IN THE MATTER OF

# ELKHORN MINING COMPANY T/A FREE ENTERPRISE URANIUM-RADON MINE, ET AL.

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

*Docket C-2721. Complaint, Aug. 5, 1975–Decision, Aug. 5, 1975*

Consent order requiring a Boulder, Mont., owner and operator of a uranium mine, among other things to cease misrepresenting the curative or physiological effect of radon gas on disease; and failing to disclose to prospective customers that radon gas has any provable physiological effect on disease, including arthritis, sinusitus, eczema and asthma.

*Appearances*

For the Commission: *Thomas C. Armitage.*

For the respondents: *John F. Bell, Bolkovatz & Romine,* Helena, Mont.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Elkhorn Mining Company, a corporation dba Free Enterprise Uranium-Radon Mine, Radon Research Foundation, a corporation, and John T. Lewis, individually and as an officer of Elkhorn Mining Company (hereinafter respondents), have violated Section 5 of the Federal Trade Commission Act, and that a proceeding would be in the public interest, hereby issues its complaint:

PARAGRAPH 1. Elkhorn Mining Company is a Montana corporation with its office located at Boulder Bank Bldg., Boulder, Mont. It does business under the name Free Enterprise Uranium-Radon Mine.

Radon Research Foundation is a Montana nonprofit corporation with its office located at Boulder Bank Bldg., Boulder, Mont. It had no receipts or disbursements in the past three years. It employed no one to do research. All expenses were paid by the Elkhorn Mining Company or its former president Wade V. Lewis personally. It distributes promotional literature for the Free Enterprise Mine and authors promotional literature distributed by the Elkhorn Mining Company. Its activities therefore inure to the monetary benefit of the Elkhorn Mining Company. It is therefore subject to Federal Trade Commission jurisdiction, 15 U.S.C. §44.

John T. Lewis is an individual and officer of Elkhorn Mining Company. He formulates, directs and controls the policies of said corporation, and his address is the same as that of said corporation.

PAR. 2. Respondents carry on the following business: The Free Enterprise Uranium-Radon Mine is a vertical shaft some eighty-five feet in depth with a horizontal shaft at the bottom some four hundred feet in length. Persons afflicted with various diseases, principally arthritis, are taken into this mine for a fee. In the mine shaft they remain for various periods of time breathing air which contains radon, a gaseous element derived from the decaying uranium surrounding the shaft. It is claimed that breathing radon will benefit these persons by curing or improving various afflictions.

PAR. 3. Respondents advertise in media of interstate dissemination and ship advertisements and brochures in commerce through the mails.

PAR. 4. Respondents' advertisements and brochures claim that the cause of arthritis is known and that cause is hormone deficiencies. Respondents claim that radon gas, derived from the ore in the mine, stimulates the production of ACTH, a hormone, which in turn stimulates the production of hydrocortisone. These hormones, it is claimed, are beneficial to and curative of arthritis, bursitis, sinusitis, asthma, eczema, skin affliction, and kindred ailments.

PAR. 5. Illustrative of respondents' advertising claims are the following quotations:

NATURE'S RADON THERAPY and IONIZATION are now recognized as REACHING THE CAUSE OF ARTHRITIS and many kindred afflictions.

NATURE reaches CAUSE OF ARTHRITIS.

Visit the Free Enterprise Uranium-Radon Mine at Boulder, Montana, for arthritis, sinusitis, asthma, skin afflictions and kindred ailments.

* * * radiation due to RADON GAS transmutation elements in the air of the mine workings, is of such type and amount as to stimulate the master pituitary gland in its production of ACTH, this body product thereupon acting upon the adrenal cortex to produce hydrocortisone, the great pain killer.

Research through Radon Research Foundation indicates there are two basic causes of arthritis and kindred glandular connected ailments:

1. AN EXTERNAL CAUSE: Stress, strain or shock of physical, mental or emotional origin.

2. AN INTERNAL CAUSE: Retardation of the glands' activities, resulting in non-normal production of body hormones.

Exposure to the mild radiation from breathing transmuted elements from radon, a gas * * * represents a scientific break-through, offering a remedy reaching a principal CAUSE of rheumatoid arthritis and allied glandular afflictions.

It (radon gas) exerts an influence on the autonomic nervous system, improves the circulatory state, and causes removal of waste from the organism and an activation of hormone producing organs, particularly the pituitary-adrenal system.

PAR. 6. These statements and others contained in respondents' advertisements and promotional literature are false, misleading and deceptive as follows:

A. Radon gas and the Free Enterprise Uranium-Radon Mine do not have any curative or physiological effect upon any disease or bodily

condition, including arthritis, sinusitus, eczema or other skin afflictions, or asthma.

B. Radon gas does not have any beneficial effect on the autonomic nervous system, the circulatory state, the removal of waste, and the utilization of oxygen by defense cells of the body.

C. There is no one cause for arthritis. There are more than sixty (60) forms of joint disease now recognized by the American Rheumatism Association, and it is unlikely that any two have the same cause. Some of these causes are well known; a number of causes are unknown.

D. The role of stress, either internal or external, in causing or aggravating arthritis is unknown.

E. Below normal production of adrenal hormones is a well-known condition named Addison's Disease. Underproduction of hormones is not related to any form of joint disease.

F. Lack of or deficiency in ACTH and hydrocortisone does not cause joint disease.

G. Radon gas does not increase production of ACTH, hydrocortisone, or any other hormone.

H. White blood cells are the most sensitive to radiation. If the radiation in respondents' mine is not great enough to affect these cells, it does not affect the body at all. If, on the other hand, the radiation is sufficient to affect white blood cells, it is dangerous and requires careful monitoring. The level of radiation in respondents' mine is in fact not dangerous to humans.

I. Even if the production of ACTH and hydrocortisone were increased by the inhalation of radon gas, the beneficial effects would be only symptomatic, failing to reach the causes of arthritis.

J. The use of radon gas does not represent a scientific breakthrough.

K. Such "cures" as are claimed by customers of respondents' mine are either of psychosomatic origin or are due to the coincidental cyclical remission of arthritis.

PAR. 7. Respondents further fail to disclose, prior to the purchase of visits to the mine by customers, a number of material facts as follows:

A. Neither radon gas nor the Free Enterprise Mine has any physiological effect on any disease or bodily condition, including arthritis, sinusitis, eczema or other skin afflictions, or asthma.

B. Any benefits claimed by visitors to the Free Enterprise Mine are psychosomatic or are due to the coincidental cyclical remission of a disease.

C. Patients should consult their doctors before and/or after going to the Free Enterprise Mine. They may be missing the benefits of known and medically approved forms of therapy. Lack of medically accepted

treatment of arthritis may result in greater pain and possible permanent disability.

Knowledge of these facts may affect a customer's decision as to whether to purchase visits to respondents' mine.

PAR. 8. The above-described conduct constitutes 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 heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its rules, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

A. Respondent Elkhorn Mining Company is a Montana corporation with its office located at Boulder Bank Bldg., Boulder, Mont. It does business under the name Free Enterprise Uranium-Radon Mine.

Respondent Radon Research Foundation is a Montana corporation with its office located at Boulder Bank Bldg., Boulder, Mont.

Respondent John T. Lewis is an individual and officer of Elkhorn Mining Company. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

B. 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 Elkhorn Mining Company, a corporation dba Free Enterprise Uranium-Radon Mine, Radon Research Foundation, a corporation, their successors and assigns, and their officers, and John T. Lewis, individually and as an officer of Elkhorn Mining Company, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing directly or by implication, that:

A. Radon gas or the Free Enterprise Uranium-Radon Mine has any curative or physiological effect upon any disease or bodily condition, including arthritis, sinusitus, eczema or other skin afflictions, or asthma.

B. Radon gas has any beneficial effect on the autonomic nervous system, the circulatory state, the removal of waste, or the utilization of oxygen by defense cells of the body.

C. There is a single cause of arthritis or that the cause or causes of arthritis are known.

D. Arthritis is caused by or has any relationship to stress, either internal or external.

E. Arthritis or any form of joint disease is caused by hormone deficiencies of any type.

F. Arthritis is caused by underproduction of ACTH or any hormone associated with the pituitary gland or the adrenal gland.

G. Radon gas increases production of ACTH, hydrocortisone, or any other hormone.

H. Exposure to any radioactive gas has any physiological effect on any disease or bodily condition.

I. ACTH or hydrocortisone, no matter how administered, results in anything but temporary symptomatic relief of arthritis.

J. The use of radon gas represents a scientific breakthrough.

K. Improvements in condition claimed to result from visits to the Free Enterprise Uranium-Radon Mine are neither psychosomatic nor the result of coincidental remission of a disease.

*It is further ordered*, That respondents shall clearly and conspicuously (a) include in all advertising and promotional materials for radon gas or the Free Enterprise Uranium-Radon Mine, and (b) provide by means of a separate written statement furnished to each prospective customer prior to the time he or she pays for the Free Enterprise Uranium-Radon Mine visit, the following form of notice:

NOTICE

Neither radon gas nor the Free Enterprise Uranium-Radon Mine has any provable physiological effect on any disease or bodily condition, including arthritis, sinusitus, eczema or other skin afflictions, or asthma.

You are advised to consult with your doctor before and/or after going to the Free Enterprise Uranium-Radon Mine. You may be missing the benefits of known and medically approved forms of treatment. Lack of medically accepted treatment of arthritis may result in greater pain and possible permanent disability.

This notice is made pursuant to order of the Federal Trade Commission.

In addition to the above, the separate written statement shall set forth the following language:

I have read and understand the above information.

_____
Name (please print)

_____
Signature

_____
Address (please print)

_____
Date

Respondents shall retain for their records, for a period of at least three years, copies of such written statements which have been signed and dated by the customers.

*It is further ordered,* That respondents shall forthwith distribute a copy of this complaint and order to each of their employees and shall continue such distribution to each new employee for a period of two years from the date this order becomes effective.

*It is further ordered,* That respondents shall maintain such records as will fully disclose the manner and form of their compliance with this order.

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

*It is further ordered,* That the individual respondent 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 address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

IN THE MATTER OF

# JAMES SLYMAN T/A SLYMAN REAL ESTATE COMPANY

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

*Docket C-2714. Complaint, Aug. 7, 1975-Decision, Aug. 7, 1975*

Consent order requiring a Knoxville, Tenn., real estate broker, 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.

*Appearances*

For the Commission: *Charles C. Murphy, Jr.*
For the respondent: *Pro se.*

## COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing Regulation promulgated thereunder and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts; the Federal Trade Commission, having reason to believe that James Slyman, an individual trading and doing business as Slyman Real Estate Company, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent James Slyman is an individual trading and doing business as Slyman Real Estate Company, with his principal office and place of business located at 5722 Oak Ridge Hwy., Knoxville, Tenn.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale and sale of improved and unimproved, developed and undeveloped real estate to the public.

PAR. 3. In order to promote the sale of improved and unimproved, developed and undeveloped real estate, respondent has caused advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, to be placed in newspapers of interstate circulation. These advertisements aid, promote or assist directly or indirectly extensions of consumer credit, as "consumer credit" is defined in Section 226.2 of Regulation Z, through the offer to persons of

"assumptions of obligations," as that term is used in Section 226.8(k) of Regulation Z. Certain of said advertisements which were published subsequent to July 1, 1969:

1. Stated the rate of a finance charge without stating the rate of such charge expressed as an "annual percentage rate," using that term, in violation of Section 226.10(d)(1) of Regulation Z.

2. Stated the amount of installment payments, the number of installments, and the period of repayment to be made if the credit is extended, without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

a. The amount of the loan;

b. the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

c. the amount of the finance charge expressed as an annual percentage rate.

PAR. 4. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed

consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent James Slyman is an individual trading and doing business as Slyman Real Estate Company, with his office and principal place of business located at 5722 Oak Ridge Hwy., Knoxville, Tenn.

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 James Slyman, an individual trading and doing business as Slyman Real Estate Company, or under any other name or names, and respondent's successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 CFR §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. Causing to be disseminated to the public in any manner whatsoever any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, which advertisement states:

(a) The rate of a finance charge unless the rate of such charge is expressed as an "annual percentage rate," using that term as required by Section 226.10(d)(1) of Regulation Z.

2. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any installment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

(a) The amount of the loan;

(b) the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(c) the amount of the finance charge expressed as an annual percentage rate.

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

*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 of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said copy of this order from each such person.

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

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

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## IN THE MATTER OF

## HEFTLER REALTY SALES, INC., ET AL.

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

*Docket C-2715. Complaint, Aug. 13, 1975-Decision, Aug. 13, 1975*

Consent order requiring a Miami, Fla., marketer of condominiums and single-family homes, 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.

### *Appearances*

For the Commission: *H. Robert Ronick* and *Hong S. Dea.*
For the respondents: *Pro se.*

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation, as

amended, promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Heftler Realty Sales, Inc., a corporation, and Clyde M. Taylor, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation, as amended, 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 Heftler Realty Sales, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 9450 Sunset Dr., Miami, Fla.

Respondent Clyde M. Taylor 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 and sale of condominium units and single family homes to members of the public.

PAR. 3. In the regular course and conduct of their business as aforesaid, respondents regularly advertise the availability and cost of consumer credit and offer to extend or arrange for the extension of such credit, as "consumer credit" is defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, as amended, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, have caused, and are causing to be published, advertisements, as "advertisement" is defined in Section 226.2 of Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of other than open end credit.

PAR. 5. Respondents, in certain of these advertisements, have stated, and are stating, the rate of a finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, and have not expressed said rate as an annual percentage rate, using the term "annual percentage rate," as "annual percentage rate" is defined in Section 226.2 of Regulation Z, in violation of Section 226.10(d)(1) of Regulation Z.

PAR. 6. Respondents, in certain of these advertisements, have stated, and are stating, the amount of the downpayment required, that no downpayment is required, or that the downpayment is a certain

percentage of the stated sales price without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

a. The cash price;

b. the amount of the downpayment required or that no downpayment is required, as applicable;

c. the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

d. the amount of the finance charge expressed as an annual percentage rate.

PAR. 7. By and through the aforesaid failures to make disclosures, respondents have failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, as amended, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with Regulation Z constitutes violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

## DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as 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 the implementing regulation promulgated thereunder, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure

prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Heftler Realty Sales, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 9450 Sunset Dr., Miami, Fla.

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

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

ORDER

*It is ordered*, That respondents Heftler Realty Sales, Inc., a corporation, its successors and assigns, and its officers, and Clyde M. Taylor, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth and Lending Act (Pub.L. 90-321; 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Failing to state the rate of a charge for consumer credit expressed as an "annual percentage rate," using that term, as prescribed by Section 226.10(d)(1) of Regulation Z.

2. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any installment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

a. The cash price;

b. the amount of the downpayment required or that no downpayment is required, as applicable;

c. the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

d. the amount of the finance charge expressed as an annual percentage rate.

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3. Failing, in any advertisement, to make all disclosures as required by Section 226.10 of Regulation Z and in the manner prescribed therein.

*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 address and a statement as to the nature of the 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, its successors and assigns, shall forthwith distribute a copy of this order to each of its operating divisions.

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

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## IN THE MATTER OF

## HOLLYWOOD CARPETS, INC., ET AL.

*Docket 8983. Order, Aug. 14, 1975*

Denial of respondents' request for leave to file an answering brief to complaint counsel's appeal from the initial decision.

### *Appearances*

For the Commission: *Everette E. Thomas, Richard C. Donohue*, and *Thomas J. Keary.*

For the respondents: *Noble & Lorsen*, Wash., D.C.

### ORDER DENYING REQUEST FOR LEAVE TO FILE ANSWERING BRIEF

Respondents herein on July 31, 1975 filed with the Commission a motion for leave to file a brief in answer to complaint counsel's appeal from the initial decision of the administrative law judge, the thirty-day period of time for the filing of said answering brief allowed by Section

3.52(c) of the Commission's Rules of Practice having expired. As grounds for the request respondents state that the work schedule of counsel, complicated by shortage of personnel in the office, prohibited the brief from being filed on time. Respondents also contend that inasmuch as oral argument has been waived, no prejudice is likely to occur with respect to any party. Annexed to said motion is respondents' "Answering Brief."

Complaint counsel have filed an answer in opposition to respondents' motion wherein they point out that respondents' answer to the complaint in this proceeding, respondents' proposed findings and respondents' notice of intention to appeal the initial decision have all been untimely filed.

The Commission has concluded that good cause has not been shown for the relief requested and is therefore of the opinion that respondents' motion should be denied and that all copies of the "Answering Brief" filed with said motion should be returned to respondents by the secretary.

Accordingly, *It is ordered*, That the aforesaid request by respondents for leave to file an answering brief be, and it hereby is, denied.

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## IN THE MATTER OF

## SPIEGEL, INC.

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

*Docket No. 8990. Complaint, Aug. 7, 1974-Decision, Aug. 18, 1975*

Order requiring a Chicago, Ill., catalog retailer, among other things to bring collection law suits only in a court in the county where the defendant resides or the debt was incurred.

### *Appearances*

For the Commission: *Randall H. Brook* and *Barry E. Barnes.*
For the respondent: *Stein, Mitchell & Mezines*, Wash., D.C.

### COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Spiegel, Inc. has violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint:

PARAGRAPH 1. Spiegel, Inc. is a Delaware corporation, with its office and principal place of business located at 2511 W. 23rd St., Chicago, Ill.

PAR. 2. Respondent is a catalog retailer, engaged in the advertising, offering for sale, sale and distribution of clothing, household goods, appliances, tools, tires and various other articles of merchandise. Allegations below of respondent's present acts or practices include past acts or practices.

PAR. 3. In the course of its mail-order catalog business, respondent receives orders from purchasers in various States at its place of business in Illinois and causes its products when sold to be shipped from Illinois to purchasers located in various States of the United States. Thus, respondent maintains a substantial course of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course of its business, respondent regularly extends credit (hereinafter referred to as retail credit accounts) for the purpose of facilitating consumers' purchase of respondent's products.

PAR. 5. In the course of its collection of retail credit accounts, respondent regularly sues allegedly defaulting retail mail-order purchasers who reside in States other than Illinois (hereinafter referred to as out-of-State defendants) in the Circuit Court of Cook County, Illinois. Courts located in the State and county where out-of-State defendants reside or where they signed the contracts sued upon could be used for these suits. Almost all out-of-State defendants have received respondent's catalogs or other advertising material, and executed purchase orders or contracts, in their home States. Almost all out-of-State defendants have had no pertinent contact with the State of Illinois other than their dealings with respondent.

PAR. 6. The distance, cost and inconvenience of defending such suits in Illinois place a virtually insurmountable burden on out-of-State defendants. Respondent thus effectively deprives these defendants of a reasonable opportunity to appear, answer and defend. Therefore, such use of distant or inconvenient forum is unfair.

PAR. 7. The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and constitute unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

# INITIAL DECISION BY HARRY R. HINKES, ADMINISTRATIVE LAW JUDGE

JANUARY 31, 1975

## PRELIMINARY STATEMENT

In a complaint issued by the Federal Trade Commission on Aug. 7, 1974, respondent, Spiegel, Inc., was charged with unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act in suing defaulting retail mail-order purchasers who reside in States other than Illinois in the Circuit Court of Cook County, Illinois. By answer duly filed respondent admitted all of the material factual allegations of the complaint but denied any violation of law. The record was thereupon closed and the parties have submitted proposed findings and briefs. Pursuant to the admitted factual allegations of the complaint, I make the following:

## FINDINGS OF FACT

1. Spiegel, Inc., is a Delaware corporation, with its office and principal place of business located at 2511 W. 23rd St., Chicago, Ill.

2. Respondent is a catalog retailer, engaged in the advertising, offering for sale, sale and distribution of clothing, household goods, appliances, tools, tires and various other articles of merchandise. Allegations below of respondent's present acts or practices include past acts or practices.

3. In the course of its mail-order catalog business, respondent receives orders from purchasers in various States at its place of business in Illinois and causes its products when sold to be shipped from Illinois to purchasers located in various States of the United States. Thus, respondent maintains a substantial course of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course of its business, respondent regularly extends credit (hereinafter referred to as retail credit accounts) for the purpose of facilitating consumers' purchase of respondent's products.

5. In the course of its collection of retail credit accounts, respondent regularly sues allegedly defaulting retail mail-order purchasers who reside in States other than Illinois (hereinafter referred to as out-of-State defendants) in the Circuit Court of Cook County, Illinois. Courts located in the State and county where out-of-State defendants reside or where they signed the contracts sued upon could be used for these suits. Almost all out-of-State defendants have received respondent's catalogs or other advertising material, and executed purchase orders or

contracts, in their home States. Almost all out-of-State defendants have had no pertinent contact with the State of Illinois other than their dealings with respondent.

6. The distance, cost and inconvenience of defending such suits in Illinois place a virtually insurmountable burden on out-of-State defendants.

COMMENT

The respondent states:

> The material factual allegation charged in the complaint is that suits filed by Spiegel in Cook County, Illinois, are inconvenient to defaulting debtors who reside in another state.

This is an oversimplification of this case. In fact, the complaint alleges that respondent Spiegel, Inc., in the course of its *mail-order catalog retailer business*, regularly sues in the courts of Illinois allegedly defaulting *retail mail-order purchasers* who reside in States other than Illinois (hereinafter referred to as out-of-State defendants) and that such acts and practices are to the prejudice and injury to the public and constitute unfair acts and practices in commerce in violation of the Federal Trade Commission Act. This distinction is important as will be explained below.

In recent years the limits of permissible *in personam* jurisdiction over out-of-State defendants have undergone great modification and expansion. Originally physical presence within the forum State was required, *Pennoyer* v. *Neff*, 95 U.S. 714 (1877), regardless of how temporary the presence may have been. This concept of jurisdiction changed in *Hess* v. *Pawloski*, 274 U.S. 352 (1927), where a Massachusetts nonresident motorist statute was upheld and in *Doherty & Co.* v. *Goodman*, 294 U.S. 623 (1935), where jurisdiction over nonresidents was recognized for claims resulting from doing business within the State. In *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), the Supreme Court laid down the constitutional requirements for the assertion of jurisdiction:

> Due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

The court considered relevant both an estimate of the inconveniences to each party and an estimate of the quality and nature of the activity being conducted by the nonresident defendant within the forum.

The "minimum contacts" theory of *International Shoe* was further defined in later Supreme Court decisions. In *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957), a foreign insurance company was sued in California for payment under a life insurance policy. The company had never solicited nor done any insurance business in

California apart from this one policy which was transacted by mail. *In personam* jurisdiction of the foreign insurance company was upheld, the Court noting that the insurance contract was delivered in California, the premiums were mailed from there, the insured was a resident of the State and died there and that there was a substantial State interest in protecting residents from insurers who refused to pay. In *Hanson* v. *Denckla*, 357 U.S. 235 (1958), the Court held that a Florida court had no personal jurisdiction over a Delaware trustee corporation when the only connection between the trustees and Florida was some correspondence between the settlor and the trustees, holding that the act done or the transaction consummated in the forum must be one "by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

Respondent points to a number of statutes which have been enacted in a number of States conferring jurisdiction upon the courts of that State over persons transacting any business within the State whether or not such persons are resident or present in the State. Not only is such a jurisdictional statute in effect in the State of Illinois, (Smith-Hurd, Ill. Stat., Supp. 1967, c.110 Sec. 17) but more than one-half of the States have enacted such so-called long-arm statutes in one form or another (4 Wright & Miller *Fed. Practice and Procedure*, Sec. 1068). Similarly, the Commissioners on Uniform State Laws have promulgated and the American Bar Association has approved the Uniform Interstate and International Procedure Act containing a long-arm provision and Congress has enacted a long-arm statute for the District of Columbia (13 D.C. Code Sec. 423, 1973 ed.). Respondent argues, therefore, that the validity of long-arm jurisdiction is beyond question.

But that is not the issue before us. The validity of the Illinois statute is not involved. Its application to the persons specified in this proceeding is involved and a determination must be made whether such out-of-State defendants have contacts with the forum sufficient to comport with fair play. To this end respondent cites the fact that the out-of-State defendants purposefully and intentionally mailed to Illinois a purchase order for merchandise, instructing Spiegel to ship merchandise from Chicago. Respondent argues that, thus, the out-of-State defendants transacted business within Illinois and submitted themselves to the jurisdiction of the courts of Illinois as to causes of action arising from such business transactions. But respondent concedes, as it must, that such *in personam* jurisdiction over out-of-State defendants in Illinois courts is proper only if the nonresidents have contacts with the forum, Illinois, sufficient to comport with due process and where the nonresidents have committed any of the acts

specifically enumerated in the long-arm statute. Stated differently, the question is whether Spiegel, a mail-order house in the State of Illinois, can sue an out-of-State retail mail-order purchaser of its merchandise in the courts of Illinois.

This practice has been decried by many commentators and assumed to be violative of due process by many courts, but, to the best of my knowledge, has never been specifically adjudicated in a litigated action. The language of some court decisions is instructive on this point.

In *In-Flight Devices Corporation* v. *Van Dusen Air Incorporated*, 466 F.2d 220, 233 (1972), it was stated:

> In our economy the seller often initiates the deal, tends to set many, if not all of the terms on which it will sell, and, of course, bears the burden of producing the goods or services, in the course of which production injuries and other incidents giving rise to litigation frequently arise. The buyer, on the other hand is frequently a relatively passive party, simply placing an order, accepting the seller's price and terms as stated in his product advertisement and agreeing only to pay a sum upon receipt of the goods or services.

The court went on to note that if the buyer vigorously negotiates terms, inspects production, travels to the forum, conducts substantial interstate business and the like, then his contacts with the forum are increased and the expectation and likelihood that he may be successfully sued in a distant forum are also correspondingly increased. See, *e.g.*, *Ziegler* v. *Houghton-Mifflin Co.*, 224 N.E. 2d. 12 (1967). It cannot be denied that here Spiegel initiated the contacts with the buyer through its mail-order catalog and advertisements and dictated the price and terms of the contract. Generally, the purchase is the only contact the buyer has had with Spiegel or Illinois.

The language of an Illinois court in *Geneva Industries Inc.* v. *Copeland Construction Co.*, 312 F.Supp. at 188 (1970), is even more specific:

> The notion that *any customer of an Illinois based mail-order house such as Sears Roebuck or Montgomery Ward* [or Spiegel?] would be subject to the jurisdiction of Illinois is obviously violative of the most minimal standard of minimum contacts and the fundamental structure of the Federal system. (Emphasis added.)

The court noted differences in an earlier Illinois case, *Gorden* v. *ITT*, 273 F.Supp. 164 (1967), where the out-of-State defendant was subjected to the jurisdiction of the Illinois court because it "regularly sent its salesmen into Illinois to solicit orders * * *" and engaged in a heavy mail-order solicitation in Illinois. See also *Koplin* v. *Thomas, Haab & Botts*, 219 N.E. 2d. 646, 652 (1966), where the court upheld *in personam* jurisdiction over a nonresident defendant which "affirmatively and voluntarily sought the benefit of our [Illinois] laws by *initiating and soliciting* the sales here." (Emphasis added.)

In *McQuay, Inc.* v. *Schlosberg, Inc.*, 321 F.Supp. 902 (1971), the court said:

The general philosophy of long-arm statutes is to protect citizens of a state where a nonresident comes into the state directly or indirectly to sell something or solicit sales, or where, even though out-of-state, a nonresident sells a product which is brought into or comes to rest in the state. The nonresident thus receives the benefit and protection of the state laws and profits or hopes to from its adventure therein. The nonresident is the aggressor or initiator. It is appropriate that such a nonresident seller should respond to service of process in that state.

The court added that where a nonresident corporation enjoys no particular privilege or protection in purchasing products from the seller in the forum State, it would be wrong to subject the nonresident buyer to the jurisdiction of the forum State:

The rationale behind this long time statutory precedent is that a defendant ought to be entitled to defend himself among people and in a community where he resides and is known, his witnesses generally will reside in or near the place of his residence, his counsel will be from his community, the goods he has purchased * * * likely will be situated in his home community. Such concepts have roots deep in common law traditions. It would seem that this is what the United States Supreme Court meant by "traditional notions of fair play and substantial justice" in *International Shoe, supra.*

Courts have also distinguished between out-of-State buyers and out-of-State sellers noting that generally it would be more equitable to impose *in personam* jurisdiction over out-of-State sellers than out-of-State buyers. See, for example, *Nordberg Div. of Rex Chainbelt Inc.* v. *Hudson Engineering Corp.*, 361 F.Supp. 903 (1973), where the court noted that "sellers in general have more resources to defend themselves in out-of-state litigation than do buyers." The same case also noted that individuals and small companies may be hard put to defend themselves in a foreign forum saying:

*A customer of a mail-order house,* be it an individual or a small company engaged in a one-state operation, is also more likely to be unprepared to defend itself in a foreign forum than is a company * * * which transacts a substantial amount of interstate business. When almost all of its business is conducted in its home state, a customer of a mail-order house does not expect to be forced to travel to a distant forum. It thus lacks experience in out-of-state litigation. When its expectations are disappointed, it is caught unprepared pyschologically and, perhaps, financially. (Emphasis added.)

In *Conn* v. *Whitmore*, 342 P.2d 871 (1959), an Illinois horse fancier wrote to the defendant in Utah, offering to sell him several horses. The defendant had a friend inspect the horses in Illinois, accepted the offer by mail from Utah and sent a servant to Illinois to pick up his purchases. The Court refused to enforce an Illinois judgment against the buyer. "It was not the defendant Utah resident who took the initiative by going into Illinois to transact business, nor did he engage in any activity resulting in injury or damage there. Quite the contrary, it was the plaintiff resident of Illinois who proselyted for business in Utah." Much the same can be said of Spiegel's relationship with its out-of-State mail-order purchasers.

Thus, Spiegel's suits in Illinois courts against out-of-State retail mail-order purchasers would be deemed beyond the pale of the Illinois long-

arm statute whether one considers the extent of such purchasers' activities within Illinois or whether one considers the extent of the interstate business of such purchasers or whether one considers the participation of such purchasers in the terms and conditions of the contract. In short, under the doctrine of *International Shoe, supra,* considering the inconveniences to each party and the quality and nature of the activity being conducted within the forum, the maintenance of a suit by Spiegel in Illinois against out-of-State retail mail-order purchasers could not but offend traditional notions of fair play and substantial justice. See Currie, *The Growth of the Long Arm,* 1963 U. Ill. L.F. 533, 577. Such practice is oppressive since the distance, cost and inconvenience of defending such suits in Illinois effectively deprives out-of-State defendants of a reasonable opportunity to appear, answer and defend.

Nor can it be denied that the practice causes substantial injury to such defendants since a default judgment may be entered in Illinois without defendants effectively being able to contest it, ultimately operating to their substantial economic detriment in the impairment of their credit standing if nothing else. As the court noted in *Barquis* v. *Merchants Collection Association of Oakland, Inc.,* 496 P.2nd 817 (1972):

> Knowingly filing actions in distant counties in order to gain an unconscionable advantage is not a unique or isolated practice, but instead has been continuously identified * * * as a widespread and common abuse in the debt collection field.

Respondent argues, nevertheless, that if, indeed, this practice of Spiegel is violative of due process, it cannot be acted upon without a second suit in the State of the defendant purchaser where the latter may raise the issue of due process and, if successful, prevent collection. It is unlikely, however, that such purchaser in the second suit would have an opportunity to raise any valid defenses on the merits or make counter-claims or correct the damage done to his credit rating. Moreover, such circuitous and last-ditch defense tarnishes the machinery of justice. Supreme Court Chief Justice Burger noted that there was a need to improve the machinery of justice so that the sense of confidence in the courts will not be destroyed by a belief among people "who have long been exploited" that "the courts cannot vindicate their legal rights from fraud and overreaching in the smaller daily transactions of life." 69 U.S. News & World Report 68 (No. 8, Aug. 13, 1970). It is even more incumbent upon the Federal Trade Commission which is specifically charged with protecting the public from unfair trade practices to act under these circumstances. See *Barquis, supra,* p. 828.

The injury to such mail-order purchasers subjected to suits in distant forums was pointed out not only by the courts but by others as well.

The National Commission on Consumer Finance, for example, stated in its report of December 1972:

> Many states permit a suit of money judgment to be brought in a county where either the plaintiff or defendant resides. This type of venue provision can easily be abused by plaintiffs in collection matters. For example, if the plaintiff-creditor has multiple locations or a central place of business fairly distant from the county or location where most of its customers reside, it can initiate suit in a venue (location) which, though "legally" proper, is extremely distant from or inconvenient to the debtor-defendant. The practice usually results in the entry of a default judgment and, in effect, deprives the debtor-defendant of a reasonable opportunity to defend against the underlying claim.

Similar observations are contained in the final draft of the Uniform Consumer Credit Code by the National Conference of Commissioners on Uniform State Laws (1974) and in the first final draft of the National Consumer Act (National Consumer Law Center, Boston College Law School, Brighton, Mass. (1970).

> Even if the debtor's defense was totally lacking in merit, he should not have been denied his opportunity to assert it. Even the most deadbeat debtor can perceive the perversion of justice in a procedure that allows a default judgment to be entered against him in a court at the other end of Texas, (Sampson, *Distant Forum Abuse in Consumer Transactions*, 51 Tex. L.R. 269 (1973)).

The Commission's guidelines in ascertaining fairness or unfairness were noted by the Supreme Court in *Sperry & Hutchinson* v. *Federal Trade Commission*, 405 U.S. 233, 244-45 n. 5 (1972). Where, as here, the practice has been found to offend public policy as it has been established by statutes, common law or otherwise and where it is oppressive and causes substantial injury to consumers, such practice may be found unfair and prohibited. I have found that Spiegel's practices involved in this proceeding lack due process and do not conform to the objectives of long-arm statutes. But even if they had been valid under such statutes, it would not change the outcome of this proceeding. What may have been lawful heretofore may, nevertheless, be found to have become an unfair trade practice under current community standards of fair dealing. See, *e.g. Federal Trade Commission* v. *Standard Education Society*, 86 F.2d 692, 696 (1936). I have found that Spiegel's use of the Illinois long-arm statute against out-of-State retail mail-order purchasers would not comport with fair play and would be deemed unfair. Under such circumstances, the Commission is authorized to act even in the absence of proof of actual injury to anyone. See *Spiegel, Inc.* v. *Federal Trade Commission*, 494 F.2d 59, 62 (1974).

## THE REMEDY

The Commission's authority and obligation to enter an order of sufficient breadth to ensure that a respondent will not engage in future violations of the law is well established; the Commission has widest

discretion to fashion suitable order provisions, not limited to the exact nature of the specific violations, to protect the public interest. *Federal Trade Commission* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 392, 394-5 (1965); *Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 428-30 (1957); *Federal Trade Commission* v. *Ruberoid Co.* 343 U.S. 470, 473 (1952); *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611-13 (1946). The only limitations set by the courts are that the order provisions must be reasonably related to the unlawful practices and must be sufficiently clear and precise in defining understandable parameters of compliance and enforcement. *Colgate*, 380 U.S. at 392, 394-95; *National Lead*, 352 U.S. at 428-30; *Ruberoid*, 343 U.S. at 473; *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 726 (1948).

Thus, Paragraph One of the order herein prohibits the institution of suits against a defendant other than where defendant resides or where the contract sued upon was signed. This will not preempt any rule of law which further limits choice of forum and is similar to the consent orders issued by the Commission in *Montgomery Ward & Co.*, C-2602 (Nov. 1974) [84 F.T.C. 1337] and *West Coast Credit Corp.*, C-2600 (Nov. 1974) [84 F.T.C. p. 1328].

Paragraph Two of the order herein is also akin to the consent orders in *Montgomery Ward* and *West Coast Credit*, *supra*. It requires Spiegel to terminate any suit instituted contrary to the provisions of Paragraph One above and vacate any default judgment entered thereunder, although a change of forum is permitted instead. Respondent opposes this paragraph as harsh and unfair. But this termination requirement is triggered only after Spiegel learns that such a suit had been instituted. Complaint counsel interprets this paragraph of the order to be prospective in effect and not disturbing existing judgments. Consequently, the burden on Spiegel should not be undue, and would insure that Spiegel did not retain the fruits of a suit and judgment improperly, but in good faith, obtained. Moreover, this paragraph permits Spiegel to seek a change of forum where permitted by State law. At the same time, defendants are to be given a reasonable opportunity to defend the new proceeding by Spiegel.

Paragraph Three of the order herein requires Spiegel to notify credit bureaus and consumer reporting agencies, as well as any others upon request of the defendant, of the termination of suits improperly filed and the vacation of default judgments obtained thereunder. This is necessary to overcome the harm done to the defendant's credit reputation by the filing of an improper suit even though the suit may have been terminated later.

Paragraph Four of the order herein concerns recordkeeping. It

requires Spiegel to prepare and maintain a summary of consumer law suits filed for two years following the commencement of this order. This will enable the Commission to monitor compliance and should not constitute an undue burden to Spiegel which can comply with relatively slight clerical operations at the scene of such activity. It would be much more burdensome for the Commission to undertake such monitoring considering Spiegel's far-flung operations. This paragraph also requires Spiegel to prepare such a summary for the year preceding the issuance of the complaint herein, Aug. 7, 1974. This will enable the Commission to gauge the effectiveness of the order and is consistent with the Commission's powers. See, *e.g.*, *National Dynamics Corp.* v. *Federal Trade Commission*, 492 F.2d 1333 (1974); *Tashof* v. *Federal Trade Commission* 437 F.2d 707, 715 (1970); *Arthur Murray Studio of Washington, Inc.*, 78 F.T.C. 401, 436 (1971).

Paragraphs Five, Six and Seven of the order herein are standard provisions.

ORDER

*It is ordered*, That respondent Spiegel, Inc., a corporation, and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, including any collection agency, in connection with the collection of retail credit accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Instituting suits except in the county where defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

*It is further ordered*, That, where respondent learns subsequent to institution of a suit that the preceding paragraph has not been complied with, it shall forthwith terminate the suit and vacate any default judgment entered thereunder. In lieu of such termination, respondent may effect a change of forum to a county permitted by the preceding paragraph, provided that respondent gives defendant notice of such action and opportunity to defend equivalent to that which defendant would receive if a new suit were being instituted. In all cases respondent shall provide defendants with a clear explanation of the action taken and of defendants' rights to appear, answer and defend in the new forum.

*It is further ordered*, That where respondent terminates a suit or vacates a judgment pursuant to the preceding paragraph, it shall give

notice of such termination or vacation to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. §603), which it has been informed or has reason to know has recorded the suit or judgment in its files. Additionally, respondent shall furnish such notice to any other person or organization upon request of the defendant.

*It is further ordered,* That respondent prepare and maintain a summary of suits instituted, pending, terminated, or acted upon subsequent to judgment. This summary shall contain each defendant's name, address, and county of residence; county where the contract was signed by the defendant, if the suit was not instituted in the residence county; county where served; date served; date filed; docket number; name and location of court in which filed; name of plaintiff (if a collection agency suing in its own name); amount claimed; and disposition (including garnishment or execution, if any). Where a suit has been instituted in a county other than where defendant resides or signed the contract, the reason for this choice of forum shall be explained. This summary shall cover three years, including Aug. 1, 1973 to Aug. 1, 1974, and two years immediately following effective date of this order. A copy of this summary shall be submitted to the Federal Trade Commission on a quarterly basis except that the summary of activity for the first year shall be submitted within sixty days after the effective date of this order.

*It is further ordered,* That respondent shall forthwith deliver a copy of this order to each of its subsidiaries and operating divisions, to each collection agency currently collecting any of respondent's retail credit accounts, and to any other collection agency prior to referral to it of any of respondent's retail credit accounts. Respondent shall obtain and preserve signed and dated statements from each collection agency, acknowledging receipt of the order and willingness to comply with it.

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

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

## OPINION OF THE COMMISSION

BY DIXON, *Commissioner:*

Complaint in this matter was issued on Aug. 7, 1974, charging that respondent's use of an inconvenient forum in which to sue certain of its customers constituted an unfair act or practice, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45. Proceedings before the administrative law judge were brief. Respondent admitted all the factual allegations of the complaint but argued they did not warrant a finding of illegality, or, at least, the imposition of an order. The administrative law judge disagreed, sustained the complaint, and entered an order. Respondent has appealed.

The facts are readily summarized. Respondent is a catalog retailer, engaged in the advertising, offering for sale, sale and distribution of clothing, household goods, appliances, tools, tires and various other articles of merchandise (I.D. 2).[1] Respondent's principal place of business is in Chicago, Ill. (I.D. 1). In the course of its mail-order catalog business it receives orders in Illinois from purchasers domiciled throughout the country, and ships products to them in their home States (I.D. 3). Respondent regularly extends credit to consumers to facilitate their purchase of its products (I.D. 4), and in the course of collecting overdue accounts, it regularly sues purchasers who reside in States outside of Illinois (hereinafter "out-of-State" defendants) in the Circuit Court of Cook County, Ill. Almost all out-of-State defendants have received respondent's catalogs or other advertising material, and executed purchase orders or contracts in their home States. Almost all of these defendants have had no pertinent contact with the State of Illinois other than their dealings with respondent (I.D. 5). The distance, cost, and inconvenience of defending such suits in Illinois place a virtually insurmountable burden on out-of-State defendants who might wish to defend the charges against them (I.D. 6).

### I.

It is perhaps to respondent's credit that on appeal it has made less effort to defend the justness of its own prior conduct than to challenge the propriety of Commission action to change it. We agree with the administrative law judge that respondent's activities do fall squarely within Section 5's proscription of unfair acts and practices, and that

[1] The following abbreviations are used herein:
I.D. - Initial Decision (Finding No.)
I.D. p. - Initial Decision (Page No.)
RB - Respondent's Appeal Brief to the Commission (Page No.)
RPF - Respondent's Proposed Findings of Fact and Law
CB - Complaint Counsel's Reply Brief to the Commission (Page No.)

remedial action is warranted. The Commission has previously described factors it will consider in determining whether a practice is "unfair" within the statutory meaning:

(1) Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness;

(2) whether it is immoral, unethical, oppressive, or unscrupulous;

(3) whether it causes substantial injury to consumers.***[2]

In seeking the source of public policy with respect to questions of jurisdiction and the proper use of judicial fora for debt collection, we must begin with the guarantees of due process as they have been articulated by courts. We think there can be little question that Spiegel's use of an Illinois situs to sue its out-of-State debtors offends traditional notions of due process and denies consumers the meaningful opportunity to answer and defend charges against them which it is the purpose of the law to provide.

Spiegel contends that it has merely made proper use of the Illinois "Long Arm Statute,"[3] which confers jurisdiction over parties who are, *inter alia*, "doing business" in Illinois, to the extent a suit concerns such business. The statute has been construed to confer jurisdiction as broad as that permitted by the Constitution *Nelson* v. *Miller*, 11 Ill. 2d 378, 143 N.E. 2d 673, 679 (1957). Complaint counsel reply (and the administrative law judge so found) that suit against out-of-State debtors in the circumstances defined by the complaint denies due process, and, thus, could not come within the grant conferred by the Illinois statute (I.D. p. 8 [pp. 431, 432, herein]).[4]

The Supreme Court has set forth the general standard for permissible *in personam* jurisdiction:

[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945).

Subsequent decisions have made clear that a defendant need not have entered a State or have had extensive contacts with it in order to satisfy the constitutional test *Travelers Health Association* v. *Virginia*, 339 U.S. 643 (1950); *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957).

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[2] "Statement of Basis and Purpose of Trade Regulation Rule 408, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking," 29 Fed. Reg. 8355 (1964), cited in *FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 244-45 n. 5 (1972).

[3] Ill. Rev. Stat., Supp. Ch. 110 §176, 1967.

[4] Respondent's argument that the Commission in this proceeding is challenging the validity of the Illinois statute itself is patently incorrect. To the extent the Illinois statute is relevant, the question is whether its narrow and particular *use* by Spiegel is consistent with federal law. Respondent has pointed out no opinion by an Illinois court or any other holding that Spiegel's particular use of the long arm statute is a proper one.

While extending the reach of *in personam* jurisdiction, courts have continued to recognize the impropriety and fundamental unfairness of assuming jurisdiction over defendants whose connection with the forum State is tenuous at best, who have made no attempt to avail themselves of the benefits and protections of the laws of the forum State (*e.g.*, *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958)), and who have no means or expectation of defending suit in a distant locale. Compare *McQuay, Inc.* v. *Samuel Schlosberg, Inc.*, 321 F. Supp. 902 (D. Minn. 1971) in which the court said:

> The general philosophy of long arm statutes is to protect citizens of a state where a nonresident comes into the State directly or indirectly to sell something or solicit sales, or where, even though out of state, a nonresident sells a product which is brought into or comes to rest in the State. The nonresident thus receives the benefit and protection of the state's laws and profits or hopes to from its adventure therein. The nonresident is the aggressor or initiator. It is appropriate that such a nonresident seller should respond to service of process in that state. (At 906.)

With *Nordberg Div. of Rex Chainbelt Inc.* v. *Hudson Engineering Corp.*, 361 F. Supp. 903 (E.D. Wisc. 1973) in which the court reviewed underlying policy considerations militating against assertion of jurisdiction over a nonresident mail order purchaser:

> A customer of a mail-order house, be it an individual or a small company engaged in a one-state operation, is also more likely to be unprepared to defend itself in a foreign forum than is a company which transacts a substantial amount of interstate business. When almost all of its business is conducted in its home state, a customer of a mail order house does not expect to be forced to travel to a distant forum * * *. When its expectations are disappointed, it is caught unprepared psychologically and, perhaps, financially. (At 907.)

It is perhaps an oversimplification to say that the courts have drawn a firm jurisdictional line between buyers and sellers, but those categories are clearly of relevance to the extent they are used "as a short-hand means of expressing the differences between passive and active involvement in a transaction." *In Flight Devices Corporation* v. *Van-Dusen Air, Inc.*, 466 F.2d 220, 233 (6th Cir. 1972). Jurisdiction over an out-of-State purchaser may be appropriate, but only where the buyer has taken an active role in negotiation or performance of the contract, or has had other significant contacts with the forum State. Thus, in finding that a large corporate purchaser could be sued in the vendor's home State, the First Circuit distinguished its role from that of the usual long distance customer:

> On this background the extent of United's participation in the economic life of Massachusetts seems clearly to rise above that of a purchaser who simply places an order and sits by until the goods are delivered * * *. *Whittaker Corporation* v. *United Aircraft Corporation*, 482 F.2d 1079, 1084 (1973).

It is clear, however, that Spiegel's retail credit customers are the quintessential passive buyers, who do sit by until the goods are delivered. They have purchased in response to respondent's advertising

or mailing of its catalog. They have had no contact with the State of Illinois other than to mail in a standardized contract signed in their home State. They have not sought the benefit and protection of Illinois laws, and they most certainly have no expectation of being required to travel to Illinois to engage in litigation should a dispute develop concerning the merchandise. Nor, undoubtedly, do most have the means to launch a cross-country defense on procedural or substantive grounds.

While neither side has cited a holding precisely on point, there appear to be numerous instances in which courts, in the course of resolving related problems, have considered situations virtually the same as that involved here, and concluded that jurisdiction over an out-of-State mail order customer would contravene due process. Indeed, one reason that this narrow point has never been the subject of a litigated holding may be that sellers' counsel have considered it too obvious to withstand scrutiny and have backed off if faced with a contest.[5] As the Illinois District Court commented in *Geneva Industries, Inc.* v. *Copeland Construction Co.:*

> The notion that any customer of an Illinois based mail order house such as Sears Roebuck or Montgomery Ward would be subject to the jurisdiction of Illinois courts is obviously violative of the most minimal standard of minimum contacts and the fundamental structure of the federal system. 312 F. Supp. 186, 188 (1970).

In *McQuay, Inc.* v. *Samuel Schlosberg, Inc., supra,* a New York-based contractor was solicited by a Minnesota corporation's New York agent. It placed an order and failed to pay. In denying jurisdiction under Minnesota's long-arm statute, substantially identical to that of Illinois, the court reasoned that:

> If plaintiff's position is sound, then it or any other Minnesota manufacturer can sue all of its customers wherever they may be located in the United States who for good or bad reasons have failed to pay their bills or the purchase price of goods.* * * This concept almost completely obliterates state lines.* * * (At 906.)

In *Conn* v. *Witmore,* 9 Utah 2d 250, 342 P. 2d 871 (1959), the court denied enforcement of a default judgment rendered in Illinois against a Utah purchaser who had sent his servant to Illinois to inspect and pick up the merchandise, and remitted payment by mail to the Illinois vendor. The court reasoned that:

> Brief reflection will bring to mind difficulties to be encountered if the ordering of merchandise in a foreign state by mail and taking delivery through a designated carrier * * * is to be deemed "doing business" in a foreign state which will draw one into the orbit of the jurisdiction of its courts.* * * Mail order houses, for example, accept and fill orders from all over the country. If they could sue on their own accounts in their own state where it would be highly inconvenient for out-of-state customers to defend, n forward the judgments to the jurisdictions where the customers live, demanding full faith and credit for them, this would effectively prevent the customers from presenting a meritorious defense where one existed. The ultimate result would be to dissuade

[5] See RPF, Appendix A, p. 2.

customers from doing business across state lines by mail. Thus what may seem a temporary advantage to such businesses, in all likelihood would be detrimental to them and to business generally in the long run. (At 342 p. 2d 874-75.)

More recently, an Illinois District Court denied jurisdiction in a suit brought by an Illinois corporation against a Michigan corporation which had leased railroad cars from plaintiff, having been solicited by the vendor's agents in Michigan. The court concluded that:

The interpretation by state and federal courts that the Illinois Long-Arm Statute does not extend Illinois jurisdiction to such cases as the instant action rests on logic and hard fact. To grant jurisdiction in such cases would have an adverse effect on commerce because such a decision would subject any customer of an Illinois business, manufacturer, or mail order house to Illinois jurisdiction in the event of suit arising solely out of the acceptance by mail of an Illinois resident's offer. The ultimate result would be to dissuade customers in foreign states from doing business by mail or even telephone with Illinois businessmen. *United States Railway Equipment Co.* v. *Port Huron and Detroit Railroad Co.*, 58 FRD 588 (N.D. Ill. 1973).

To the same effect are numerous other reported cases, *e.g.*, *In-Flight Devices Corp.* v. *Van Dusen Air, Inc.*, 466 F.2d 220, 232-33 (6th Cir. 1972); *Nordberg Div. of Rex Chainbelt Inc.* v. *Hudson Engineering Corp.*, 361 F. Supp. 903, 906-07 (E.D. Wisc. 1973); *Fourth Northwestern Nat. Bank* v. *Hilson Industries, Inc.*, 264 Minn. 110, 117 N.W. 2d 732 (1962); *"Automatic" Sprinkler Corp.* v. *Seneca Foods Corp.*, 280 N.E. 2d 423, 425 (Mass. 1972); *Marshall Egg Transport Co.* v. *Bender-Goodman Co., Inc.*, 275 Minn. 534, 148 N.W. 2d 161 (1967); *Tiffany Records Inc.* v. *M.B. Krupp Distributors, Inc.*, 81 Cal. Rptr. 320, 327, 276 Cal. App. 2d 610 (1969); *Belmont Industries, Inc.* v. *Superior Ct. of Stanislaus County*, 107 Cal. Rptr. 237, 31 Cal. App. 3d 281 (1973).[6]

From the foregoing we conclude that Spiegel's practice of suing its out-of-State mail order customers in Illinois courts is patently offensive to clearly articulated public policy, intended to guarantee all citizens a meaningful opportunity to defend themselves in court.

We also find that Spiegel's practices are oppressive, and injurious to consumers. The burdens imposed on a consumer-debtor by the creditor's use of an inconvenient forum have been highlighted in a *Staff Report on Debt Collection Hearings* compiled by the Commission's New York Regional Office, and cited by complaint counsel:

The plaintiff, having selected a forum convenient to himself, may have at the same

[6] Respondent has made no effort to distinguish the extensive case law cited by complaint counsel in support of their position. We have carefully reviewed the decisions cited by respondent at pages 32-36 of its Appeal Brief, involving construction of the Illinois long-arm statute, *e.g.*, *Ziegler* v. *Houghton-Mifflin Co.*, 80 Ill. App. 210, 224 N.E. 2d 12 (App. Ct. 2d Dist. (1967); *Koplin* v. *Thomas, Haab, and Botts*, 73 Ill. App. 2d 242, 219 N.E. 2d 646 (App. Ct. 1st Dist. 1966); *O'Hare International Bank* v. *Hampton*, 437 F.2d 1173 (7th Cir. 1971). None of these matters involved, nor did the courts therein discuss, the type of situation at issue here, and of concern to courts in cases cited by complaint counsel, *i.e.*, a passive consumer mail order buyer and a large vendor who initiates and sets the terms of the transaction. Respondent's reliance on *McGee* v. *International Life Insurance*, *supra*, is similarly misplaced, in light of the wide difference of involvement in the transaction between the defendant vendor in that case and the defendant consumers in this, and in view of the Court's heavy reliance in that case on the state's interest in providing its citizens with an effective means of suing insurers who refuse to pay their claims 355 U.S. 223-24.

time imposed a hardship upon the defendant as far as travel and expenses are concerned. The defendant may have to lose a day's salary which he can ill afford. In addition, the defendant who has retained a private attorney, may have to pay additional expenses to have the attorney travel to defend. Or, if the debtor desires to be represented by a legal services agency, he may find that the local legal services office may have to refer him to the legal services office in the county of suit because the local office is not physically equipped to handle the defense properly. This, in turn, imposes other hardships; it becomes more difficult and more expensive to prepare a defense.

It may be possible for the defendant to make a motion for a change of venue * * *, but where the defendant is without counsel, he would probably be unaware of this and, in any event, technicalities of motions practice may make it too difficult for the consumer-debtor to accomplish on his own. Thus, while the plaintiff may bring the action in a forum inconvenient for the consumer with respect to venue, unless the defendant moves for a change of venue, the action may still proceed there (at pages 123-24; April 1973).[7]

It is not surprising that all of the cases cited by counsel in their briefs have involved well-heeled defendants and substantial sums of money, which made it economically worthwhile for the defendants to retain counsel to contest the issue of jurisdiction. If lawyers worked for free, and there were no limit to their numbers, Spiegel's practices would cause us less concern. In fact, however, it is probable that for many of Spiegel's defaulting customers, like most consumers who are sued for small debts, the only meaningful and economically viable opportunity they have to defend a suit against them is to appear in court *pro se* and argue their case. This opportunity is totally foreclosed by respondent's use of the Cook County forum, which forces the consumer who wishes to defend to appear in a courtroom hundreds or thousands of miles from home, at a cost in travel alone which may exceed the amount in controversy. The option of hiring a lawyer who would be able to file a motion contesting jurisdiction is likely to be equally unviable. Nor do we think it lessens the damage done to argue that judgments unfairly obtained by Spiegel would be rejected if it attempted to collect on them. Affirmative efforts to defend a collection suit can also impose costly and unaccustomed burdens on the consumer, and in any event there are many injurious uses which can be made of improper judgments short of execution, such as sullying credit records cf. *Riverside & Dan River Mills* v. *Menefee*, 237 U.S. 189, 195-97 (1915).

Spiegel has suggested that it confined its Illinois collection suits to those involving "undisputed balances" in which the debtor "could not be persuaded to pay."[8] It is clearly not for Spiegel, however, to decide which of its debtors have defenses so unmeritorious that they do not deserve a reasonable opportunity to defend themselves in judicial

[7] This passage discusses the effect of use of inconvenient venue within the debtor's home State. Spiegel's suits in an inconvenient venue outside the debtor's State can hardly be less oppressive. See also, *Consumer Credit in the United States, Report of the National Commission on Consumer Finance*, pages 41-42 (Dec. 1972).

[8] RPF, Appendix A, page 2.

proceedings brought against them. In a society which prizes the right of everyone to a day in court, there can be little doubt that substantial injury is done whenever the meaningful opportunity to defend is foreclosed, no matter what the outcome would have been absent the foreclosure. As the Supreme Court noted more than a half century ago in *Coe* v. *Armour Fertilizer Works:*

> To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense on the merits. 237 U.S. 413, 424 (1915).

Because Spiegel's practice of suing its out-of-State mail order customers in Illinois is contrary to clearly established public policy favoring a meaningful opportunity for all citizens to defend suits brought against them, and because this conduct is oppressive and injurious to consumers in denying them valuable rights which our society holds dear, we conclude that Spiegel has engaged in an unfair practice within the meaning of Section 5 of the Federal Trade Commission Act.

II

Counsel for respondent has raised a number of objections to the entry of an order, which we believe are without merit. Counsel suggests that the Commission should proceed by rulemaking rather than "singling it out" for imposition of sanctions. While rulemaking would not necessarily be inappropriate in this circumstance, it is well settled that the Commission may proceed by adjudication against an offender without simultaneously pursuing all others. *Moog Industries, Inc.* v. *Federal Trade Commission,* 355 U.S. 411 (1958), *cert. denied* 356 U.S. 905 (1958); *Ger-Ro-Mar, Inc., et al.* v. *Federal Trade Commission,* No. 74-2343 (2d Cir., June 16, 1975). In addition, at the same time that suit was brought against Spiegel, three other firms, including Montgomery Ward, were cited for practices involving suit in inconvenient fora, and those three all consented to orders imposing the same limitations on choice of forum as are contained in the order of the administrative law judge.[9] In light of its holding in this matter the Commission will certainly view with care the allegedly identical practices of others which may come to its attention (though respondent has not suggested whom it has in mind), but we do not believe that imposition of an order on respondent amounts, by any standard, to an abuse of discretion *Federal Trade Commission* v. *Universal-Rundle Corp.,* 387 U.S. 244 (1967).

A related contention on Spiegel's part is that the Commission should

[9] *Montgomery Ward & Co.,* C-2602 (Nov. 1974); *West Coast Credit Corp.,* C-2600 (Nov. 1974); *Commercial Service Co., Inc.,* File No. 732-3434 (consent order accepted and placed on public record for comment).

stay its hand because of the "novelty" of the legal position asserted in the complaint. Spiegel proposes that if the Commission will not proceed by rulemaking it should issue a declaratory judgment in this proceeding, stating that the practice is unlawful but omitting a binding order. We cannot agree with Spiegel's suggestion that somehow its practice has been lawful until now. We think it is more accurate to say that Spiegel has in the past gotten away with something that its counsel ought to have recognized, in light of the numerous decisions cited hereinbefore (some of which were a matter of public record before Spiegel contends it began its practice), was at best a highly dubious activity.[10] There may be instances in which it would be inequitable to impose a harsh order on a respondent based upon a novel interpretation of the law. This is nowhere near such a case. The order imposed is not harsh, and not particularly difficult of compliance. And the Commission's "novel interpretation" of law has been foreshadowed, indeed dictated, by substantial prior precedent. We do not believe that whenever the Commission resolves a point of law for the first time in an adjudication it must omit an order against the violator. Acceptance of Spiegel's argument would require no less.

Spiegel also contends that the Commission may not "pre-empt" the laws of Illinois by limiting the reach of the Illinois long-arm statute. Relatedly, Spiegel argues that a sufficient remedy is afforded injured debtors by the courts of Illinois, which can determine on a case-by-case basis whether or not jurisdiction lies therein.

With respect to the pre-emption argument, the Commission does not believe that its decision in this matter is in any way inconsistent with the law of Illinois, which has necessarily been construed by the courts of that State to afford all defendants due process *Nelson* v. *Miller*, *supra*. As noted earlier, Spiegel has cited no precedent from Illinois or elsewhere to suggest that an Illinois court could find its use of the long-arm statute to be proper. To the contrary, more than one Illinois federal district court judge, upon considering the precise issue before us, has expressed the view that Illinois law would not favor Spiegel's behavior, *e.g.*, *United States Railway Equipment Co.* v. *Port Huron and Detroit Railroad Co.*, *supra*; *Geneva Industries* v. *Copeland Construction Co.*, *supra*.

It may be argued that the baseline courts in Cook County have tacitly sanctioned Spiegel's construction of the long-arm statute by

[10] In this regard it may not be irrelevant to note that in Appendix A of respondent's "Proposed Findings of Fact and Conclusions of Law" before the administrative law judge, respondent's vice-president/secretary states that Spiegel instituted its experimental program of suing out-of-State debtors in Cook County "to determine what the collection results would be without recourse to execution or garnishment on the judgments obtained against delinquent debtors." In the same affidavit it is stated that in those rare instances when a consumer objected to the Illinois venue, the suit was dropped. We wonder why, with an "undisputed balance" at stake, Spiegel should desist from proceeding in a forum it assertedly believed to be entirely proper.

entering default judgments in its favor. It is questionable, however, whether these courts have ever really had occasion to consider the legal issues involved here. While there is authority to suggest that a court should consider on its own initiative whether it has subject matter jurisdiction before entering a judgment, there is little authority to suggest that a court, when faced with valid proof of service of process, a petition by plaintiff, and no answer by defendant, is obliged before entering a default judgment to look behind the pleadings to determine *sua sponte* whether it possesses *in personam* jurisdiction.[11] Particularly since Spiegel, by its own admission, has withdrawn its suit in the rare case when a defendant had the legal resources or legal acumen to challenge jurisdiction, the failure of the Cook County Circuit Court to put a spontaneous stop to respondent's practice appears to us to be of slight precedential value as a guide to the proper construction of the Illinois long-arm statute.

Moreover, assuming *arguendo*, and contrary to what appears to be the fact, that Illinois law could somehow be read to condone Spiegel's conduct, such conduct must nevertheless fall in the final analysis before clear Federal policy which condemns it. Respondent does not challenge the proposition that where State and Federal laws conflict, Federal policy governs *Free* v. *Bland*, 369 U.S. 663 (1962). While courts will endeavor to avoid reading a pre-emptive intention into Federal law, they will not hesitate to find pre-emption where a clear conflict exists *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142-43 (1963). Moreover, any conflict which exists here is minimal. This is not a situation in which State and Federal law compel two different and inconsistent courses of conduct. Rather, at most, Spiegel can argue that State law permits that which Federal policy forbids. Under these circumstances there can be no reason why clear Federal standards should be bent or ignored.[12]

With respect to the alleged remedy already available to individuals sued in Cook County courts, we think it is evident that such a remedy has proven illusory in the majority of cases. We strongly suspect that the tribunals of Illinois would not have hesitated to throw Spiegel out of court were there ever a case in which a defendant chose to mount a defense on the jurisdictional question, while Spiegel stayed with its

[11] Neglect of uncontroverted jurisdictional issues occurs in administrative proceedings as well. As complaint counsel have pointed out in their brief (CB 22-23), the administrative law judge did not enter a conclusion of law in his initial decision stating that the Commission has jurisdiction in this case. Spiegel has not challenged the Commission's jurisdiction, and we hereby do conclude that the Federal Trade Commission has jurisdiction over the respondent and over the subject matter of this proceeding.

[12] We similarly do not believe that the Tenth Amendment forbids Commission action (RB 40-42). Even if the Commission's action is viewed as imposing a limitation on State authority to authorize suits, rather than as imposing a limitation on Spiegel's ability to abuse the judicial process, it is nonetheless well-established that the Tenth Amendment does not mean that State-authorized activity may stand in the face of duly authorized Federal requirements *Maryland* v. *Wirtz*, 392 U.S. 183 (1968); *United States* v. *Darby*, 312 U.S. 100, 123-24 (1941).

suit. In fact, however, few defendants are likely to know how to challenge Spiegel's abuse of the long-arm statute by themselves, and few are likely to pay for a lawyer to mount a cross-country contest when the cost of so doing may well exceed the amount at issue. Faced with the typical default situation, the courts of Illinois have not in the past provided an adequate remedy on a case-by-case basis, and that is precisely the reason that action by the Commission is needed to protect consumers, and is in the public interest cf. *Barquis* v. *Merchants Collection Association of Oakland, Inc.*, 7 C. 3rd 94, 101 Cal. Rptr. 745, 496 P. 2d 817 (1972).

In the concluding paragraph of its brief (RB 42) respondent suggests that it has abandoned the challenged practices, and for that reason an order is not required. It is well established, of course, that discontinuance of an offending practice, particularly after initiation of governmental investigation, and in circumstances where resumption is possible, does not obviate the need for, or propriety of, an order *Libby-Owens-Ford Glass Co.* v. *Federal Trade Commission*, 352 F.2d 415 (6th Cir. 1965); *Cotherman* v. *Federal Trade Commission*, 417 F.2d 587 (5th Cir. 1969); *Coro, Inc.* v. *Federal Trade Commission*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965). Moreover, we have reviewed the "Assurance of Voluntary Compliance" appended by respondent to its proposed findings of fact before the administrative law judge, and we do not believe that the promises contained therein, if adhered to, would be sufficient to eliminate the offending conduct. For example, the assurance would not prevent Spiegel from assigning its cases to collection agencies who could sue on Spiegel's behalf in objectionable fora, and the assurance would not prevent Spiegel from suing a consumer in counties other than those of residence or signing of the contract, a remedial standard we think is necessary to eliminate the unfairness which has occurred here.

III

Respondent has objected to portions of the order proposed by the administrative law judge, which is essentially the same as the notice order. Respondent does not quarrel with the first substantive paragraph of the order[13] which establishes a "fair venue" standard for suits by respondent, requiring that it sue its consumer debtors in the county of their residence or the county in which they signed the contract sued upon.

The second substantive paragraph (III) requires that if respondent violates the preceding paragraph by suing in a distant locale, it must

[13] Paragraph II of the Commission's revised order. References hereinafter are to the revised order entered by the Commission, which generally tracks the notice order.

take steps to terminate the suit, vacate any default judgment entered as a result, or, in the alternative, transfer the proceeding to a suitable forum and provide the defendant with an opportunity to defend. The following paragraph (IV) requires that if respondent brings a suit in an unfair forum it must take steps to notify credit bureaus of the fact that the suit has been terminated or a default judgment vacated. We believe that these two paragraphs are necessary to satisfy the objective of this proceeding, which is to protect consumers from the unfair practice in which respondent has engaged. Even should Spiegel proceed, as we trust it will, with the greatest diligence and attention to the obligations imposed by Paragraph II, there is always the possibility that through an inadvertence of one sort or another the prohibited practice will be repeated. Paragraphs III and IV are intended to ensure that should such a situation occur, and the consumer be again sued in distant forum, an adequate mechanism exists to remedy the harm done thereby. If no violations of Paragraph II occur, Paragraphs III and IV will prove to be mere surplussage; if a violation of Paragraph II does occur, we are at a loss to see how respondent could quarrel with the objectives of Paragraphs III and IV.

Respondent worries that the obligations imposed by Paragraphs II-IV are retroactive, and protests. There is no need for us to rule here with regard to the Commission's authority to require respondent to vacate existing judgments obtained prior to the order, in violation of Section 5. We think that Paragraphs II-IV on their face quite clearly apply only to suits brought after the effective date of the order, and respondent's concerns on that score are unwarranted.

Respondent takes most strenuous exception to those portions of the order which require recordkeeping. The order proposed by the administrative law judge would require that respondent provide the Commission with a summary of collection suits it has brought for a two-year period following the effective date of the order, and for a one-year period prior to the effective date of the order. The summary of suits shall contain each defendant's name, address, county of residence, county in which the defendant signed the contract (if the suit is not instituted in the residence county), county where service was made, date of service, date of filing, docket number of case, name and location of the court in which the action was filed, name of plaintiff (if a collection agency suing in its own name), amount sued for, and disposition of the case. Where a suit has been instituted in a county other than where defendant resides or has signed the contract, the reason for the choice of forum shall be explained.

Respondent objects that the reporting requirement is unduly "burdensome." With respect to the case summaries for the period

following the effective date of the order, the information required is the minimum necessary to permit the Commission to monitor compliance and, therefore, the order is warranted, even though it may impose some burden *National Dynamics Corporation* v. *Federal Trade Commission*, 492 F.2d 1333 (2d Cir. 1974), *cert. denied*, 43 U.S.L.W. 3280 (Nov. 12, 1974); *Tashof* v. *Federal Trade Commission*, 437 F.2d 707, 715 (D.C. Cir. 1970). In addition, we do not believe the order imposes a significant burden, and beyond its barebones assertion respondent has given no indication of the extent of the burden or how the order could be modified (as opposed to omitted) to alleviate the alleged difficulties.

The necessity for the required information as a means of checking compliance during an initial post-order period is clear. Respondent suggests that the Commission can evaluate compliance any time it wishes simply by scanning the docket of the Cook County courts to determine whether Spiegel has sued any customers from out-of-State. Even assuming that it were feasible for Commission investigators to check each entry on the Cook County docket to make sure that it was not Spiegel suing in a prohibited forum, respondent ignores the fact that under this procedure it could sue anywhere else, regardless of the distance of such a forum from a consumer's residence or location of contract signing, without detection. Obviously the Commission cannot feasibly search every docket in the country to determine that respondent, or its collection agencies, is not suing in a locale prohibited by the order.[14] Only respondent itself can readily provide the information needed to determine whether or not it is in compliance. Moreover, the particular details required seem to us to be the fewest necessary to determine whether suit has been filed in a forum forbidden by the order.

With respect to the issue of burdensomeness, in the absence of any detailed substantiation by respondent we can only observe that it would astonish us to find that respondent does not have readily available all the information required to be reported by the order. The only possible "burden" of which we can conceive is that of transcribing or copying this information for submission in a compliance report. The fact that respondent has made no effort to estimate the cost of such transcription makes if difficult for us to take seriously its claim that it would prove costly.[15]

The Commission has determined that the requirement that respondent provide a litigation summary for cases brought during the year

[14] Indeed, a mere docket check in most counties would be insufficient to reveal instances in which a collection agency had sued on a Spiegel account in the agency's name.

[15] This is particularly so in view of the fact that three other respondents, sued at the same time as Spiegel, were willing to consent to reporting requirements identical to those involved here see n. 9, *supra*.

*prior* to the effective date of an order is unnecessary to determine compliance with the order subsequent to its effective date, and this provision will, therefore, be deleted. Respondent argues it is unnecessary, and complaint counsel have presented no convincing reason for its retention.

We have also modified the order slightly, to reflect the Commission's authority to enjoin practices "affecting" commerce, and to make clear (Par. I) what was implicit in the order proposed by the administrative law judge, that all provisions of the order apply to practices which Spiegel may undertake through the auspices of a collection agency or other third party.

An appropriate order is appended.

## Concurring Statement of Commissioner Nye

The Commission bases its determination that respondent has violated Section 5 of the Federal Trade Commission Act in part upon a conclusion that respondent has obtained judgments against out-of-State mail-order consumers under circumstances which fall short of the due process guarantees of the Fourteenth Amendment to the Constitution. I believe this conclusion is unnecessary and reliance upon it unwise.

It is an important principle of our jurisprudence that constitutional questions should be avoided in a case which can be resolved on statutory or common law grounds.[1] That principle should apply with special force to an administrative agency, which has no particular competence to address issues of constitutional dimension.

There appears to me no occasion to address constitutional issues in this case. While the Fourteenth Amendment imposes on the States certain minimal standards of justice and decency, Section 5 of the Federal Trade Commission Act requires the Commission "to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop"[2] and to enforce adherence to those standards in consumer transactions. The semantic kinship between the "fundamental fairness" standard adopted in the due process cases[3] and the "unfairness" yardstick mandated by Section 5 is not at all indicative of a legal equivalence. Although in particular cases the two standards may often coalesce, it would not be remarkable if a constitutional limitation on the activities of States were to diverge from a statutory limitation on the conduct of businessmen.

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[1] *See, e.g.*, Frankfurter, *Law and Politics* 25 (1939).

[2] *FTC* v. *Standard Education Society*, 86 F.2d 692, 696 (2d. Cir. 1936) (per L. Hand, J.), *rev'd on other grounds*, 302 U.S. 112 (1937).

[3] *See, e.g.*, *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) ("traditional notions of fair play").

The Commission, quite appropriately, refers to a number of judicial decisions which express doubt about the constitutionality of a State's assertion of *in personam* jurisdiction over out-of-State mail order consumers.[4] These decisions, together with others which do not involve the due process clause,[5] sufficiently establish that public policy disfavors the institution of collection lawsuits against consumers in courts unreasonably remote from the consumers' place of residence. That established public policy judgment, coupled with the substantial consumer injury disclosed by the record in this case, is enough to persuade me that the litigation practices of Spiegel which were challenged in this case amount to an unfair practice within the meaning of Section 5 of the Federal Trade Commission Act.

This reasoning also disposes of respondent's argument to the effect that the Commission cannot interfere with respondent's use of the Illinois long-arm statute unless the resulting judgments against out-of-State consumers were entered unconstitutionally. Again, while the Commission's opinion seems to answer this contention by concluding that the judgments *were* entered unconstitutionally, it is not necessary to decide that question. Leaving aside the fact that no Illinois court has ever held use of the long-arm statute in the manner adopted by respondent to be proper, I am perfectly content to assume *arguendo* that respondent's long-arm litigation does not involve the Cook County courts in a violation of due process, and that the judgments respondent obtains are entitled to full faith and credit in other States. The Federal Trade Commission Act, however, is not infrequently interpreted to prohibit unfair or deceptive acts or practices regardless of whether those acts or practices are authorized by the law of the State in which they are committed. *See, e.g., FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 239 n. 4 (1972); *Chamber of Commerce of Minneapolis* v. *FTC*, 13 F.2d 673, 684 (8th Cir. 1926); *Peerless Products, Inc.* v. *FTC*, 384 F.2d 825, 827 (7th Cir. 1960), *cert. denied* 365 U.S. 844 (1961).

This case appears to illustrate the wisdom of the rule that constitutional issues should not be decided unless necessary to the result. When the Commission issued its proposed complaint in this matter on Mar. 4, 1974, it announced simultaneously its intention to institute three similar cases: *Montgomery Ward & Co., Inc.*, File No. 742 3102 [Dkt. C-2602, 84 F.T.C. 1337]; *West Coast Credit Corp.*, File

[4] No court, however, has expressly held such an application of a long-arm statute unconstitutional.

[5] *See, e.g., Barquis* v. *Merchants Collection Association of Oakland, Inc.*, 7 C.3d 94, 101 Cal. Rptr. 745, 496 P.2d 817 (1972); *All-State Credit Corporation* v. *Defendants Listed in 669 Default Judgments*, 61 Misc. 2d 677, 306 N.Y.S. 2d 596 (Sup. Ct. App. Term 1970).

No. 732 3110 [84 F.T.C. 1328] and *Commercial Service Co., Inc.*, File No. 732 3404 [p. 467, herein].[6] In those three proposed complaints, the Commission stated it had reason to believe that the practice of suing a consumer in a remote location within the consumer's own State was unfair. At issue were alleged disregard of State venue provisions (*Commercial Service*), contractual waiver of State venue provisions (*West Coast Credit*), and, apparently, reliance on State venue provisions which the Commission had reason to believe did not in the particular circumstances come up to the standards of fairness embodied in Section 5 (*Montgomery Ward*). Of all the cases, only *Spiegel* raised putative constitutional issues. Taken together, the four cases signaled the Commission's intention to decide whether it is fair to force consumers to defend collection suits in distant courts, regardless of whether those courts are outside the State of the consumer's residence and, further, regardless of whether State venue rules are followed. *Spiegel* is the only one of these cases to be reviewed by the Commission after full administrative proceedings. The forum involved happens to be out-of-State, but that was certainly not deemed critical when the case was filed.[7] To the extent the Commission's opinion suggests otherwise, I believe it confuses the relevant assessment of public policy.

## FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent from the initial decision, and upon briefs and oral argument in support thereof and opposition thereto, and the Commission for the reasons stated in the accompanying opinion, having denied the appeal in principal part:

*It is ordered*, That the initial decision of the administrative law judge be, and it hereby is, adopted as the findings of fact and conclusions of law of the Commission, to the extent not inconsistent with the accompanying opinion.

Other findings of fact and conclusions of law of the Commission are contained in the accompanying opinion.

*It is further ordered*, That the following order to cease and desist be, and it hereby is, entered:

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[6] Respondents in all three cases have since agreed to the entry of consent orders.

[7] Nor can it be critical to the relief ordered herein. Although the specific practice held unfair in this case was suing out-of-State mail-order consumers in Cook County, Ill., it is significant that the Commission's cease and desist order prohibits Spiegel from suing a consumer anywhere other than in his county of residence or the county where he signed the contract sued upon.

ORDER

I

For purposes of this order, the term "respondent" means "Spiegel, Inc., a corporation, and its successors, assigns, officers, agents, representatives and employees, acting directly or through any corporation, subsidiary, division, or other device, including any collection agency."

II

*It is ordered,* That respondent, in connection with the collection of retail credit accounts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from instituting suits except in the county where the defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

III

*It is further ordered,* That, where respondent learns subsequent to institution of a suit that the preceding Paragraph (II) has not been complied with, it shall forthwith terminate the suit and vacate any default judgment entered thereunder. In lieu of such termination, respondent may effect a change of forum to a county permitted by the preceding paragraph, *Provided,* That respondent gives defendant notice of such action and opportunity to defend equivalent to that which defendant would receive if a new suit were being instituted. In all cases respondent shall provide defendants with a clear explanation of the action taken and of the defendants' right to appear, answer and defend in the new forum.

IV

*It is further ordered,* That where respondent terminates a suit or vacates a judgment pursuant to the preceding Paragraph (III) it shall give notice of such termination or vacation to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. §603), which it has been informed or has reason to know has recorded the suit or judgment in its files. Additionally, respondent shall furnish such notice to any other person or organization upon request of the defendant.

V

*It is further ordered*, That respondent prepare and maintain a summary of suits instituted, pending, terminated, or acted upon subsequent to judgment, involving the collection of retail credit accounts by respondent. This summary shall contain each defendant's name, address, and county of residence; county where the contract was signed by the defendant, if the suit was not instituted in the residence county; county where served; date served; date filed; docket number; name and location of court in which filed; name of plaintiff (if a collection agency suing in its own name); amount claimed; and disposition (including garnishment or execution, if any). Where a suit has been instituted in a county other than where defendant resides or signed the contract sued upon, the reason for this choice of forum shall be explained. This summary shall cover the two years immediately following effective date of this order. A copy of this summary shall be submitted to the Federal Trade Commission on a quarterly basis.

VI

*It is further ordered*, That Spiegel, Inc., shall forthwith deliver a copy of this order to each of its subsidiaries and operating divisions, to each collection agency currently collecting any of Spiegel's retail credit accounts, and to any other collection agency prior to referral to it of any of Spiegel's retail credit accounts. Spiegel, Inc., shall obtain and preserve signed and dated statements from each collection agency, acknowledging receipt of the order and willingness to comply with it.

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

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

IN THE MATTER OF

# BORG-WARNER CORPORATION

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

*Docket C-2716. Complaint, Aug. 20, 1975-Decision, Aug. 20, 1975*

Consent order requiring a Chicago, Ill., automotive parts manufacturer, among other things to divest itself, within 18 months, of all assets acquired as a result of its acquisition with Unit Parts Company, reestablishing Unit Parts as a competitor. Further, respondent is required to obtain Commission approval before acquisition of any automative parts rebuilder for a period of 10 years.

## *Appearances*

For the Commission: *K. Keith Thurman, Roger J. McClure* and *Anne R. Schenof.*

For the respondent: *Charles W. Houchins*, Chicago, Ill.

## COMPLAINT

The Federal Trade Commission having reason to believe that Borg-Warner Corporation, (hereinafter "B-W"), a corporation subject to the jurisdiction of the Commission, has acquired Unit Parts Company, (hereinafter "U-P"), a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and that a proceeding in respect thereof would be in the public interest hereby issues this complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. §21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) stating its charges in that respect as follows:

### I. Definitions

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

(a) "Automotive" refers to parts used on all self-propelled land vehicles, including automobiles, trucks, buses, tractors, self-propelled agricultural equipment and construction equipment, but excluding motorcycles.

(b) "Clutches" are clutch discs, clutch cover plates, and complete clutch assemblies.

(c) "Carburetor parts" are individual parts and kits containing such parts used to repair carburetors.

(d) "rebuilt parts" are automotive parts, exclusive of engines, crankshafts and automatic transmissions, remanufactured for resale on a production line basis.

(e) "Independent aftermarket" includes all sales by manufacturers or reboxers of automotive parts directly to wholesalers or retailers for replacement use. It excludes sales by vehicle manufacturers or engine manufacturers directly to vehicle dealers.

(f) "Reboxer" refers to a manufacturer of one or more lines of automotive parts who purchases for resale under its own brand, individual items which it does not manufacture. A reboxer competes at the manufacturers' functional level.

(g) "Automotive aftermarket" includes all sales by manufacturers of automotive parts for replacement use.

(h) "Market" includes all shipments of the relevant products manufactured in the United States or imported into the United States.

## II. Borg-Warner Corporation

2. Respondent Borg-Warner Corporation is now, and was at all times relevant herein, a corporation, and its present principal office and place of business is located at 200 S. Michigan Ave., Chicago, Ill.

3. As a result of its acquisitions described below and its internal growth, B-W by 1971 had become the 110th largest industrial corporation in the nation. In 1971, B-W had sales of $1.148 billion and assets of $932 million. In that year, B-W had five sales divisions which accounted for the following percentages of its total sales:

(a) Air conditioning and building products (22 percent);

(b) Chemicals and plastics (14 percent);

(c) Industrial and steel products (30 percent); and

(d) Transportation equipment (34 percent).

4. B-W was formed in 1928 through the merger of four leading automotive parts producers. These companies were Borg and Beck Company, Marvel Carburetor Co., Warner Gear Co. and Mechanics Universal Joint Co. Borg and Beck Company was a leading manufacturer of clutches. Marvel Carburetor Co. manufactured carburetors and parts therefor. Warner Gear Co. was a leading producer of gears for automotive manual transmissions. Mechanics Universal Joint Co. manufactured automotive universal joints.

5. By adherence to a plan of continued acquisitions and resulting internal expansion, B-W has enlarged and has plans to continue to enlarge its position as a producer and/or supplier of various types of automotive parts.

6. B-W has made a succession of acquisitions and has plans to continue to acquire manufacturers and/or sellers of various types of

automotive parts which it already sold prior to such acquisitions, including among others:

(a) Century Gas Equipment Company, a California corporation located in Paramount, California, acquired in 1957 and a leading producer of LPG carburetors and parts therefore;

(b) Shurhit Products, Inc., an Illinois corporation, located in Dixon, Ill. acquired in 1963, and a supplier of replacement ignition and carburetor parts;

(c) Precision Automotive Components Company, a Missouri corporation, located in Baldwin, Mo. acquired in 1965, and a large supplier of replacement carburetor parts;

(d) Tillotson Manufacturing Co., an Ohio corporation, located in Toledo, Ohio, acquired in 1969, and a manufacturer of small engine and industrial carburetors and parts therefor; and

(e) The Warneford group, a group of Australian limited liability proprietary businesses, acquired in 1974.

At all times relevant herein, each of the above-named United States corporations was engaged in commerce as commerce is defined in the Federal Trade Commission Act.

7. Since its inception, B-W has significantly expanded its position in the clutch market, both by acquisition and internal development. In the year following its inception, B-W had clutch sales of $4.139 million from its Borg and Beck plant.

8. In 1929, B-W acquired Long Manufacturing Co., (hereinafter "Long"), a leading manufacturer of clutches. At the time of its acquisition, Long was a corporation organized and existing under the laws of the State of Michigan, with its principal place of business located in Detroit, Mich.

9. In 1929, Long's sales of clutches were $3.098 million.

10. At all times relevant herein, Long sold and shipped its products in many States of the United States and was engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

11. In 1929, B-W acquired Rockford Drilling Machine Co., (hereinafter "Rockford"), a significant manufacturer of clutches. At the time of its acquisition, Rockford was a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located in Rockford, Ill.

12. In 1928, Rockford's total sales were $1.071 million and consisted of clutch sales of about $752,400.

13. At all times relevant herein, Rockford sold and shipped its products in many States of the United States and was engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

14. In 1970, B-W completed integration of all its clutch rebuilding operations into a plant located in Ottawa, Illinois. This plant took over the clutch rebuilding operations which B-W had conducted at its Borg & Beck, Rockford and Long plants.

15. In 1972, B-W acquired U-P, one of the nation's four largest full-line rebuilders. At the time of its acquisition, U-P was one of the four largest rebuilders of clutches and a significant supplier of replacement clutches.

16. In its 1972 fiscal year, U-P's sales of $26.704 million consisted of sales of $4.41 million of rebuilt clutches.

17. In 1971, B-W was a significant seller of original equipment clutches, automotive transmissions, torque convertors, drive line assemblies, spin resistant differentials, axles, brake controls, carburetors, radiators, seals and automotive replacement parts. B-W's total sales of transportation equipment in 1971 were $387.3 million of which $84.7 million were to the independent aftermarket.

18. In 1971, B-W had warehouses located throughout the United States. Through these warehouses and its sales force, B-W distributed its products directly to over 1705 wholesalers of which 1306 were warehouse distributors.

19. B-W has achieved a dominant position in the sale of clutches in the nation due in part to its numerous acquisitions. In 1971, B-W was the nation's leading seller of clutches for use in the assembly of new vehicles, and of clutches for replacement use, as well as the nation's largest clutch rebuilder.

20. In 1971, B-W's shipments of replacement clutches were $166 million. B-W accounted for 21 percent of the total shipments of clutches for replacement use in that year.

21. In 1967, B-W had shipments of about $2.943 million of rebuilt clutches. In 1967, B-W accounted for 10 percent of total rebuilt clutch shipments.

22. In 1971, B-W's rebuilt clutch shipments were $6.733 million, accounting for about 17 percent of such shipments.

23. In 1967 and 1971, B-W sold new water pumps to the independent aftermarket. In 1967, B-W sold $.846 million of water pumps to the independent aftermarket and accounted for 3 percent of the sales to that market.

24. B-W has a corporate policy to consolidate and enchance its market power in the sale of replacement automotive parts, through merger or acquisition, particularly of parts sold to the independent aftermarket of those product lines with which it competes or is one of the most likely entrants.

25. At all times relevant herein, B-W sold and shipped its products

throughout the United States and was engaged in "commerce" as commerce is defined in the Clayton Act, as amended, and in the Federal Trade Commission Act.

## III. Unit Parts Company

26. On or about Sept. 29, 1972, B-W acquired U-P by merger of U-P into B-W through an exchange of 305,313 shares of B-W stock for the assets of U-P. At the time of the acquisition the B-W stock exchanged for U-P was valued at approximately $10 million.

27. Prior to its merger into B-W, U-P was an Oklahoma corporation with its principal office and place of business located at 4600 S.E. 59th St., Oklahoma City, Okla.

28. In 1971, U-P was engaged in the production and sale of a full line of rebuilt automotive parts including clutches, water pumps, ignition parts, brake shoes, disc brake pads, and fuel pumps. Since 1970, U-P had sold rebuilt automotive air conditioning compressors. Prior to its acquisition, all of U-P's sales were to the independent aftermarket.

29. In its fiscal year ending June 30, 1972, U-P had four lines of automotive parts which accounted for the following percentages of its total sales: (1) clutches (17.7 percent), (2) engine components and air conditioning parts (24.4 percent), (3) ignition parts (43.3 percent) and (4) brake system parts (14.6 percent).

30. In 1972, U-P was one of the two largest domestic rebuilders of automotive parts. In its fiscal year ending June 30, 1972, it had sales of $26.704 million and assets of $7.8 million.

31. Immediately prior to its acquisition, U-P was one of the largest domestic rebuilders of clutches. In its fiscal year ending June 30, 1972, U-P's sales of clutches were $4.41 million. U-P's sales of rebuilt clutches in that year represented approximately 10 percent of total domestic sales of rebuilt clutches in 1971.

32. U-P was a significant rebuilder of water pumps. In its fiscal year ending June 30, 1972, U-P's sales of rebuilt water pumps were $4.51 million. U-P's sales of rebuilt water pumps in that year represented approximately 13 percent of the total domestic sales of rebuilt water pumps in 1971.

33. At all times relevant herein, U-P sold and shipped its products throughout the United States and was engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and in the Federal Trade Commission Act.

## IV. Trade and Commerce

34. The relevant geographic market is the United States as a whole. The relevant product markets are:

(a) Manufacture and sale of replacement clutches;

(b) Manufacture and sale of rebuilt clutches; and

(c) Manufacture and sale of water pumps to the independent aftermarket.

A. *Replacement Clutches*

35. Clutches represent a unique product which enables the engine and transmission of a vehicle to engage or disengage the drive-line of a vehicle at the command of the driver. Clutches are subject to wear and must be periodically replaced.

36. Generally, a supplier of replacement clutches must have a distribution system designed to reach the numerous outlets which replace worn or damaged clutches. An OEM-installation seller of clutches need only sell to one or a very few customers. A seller of replacement clutches must offer clutches having application on a range of models and fitting vehicles made in different years. In general, a replacement clutch supplier offers clutches having application on all vehicles which have more than minimal usage. In stark contrast, an OEM-installation clutch supplier need only supply clutches to vehicles in current production and often does not sell clutches for a wide range of model applications. Because of the need of replacement suppliers to cover more years and models of automotive vehicles as compared to OEM-installation suppliers, the production and sale of replacement clutches differs from OEM-installation clutch production. Replacement clutches generally are produced in far shorter production runs than are used to produce OEM-installation clutches.

37. Most clutch producers serve only the replacement clutch market.

38. Replacement clutches command a price considerably in excess of similiar units sold to the OEM-installation market.

39. The demand for replacement clutches is somewhat predictable as it is based primarily on the number and make of vehicles in use which have clutches and the usage or age of those vehicles. In contrast, the OEM-installation clutch demand fluctuates considerably from year to year and is dependent upon the level of vehicle sales.

40. Most replacement clutches are sold individually packaged whereas OEM-installation clutches are sold in bulk.

41. In 1971 the total shipments of replacement clutches were about $80.7 million. Such shipments have been increasing, in recent years, going from $53.8 million in 1967 to about $90 million in 1972.

42. Concentration is high in the replacement clutch market. In 1971, the four largest firms accounted for 43 percent of replacement clutch shipments and the eight largest 62 percent.

43. The barriers to entry into the replacement clutch market are high. Replacement clutches are precision machined metal and friction material products produced to close tolerances. Their production requires specialized machinery and testing equipment. A clutch plant is expensive to erect and equip.

44. The number of producers of replacement clutches has been declining. In part this decrease is due to acquisitions, including several acquisitions by the largest producers of other replacement clutch remanufacturers.

45. The production of replacement clutches is highly profitable, with a leading producer experiencing a before tax return on investment in excess of 35 percent.

46. In 1971, U-P had total sales of replacement clutches of $4.410 million, accounted for about 5 percent of sales in that market and ranked 5th among suppliers to that market. In that same year, B-W had total sales of replacement clutches of $16.632 million, accounted for 21 percent of sales in that market and was the largest supplier to that market. The combined sales of B-W and U-P in 1971 accounted for 26 percent of the sales of replacement clutches and the combination would have been by far the largest supplier of replacement clutches.

B. *Rebuilt Clutches*

47. Rebuilt clutches have different primary uses from new clutches. All rebuilt clutches are produced for replacement use, primarily on vehicles over two years of age. In contrast, most new clutches are produced for use in new vehicle assembly. New clutches produced for replacement use are generally installed on late model vehicles, generally vehicles two or less years old.

48. Rebuilt clutches are sold to different customers than are new clutches. Rebuilt clutches are generally sold direct to dealers or wholesalers. New clutches are sold or transferred to vehicle manufacturers for incorporation in new vehicles or for resale as replacement parts on late model vehicles.

49. The rebuilding of clutches requires several extra steps not performed in producing and distributing new clutches. The raw materials for producing a new clutch consist of new component parts. A new clutch manufacturer either purchases or produces new component parts, assembles these parts into a clutch unit and ships the completed clutch unit to his customer. In contrast, a clutch rebuilder relies on used clutches and their components as his primary raw material. The clutch rebuilder secures these used clutches from his customers or from a

used parts supplier and disassembles the used units into their component parts. The clutch rebuilder then cleans the components, inspects the components to determine which are salvageable, sorts the salvageable components into lots to be used in reassembling the units, procures new component parts in those instances in which insufficient salvageable parts are available, and reassembles the units from a combination of new and used component parts. The clutch rebuilder ships finished units to his customers and receives in exchange from his customers worn out units replaced by the newly rebuilt units.

50. Different firms, in general, produce new clutches compared to rebuilt clutches. There were many firms in the United States in 1972 who produced *only* rebuilt clutches.

51. The price of rebuilt clutches is significally lower than the price of new clutches sold to the aftermarket. On the average, a rebuilt clutch for a given application sells for 25 to 50 percent less than a new replacement clutch fitting that same application.

52. Rebuilt parts in general and rebuilt clutches in particular are recognized as a separate market from new parts or clutches. There is an industry trade association, Automotive Parts Rebuilding Association (APRA), whose membership is limited to rebuilders and their suppliers. For many years, the Bureau of the Census has separately reported shipments of rebuilt parts. In the last two *Census of Manufactures*, the Bureau of the Census has separately reported shipments of rebuilt and new clutches.

53. In 1971, the total shipments of rebuilt clutches were about $41 million. Such shipments have been increasing in recent years, going from $29.4 million in 1967 to about $43.5 million in 1972.

54. Concentration is high in the rebuilding of clutches. In 1971, the four largest firms accounted for 50 percent and the eight largest firms accounted for 74 percent of total rebuilt clutch shipments.

55. It is difficult to enter into the rebuilding of clutches. One of the principal barriers to entry is the difficulty of securing customers. Most rebuilders sell to a number of customers and utilize an extensive sales organization to reach customers. Any new supplier must possess an extensive sales organization or incur the time and expense necessary to secure such an organization. The prime customers of clutch rebuilders are extremely reluctant to shift suppliers, expecially to take on a new supplier whose product quality and ability to provide the necessary sales support are unknown.

56. The number of producers of rebuilt clutches has been declining. This decrease is due to acquisitions, including several horizontal acquisitions by the largest rebuilt clutch producers of other clutch rebuilders.

57. The production of rebuilt clutches is highly profitable, with a leading producer earning a return on investment of 62 percent.

58. In 1971, U-P had total sales of rebuilt clutches of $4.410 million, accounted for 10 percent of sales in that market, and ranked 3rd among suppliers to that market. In that same year, B-W had total sales of rebuilt clutches of $6.733 million, accounted for 17 percent of sales in that market and was the largest supplier to that market. The combined sales of B-W and U-P in 1971 accounted for 27 percent of sales of clutches and would have accounted for by far the largest single supply of rebuilt clutches.

C. *Water Pumps*

59. Water pumps are an unique product which assures the circulation of coolant on water cooled vehicles. Water pumps are subject to wear and damage and must be periodically replaced.

60. A supplier of water pumps to the independent aftermarket must possess an extensive distribution network designed to reach numerous wholesalers or retailers. In contrast, a supplier of water pumps to the OEM-installation or OEM-service markets need only have a minimal distribution organization since the number of his customers is very small. Water pumps are sold individually boxed to the independent aftermarket. Water pumps can be, and generally are, sold in bulk to the OEM-installation and service markets. A supplier to the independent aftermarket must offer water pumps having application on most vehicles in use, whereas a supplier to the OEM-installation and service markets can offer a much more limited line of products. Brand identity is important in the sale of water pumps to the independent aftermarket. Brand identity is of limited importance in the sale of water pumps to the OEM-installation and OEM-service markets.

61. In 1967, the total shipments of water pumps to the independent aftermarket were $24.634 million.

62. Concentration is high in the sale of water pumps to the independent aftermarket. In 1967, the four largest firms accounted for about 52 percent of shipments to that market and the eight largest firms 78 percent.

63. Barriers to entry into the sale of water pumps to the independent aftermarket are high. An extensive distribution system is necessary to reach the customers in this market. A reputation for supplying defect-free products is important and becoming more important as water pump design has become more complex, the tolerances have been reduced and the stress to which the product is subjected has become more intense. Likewise, a supplier must be able to supply numerous different part numbers on demand, a problem that

has been magnified greatly in recent years as more and more different part numbers have been introduced.

64. Despite a rapidly growing market, the number of sellers of water pumps to the independent aftermarket has fallen. A few firms have entered this market, but many have exited, some due to acquisitions by leading suppliers of other suppliers to the independent aftermarket.

65. In 1967, U-P had total sales of water pumps to the independent aftermarket of $1.681 million, accounted for 7 percent of sales in that market, and ranked about 5th among suppliers to that market. In that year, B-W had total sales of water pumps to the independent aftermarket of $.846 million, accounted for 3 percent of sales in that market and ranked 9th among suppliers to that market. The combined sales of B-W and U-P in 1967 accounted pro forma for 10 percent of sales of water pumps to the independent aftermarket and would have ranked 4th among suppliers to that market. In 1971, U-P had sales of $4.510 million of water pumps and accounted for 7 percent of the shipments of water pumps to the independent aftermarket.

## V. Effects of the Acquisitions

66. The effects of the acquisition of U-P by B-W may be to substantially lessen competition or tend to create a monopoly in the sale of replacement clutches, rebuilt clutches, and water pumps throughout the United States in violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, in the following ways, among others:

(a) Substantial actual competition between B-W, U-P and other firms in the sale of clutches to the replacement market has been eliminated.

(b) Substantial actual competition between B-W, U-P other firms in the sale of rebuilt clutches has been eliminated.

(c) Substantial actual competition between B-W, U-P and other firms in the sale of water pumps to the independent aftermarket has been eliminated.

## VI. The Violations Charged

67. The acquisition of U-P by B-W constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

## Decision and Order

The Commission having therefore issued its complaint charging the proposed respondent named in the caption hereto with violation of

Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the proposed respondent having being served with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered and accepted the agreement containing consent order and it having been placed on the public record for a period of sixty (60) days now and further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

(1) B-W is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 200 S. Michigan Ave., Chicago, Ill.
(2) The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of B-W, and the proceeding is in the public interest.

## ORDER

### I

*It is ordered*, That Borg-Warner Corporation, (hereinafter "B-W") within a period not exceeding eighteen (18) months from the effective date of this order, shall divest, by sale, or by public offering or spinoff of the stock of a new corporation formed for such purpose, subject to prior approval of the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible, including, but not limited to, all plants, equipment, machinery, inventory, customer lists, trade names, trademarks and good will, acquired by B-W as a result of its acquisition of Unit Parts Company (hereinafter "U-P") together with all additions and improvements to such assets and properties.

In the event that a new corporation is established as provided herein, B-W shall make available to such new corporation adequate administrative, sales and service personnel to carry on the business to be transferred to the new corporation.

II

*It is further ordered*, That none of the assets, properties, rights or privileges to be divested, as described in Part I of this order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, B-W or any of B-W's subsidiary or affiliate corporations, or anyone who owns or controls, directly or indirectly, more than 1 percent of the outstanding shares of common stock of B-W, or to anyone who is not approved in advance by the Federal Trade Commission.

III

*It is further ordered*, That if B-W divests the assets, properties, rights and privileges, described in Part I of this order, to a new corporation or corporations, the stock of each of which is wholly owned by B-W, and if B-W then distributes all the stock, in said corporation or corporations to the stockholders of B-W, in proportion to their holdings of B-W stock, Part II of this order shall be inapplicable, and the following Parts IV and V shall take force and effect in its stead.

IV

*It is further ordered*, That no person who is an officer, director, or executive employee of B-W, or who owns or controls, directly or indirectly, more than 1 percent of the stock of B-W, shall contemporaneously therewith be an officer, director, or executive employee of any new corporation or corporations described in Part III, or shall contemporaneously therewith own or control, directly or indirectly, more than 1 percent of the stock of any new corporation or corporations described in Part III.

V

*It is further ordered*, That any person who must sell or dispose of a stock interest in B-W or the new corporation or corporations, described in Part III, in order to comply with Part IV of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation or corporations is made to stockholders of B-W.

VI

*It is further ordered*, That, pending divestiture, B-W shall not make or permit any deterioration in any of the plants, machinery, buildings,

equipment or other property or assets of the company to be divested which may impair its present capacity or market value.

VII

*It is further ordered*, That, pending divestiture, and for ten (10) years from the date this order becomes final as provided in Part I of this order, B-W shall not acquire, directly or indirectly, without the prior approval of the Commission, the share capital or assets (other than products acquired for use or resale in the ordinary course of B-W's business, or other than the acquisition by B-W of the share capital or assets of any corporation not organized in the United States of which B-W owns more than 50 percent of the issued and outstanding share capital as of the effective date of this order) of any rebuilder of automotive parts having direct sales of rebuilt parts in the United States.

Direct sales shall include all sales to purchasers for those purchasers' subsequent use in the United States or those purchasers' subsequent resale in the United States.

No acquisition made by B-W shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this order.

VIII

*It is further ordered*, That, pending divestiture, and for ten (10) years from the date this order becomes final as provided in Part I of this order, B-W shall notify the Commission at least sixty (60) days in advance of any acquisition, directly or indirectly of the share capital or assets (other than products acquired for use or resale in the ordinary course of B-W's business, or other than the acquisition by B-W of the share capital or assets of any corporation not organized in the United States of which B-W owns more than 50 percent of the issued and outstanding share capital as of the effective date of this order) of any manufacturer of automotive parts having direct sales of such automotive parts in the United States for which prior Commission approval is not required.

Direct sales shall include all sales to purchasers for those purchasers' subsequent use in the United States or those purchasers' subsequent resale in the United States.

IX

*It is further ordered*, That B-W shall, within six (6) months after the effective date of this order, and every six (6) months thereafter, until B-W has fully complied with Part I of this order, submit to the Federal

Trade Commission a detailed written report of its actions, plans and progess in complying with the provisions of Part I of the order.

With respect to Parts VII and VIII of this order, B-W shall, on the first anniversary date of the divestiture provided for in Part I of this order and on each anniversary date thereafter, to and including the tenth anniversary date, submit a report, in writing, setting forth in detail the manner and form in which B-W intends to comply, is complying and has complied with Parts VII and VIII of this order.

X

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

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IN THE MATTER OF

## COMMERCIAL SERVICE COMPANY, INC., ET AL.

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

*Docket C-2717. Complaint, Aug. 20, 1975-Decision, Aug. 20, 1975*

Consent order requiring a Seattle, Wash., debt collection agency and an affiliated firm, among other things to cease filing suits in courts located in counties other than those in which defendants reside or signed the contract sued upon; failing to disclose clear explanations of what their summones mean and how a defendant should respond to avoid a default judgment; and misrepresenting that letters and forms come from an attorney when such is not the case.

*Appearances*

For the Commission: *Randall H. Brooks.*

For the respondents: *Warren A. Doolittle, Schwepp, Doolittle, Krug, Tausend, Beezer & Beierle*, Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that Commercial Service Company, Inc., a corporation, and Commercial Collectors, a partnership, and Glen B. Faulk and Richard R. Swaffield, individually, as copartners doing business as Commercial Collectors, and as officers of said corporation, and Vincent A. Retacco, an

individual, hereinafter referred to as respondents, have violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint:

PARAGRAPH 1. Commercial Service Company, Inc., (CSC) is a Washington corporation with its office and principal place of business located at 811 First Ave., Seattle, Wash.

Commercial Collectors (CC) is a Washington partnership with its office and principal place of business located at 811 First Ave., Seattle, Wash. Its activities are closely interrelated with, or indistinguishable from, those of CSC.

Glen B. Faulk and Richard R. Swaffield are co-partners in CC and officers of CSC. They formulate, direct and control the policies, acts and practices of said corporation and partnership, including those hereinafter set forth. Their addresses are the same as that of CSC.

Vincent A. Retacco is an attorney admitted to practice in the State of Washington. He formulates, directs and controls, in cooperation with the other individual respondents, policies, acts and practices of CSC and CC related to legal actions, real or threatened, including the acts and practices set forth below. His principal office and place of business is located at 30640 Pacific Hwy. S., Federal Way, Wash.

PAR. 2. Respondents are engaged in the business of pursuing collection activities against individuals for various retail installment and other creditors, acting as agents or assignees of such creditors. Allegations below of respondents' present acts or practices include past acts or practices.

PAR. 3. In the course of their business, respondents solicit and accept accounts from creditors located in various States. Respondents act as agents or assignees of various out-of-Washington creditors. Respondents' collection accounts include debts incurred outside of Washington and involve debtors resident outside of Washington. Thus respondents maintain a course of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents regularly resort to use of judicial process in cases not resolved by private settlement. The defendant debtors in such cases are predominantly low-income or middle-income persons not represented by counsel. Respondents usually obtain default judgments. CSC sues in its own name as assignee of various creditors.

PAR. 5. Excepting most cases against defendants resident in Seattle, respondents commence almost all their collection lawsuits in the Superior Court of King County, Wash. In many such suits defendants reside, and have incurred the underlying obligations, outside of King County, in places up to 300 or more miles from the court. Courts located in the county where defendants reside or where they incurred the

underlying obligations could be used for these suits. Through the use of distant or inconvenient forum, respondents effectively deprive defendants of a reasonable opportunity to appear, answer and defend the lawsuits. Therefore, such use of distant or inconvenient forum is unfair.

PAR. 6. For their superior court lawsuits, respondents use confusingly worded summonses which give defendants inadequate or misleading directions as to the proper procedure for responding. These summonses have the tendency to mislead defendants into defaulting. Thus, respondents effectively deprive defendants of a reasonable opportunity to appear, answer and defend the lawsuits. Therefore, such use of confusingly worded summons is unfair and deceptive.

PAR. 7. In the course of their business, respondents cause to be sent from their place of business, letters or forms to alleged debtors representing that their account has been referred to an attorney to institute suit or take other action. Many of these letters and forms have been previously signed in blank by Mr. Retacco, and then placed in the control and custody of employees of CSC. Typical, but not all inclusive, of such letters or forms is CSC's so-called "Attorney Assign" form letter which contains the following statements:

Dear (Alleged Debtor):

The above account has been handed to me * * * with instructions to institute immediate suit and attachment against you * * * *

I have delayed doing this with the hope * * * Also, it is my policy to withhold suit * * * *

* * * * *

I am returning my file on this matter * * * and am requesting on your behalf, an extension . . . .

If you should fail to [pay], I will of course be compelled to follow the instructions of my client and begin suit against you. Hoping this will not be necessary, I remain

Sincerely,
(Attorney's signature)

Through the use of the foregoing statements or representations, respondents have represented, directly or by implication, that the account has been referred to an attorney, that the letter or form was sent by an attorney, that files have been transmitted to an attorney, or that an attorney is actively involved in collecting or reviewing that account in preparation for institution of suit.

In truth and in fact no referral has been made, no letter has been sent by an attorney, no files have been transmitted, and no attorney is actively involved, at this stage of collection activity. Therefore, the statements, representations and practices described in this Paragraph were and are false, misleading and deceptive.

PAR. 8. The use of the false, misleading and deceptive statements and representations described in Paragraph Seven has the tendency and

capacity to mislead and deceive alleged debtors and to coerce and intimidate such debtors into paying claimed amounts under the erroneous and mistaken belief that the statements and representations are true.

PAR. 9. The acts and practices alleged above are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

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

1. Respondent Commercial Service Company, Inc. (CSC) is a Washington corporation with its office and principal place of business located at 811 First Ave., Seattle, Wash.

Respondent Commercial Collectors (CC) is a Washington partnership with its office and principal place of business located at 811 First Ave., Seattle, Wash. Its activities are closely interrelated with, or indistinguishable from, those of CSC.

Respondents Glen B. Faulk and Richard R. Swaffield are co-partners in CC and officers of CSC. They formulate, direct and control the policies, acts and practices of said corporation and partnership. Their addresses are the same as that of CSC.

Respondent Vincent A. Retacco is an attorney admitted to practice in

the State of Washington. He formulates, directs and controls, in cooperation with the other individual respondents, policies, acts and practices of CSC and CC related to legal actions, real or threatened. His principal office and place of business is located at 30640 Pacific Hwy. S., Federal Way, Wash.

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 Commercial Service Company, Inc. (CSC), a corporation, its successors and assigns, and its officers, and Commercial Collectors, a partnership, and Glen B. Faulk and Richard R. Swaffield, individually, as co-partners doing business as Commercial Collectors, or under any name(s), and their successors and assigns, and as officers of CSC, and respondents' agents, representatives and employees, hereinafter collectively "respondents," directly or through any corporation, subsidiary, division or other device, in connection with the collection of credit obligations of individuals, excluding individual obligations for corporate debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Instituting suits except in the county where defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

*It is further ordered*, That where respondents learn subsequent to institution of suit that the preceding paragraph has not been complied with, they shall forthwith terminate the suit and vacate any default judgment entered thereunder. In lieu of such termination, respondents may effect a change of forum to a county permitted by the preceding paragraph, provided that respondents give defendants notice of such action and opportunity to defend equivalent to that which defendants would receive if a new suit were being instituted. In all cases respondents shall provide defendants with a clear explanation of the action taken and of defendants' rights to appear, answer and defend in the new forum.

*It is further ordered*, That, where respondents terminate a suit or vacate a judgment pursuant to the preceding paragraph, they shall give notice of such termination or vacation to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. §603), which respondents have been informed or have reason to know has recorded the suit or judgment in its files. Additionally,

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respondents shall furnish such notice to any other such person or organization upon request of the defendant.

*It is further ordered*, That when respondents institute suit in any superior court in Washington State, they shall attach, to any summons served upon defendants, a notice which gives defendants adequate directions as to the proper procedure for responding to the suit and avoiding default. The notice shall use clear and unconfusing language, and appear clearly, conspicuously, and in type at least as large as typewriter pica type. Should superior court rules or procedures change respondents shall forthwith modify the notice accordingly. The initial form and adequacy of the notice has been approved, and any modifications thereof shall be subject to approval, by authorized representatives of the Federal Trade Commission.

*It is further ordered*, That respondents prepare and maintain a summary of superior court suits instituted, pending or terminated, in which CSC is a plaintiff. This summary shall contain each defendant's name, address and county of residence; county where the contract sued upon was signed by the defendant, if the suit was not instituted in the residence county; county where served; date served; date filed; docket number; name and location of court in which filed; name of original creditor; amount claimed; and whether or not a default judgment has been entered. Where a suit has been instituted in a county other than where defendant resides or signed the contract, the reason for this choice of forum shall be explained. This summary shall cover a continuous two-year period commencing with service upon respondents of this order. A copy of this summary shall be submitted to the Federal Trade Commission on a quarterly basis.

In subsequent paragraphs "respondents" shall include the above-named respondents and Vincent A. Retacco, an individual, and his agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device.

*It is further ordered*, that respondents do forthwith cease and desist from representing in writing, orally, visually or in any other manner, directly or by implication, that:

1. An account has been referred to an attorney until and unless such representation is true.

2. Communications to an alleged debtor are from an attorney when such is in fact not true.

3. That any files have been removed, transferred, or reviewed, or directions issued, or other action requested, authorized or directed, to or by an attorney, when such is in fact not true.

*It is further ordered*, That respondents shall forthwith deliver a copy

of this order to each of their subsidiaries, operating divisions and employees.

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

*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, in the event of such discontinuance or affiliation. Such notice shall include respondents' current business address and a statement as to the nature of the 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 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.

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## IN THE MATTER OF

## MELMAR INDUSTRIES, INC., ET AL.

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

*Docket C-2719. Complaint, Aug. 22, 1975-Decision, Aug. 22, 1975*

Consent order requiring four affiliated swimming pool firms located in Cherry Hill, N.J., and Philadelphia, Pa., among other things to cease using bait and switch tactics, misleading pricing claims and other deceptive selling practices; and 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.

### *Appearances*

For the Commission: *John A. Crowley* and *Phyllis L. Kaye.*

For the respondents: *Joseph H. Weiss, Fell, Spalding, Goff & Rubin*, Philadelphia, Pa. and *Timothy J. Waters, Peabody, Rivlin, Lambert & Dennison*, Wash., D.C.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and 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 Melmar Industries, Inc., a New Jersey corporation, Melmar Industries, Inc., a Pennsylvania corporation, Prestige Industries Incorporated, a corporation, Gold Bond Industries, Inc., a corporation, and Marc Wolf, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Melmar Industries, Inc., a New Jersey corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1 Martin Ave., Cherry Hill, N.J.

Respondent Melmar Industries, Inc., a Pennsylvania corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business located at 2555 Welsh Rd., Philadelphia, Pa.

Respondent Prestige Industries Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with an office at 396 Rodi Rd., Pittsburgh, Pa. and its general office at 1 Martin Ave., Cherry Hill, N.J.

Respondent Gold Bond Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with an office at 1 Uam Square, Springdale, Pa. and its main office and principal place of business located at 1 Martin Ave., Cherry Hill, N.J.

Respondent Marc Wolf, 1216 Cardinal Lake Dr., Cherry Hill, N.J., is an individual and is the president of Melmar Industries, Inc., a New Jersey corporation; is the secretary-treasurer of Melmar Industries, Inc., a Pennsylvania corporation; is the president of Prestige Industries Incorporated, a corporation; and is vice president of Gold Bond Industries, Inc., a corporation. Respondent Marc Wolf is responsible for formulating, controlling and directing the policies, acts and practices of the corporate respondents.

PAR. 2. Respondents are now and have been, for some time last past, engaged in the advertising, offering for sale, sale and distribution of

swimming pools and other merchandise and home improvement products. In the course and conduct of their business as aforesaid, respondents negotiate to third parties conditional sales contracts, promissory notes or other instruments of indebtedness executed in connection with credit purchase agreements.

## COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents cause advertisements designed to secure leads to potential purchasers of swimming pools and other merchandise and home improvement products to be placed in various newspapers and other publications. The respondents are responsible for the content of said advertisements.

PAR. 4. In the further course and conduct of their business as aforesaid, respondents sell and distribute the aforementioned swimming pools and other merchandise and home improvement products by causing said swimming pools and other merchandise and home improvement products to be shipped from the places of business of their various suppliers in the United States to purchasers at retail in States other than the States from which such shipments originate.

There is now, and has been, at all times mentioned herein, a substantial and continuous course of trade in said swimming pools and other merchandise and home improvement products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have made statements and representations with respect thereto in advertisements inserted in newspapers of general interstate circulation, of which the following are typical and illustrative, but not all inclusive:

INTRODUCTORY
OFFER!
ALUMINUM POOLS
CONVENIENT CREDIT TERMS ARRANGED

| | |
|---|---|
| 21' x 21'<br>OUTSIDE DIMENSION<br>16' x 16' SWIM AREA<br>4' CONSTANT | COMPLETELY INSTALLED<br>$499<br>WOOD POOL SAME<br>AS ABOVE $444 |
| 29' x 21'<br>OUTSIDE DIMENSION | COMPLETELY INSTALLED<br>$699 |

24' x 16' SWIM AREA
4' CONSTANT

WOOD POOL SAME
AS ABOVE $644

3
Pre Season Offer
days
Only
Swimming Pools!
Sun. - Mon.
Tuesday

DeLuxe Aluminum Family Pool
All Pools Include:
Filter and Pump
Pool Ladder
Steel Bracing
Sun Decks
Vacuum Cleaner
Set-In Vinyl Liner
Safety Fence and Stairs

Huge Family Size
29' x 21' Outside Dimensions
24' x 16' x 4'
Swim Area

NO MONEY DOWN

Low Budget
Terms Arranged

Your Choice
$400
No Extras - Delivered and Completely Installed

Pick a Pool
Huge Family Size

Pick a Prize
29' x 21' Outside Dimensions
DeLuxe Wood Family Pool

Free Portable TV

Yours Free With Your Purchase

No Money Down

Low, Low Terms
Completely Installed $400

DeLuxe Aluminum Family Pool Free Huge 21" Cabana Deck With Your Purchase

No Money Down Low, Low Terms Completely Installed $400

New DuPont Tedlar Family Pool Free Complete Stock of Summer Furniture

No Money Down Low, Low Terms Completely Installed $400

Guaranteed! Not Just A Word, But Our Way Of Doing Business

Guaranteed 72-hour delivery upon office receipt of your order

Wanted!

5 Residential Home Sites to display Our New Advanced Swimming Pool

Giant Family Size
27' x 16' x 6' Outside Dimensions
21' x 15' x 4' Swim Area
$666
Completely Installed

PAR. 6. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, separately and in connection with oral statements and representations of their salesmen or representatives, respondents have represented, and are now representing, directly or by implication, that:

1. The offers set out in their advertisements are bona fide offers to sell swimming pools of the kind therein described and on the terms and conditions stated.

2. A prospective customer is able to obtain a "free" portable television set, or a "free" set of summer furniture with the purchase of an advertised pool.

3. The prices shown in advertisements are "Introductory" or "Pre-Season" prices and that said prices are offered only on an introductory or pre-season basis or are effective during a limited period of time and said reduced prices will be returned to respondents' pre-sale bona fide offering price or to some other substantially higher amount immediately after the sale has terminated.

4. The advertised pools are unconditionally "Guaranteed."

5. The advertised pool will be delivered within 72 hours of receipt of the customer's order.

6. Pools are sold with "No Money Down."

7. After the installation of respondents' swimming pools is completed, the purchasers' pools will be used for demonstration and advertising purposes by respondents, and, as a result of allowing or agreeing to allow their pools to be used as models, purchasers will be granted reduced prices or will receive allowances, discounts, commissions or referral fees.

PAR. 7. In truth and in fact:

1. The offers set out in respondents' advertisements are not bona fide offers to sell swimming pools of the kind therein described at the prices or on the terms and conditions stated but are made for the purpose of obtaining leads to persons interested in the purchase thereof. After obtaining such leads, the individually named respondent or respondents' salesmen or representatives call upon such persons but make no effort to sell the advertised products at the advertised prices but instead disparage the advertised products in such a manner as to discourage their purchase and attempt to sell and frequently do sell different and more expensive swimming pool products.

2. A prospective purchaser is unable, in a substantial number of instances, to obtain a "free" portable television set, a "free" cabana deck, or a "free" set of summer furniture since the receipt of the aforesaid "free" item is conditioned on the purchase of an dvertised

pool which the prospective purchaser is generally unable to purchase for the aforesaid reasons. Additionally, where the advertisement offers a "free" item conditioned on the purchase of any pool without further specification, said "free" item is not, in a substantial number of instances, provided to said purchaser.

3. Respondents' advertised offers of swimming pools at the prices stated are not made only for a limited period of time. Said products are advertised regularly at the represented price and on the terms and conditions therein stated. Also, the swimming pools advertised and sold are not being offered for sale at special or reduced prices, and savings are not thereby afforded to their purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices, but the prices at which respondents' products are sold vary from purchaser to purchaser depending upon the resistance of the particular purchaser.

4. Respondents' swimming pools are not warranted in every respect without conditions or limitations for a period of ten years or any other period of time. Such warranty or guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the warranty or guarantee and fails to set forth the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder.

5. In a substantial number of instances, the advertised pools are not delivered to the customer within 72 hours of receipt of the customer's order.

6. In a substantial number of instances, the advertised pools are not sold on a "No Money Down" basis.

7. After the installation of respondents' swimming pools are completed, the pools of respondents' purchasers will not, in a substantial number of instances, be used for demonstration or advertising purposes by respondents and as a result of allowing, or agreeing to allow their pools to be used as models, purchasers are not granted reduced prices, nor do they receive allowances, discounts, commission or referral fees.

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

PAR. 8. In the further course and conduct of their business, and in furtherance of a sales program to induce the purchase of their swimming pools and other merchandise and home improvement products, respondents and their salesmen or representatives have

engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Five through Seven, above, respondents or their representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

PAR. 9. In many instances, in the usual course of their business, respondents sell and transfer said customers' contracts, procured by the aforesaid false, misleading and deceptive means, to various third parties including banks. In any subsequent action to collect monies from said customers pursuant to said contracts, certain valid legal defenses and claims which said customers may have against respondents upon said contracts are unavailable as against said third parties.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of swimming pools and other merchandise and home improvement products of the same general kind and nature as sold by respondents.

PAR. 11. 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 such statements were and are true and into the purchase of substantial quantities of respondents' swimming pools and other merchandise and home improvement products by reason of said erroneous and mistaken belief.

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

## COUNT II

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 II as if fully set forth verbatim.

PAR. 13. In the course and conduct of their business as aforesaid

respondents have caused, and are now causing, advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System, to be placed in various media for the purposes of aiding, promoting or assisting, directly or indirectly, in the credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, of respondents' swimming pools and other merchandise and home improvement products. Said advertisements make use of terms such as "No Money Down, Low, Low Terms" without stating all of the following items, prescribed under Section 226.8 of Regulation Z, in the manner and form required by Section 226.10(d)(2) thereof:

1. The cash price or the amount of the loan, as applicable;

2. The amount of the downpayment required or that no downpayment is required, as applicable;

3. The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

4. The amount of the finance charge expressed as an annual percentage rate; and

5. The deferred payment price.

PAR. 14. In the further course of their business as aforesaid and in order to facilitate the sale of their swimming pools and other merchandise and home improvement products, respondents, or any of them, regularly extend, and for some time last past have regularly extended consumer credit as "consumer credit" is defined in Section 226.2(k) of Regulation Z.

PAR. 15. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, respondents have caused and are causing their customers to enter into retail installment contracts, hereinafter referred to as the contract. On the contract respondents provide certain consumer credit cost information. Respondents do not provide any other consumer credit information.

PAR. 16. By and through the use of the contract referred to in Paragraph Fifteen, respondents:

1. In some instances fail to employ the term "annual percentage rate" as required by Section 226.8(b)(2) of Regulation Z.

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

3. Include the amount of the finance charge in the computation of the amount financed contrary to the requirements of Section 226.8(c)(7) of Regulation Z.

4. In making the charge for credit life insurance optional to the customer, fail to include such charge in the amount financed, as required by Sections 226.4(a)(5) and 226.8(c)(4) of Regulation Z.

5. Fail to disclose the annual percentage rate with an accuracy to the nearest quarter of one percent, as required by Section 226.5(b)(1) of Regulation Z.

6. Fail to use the term "cash down payment" when the down payment is in money, as required by Section 226.8(c)(2) of Regulation Z.

7. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the cash down payment, as required by Section 226.8(c)(3) of Regulation Z.

8. Fail to identify the property in which a security interest is obtained and held, as required by Section 226.8(b)(5) of Regulation Z.

9. Fail to notify the buyer of said buyer's right to rescind the contract, as provided for by Section 226.9(a) of Regulation Z.

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

PAR. 17. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitutes a violation of that Act, and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days now in further conformity with the procedure

prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Melmar Industries, Inc., a New Jersey corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1 Martin Ave., Cherry Hill, N.J.

Respondent Melmar Industries, Inc., a Pennsylvania corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business located at 2555 Welsh Rd., Philadelphia, Pa.

Respondent Prestige Industries Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with an office at 396 Rodi Rd., Pittsburgh, Pa. and its general office at 1 Martin Ave., Cherry Hill, N.J.

Respondent Gold Bond Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with an office at 1 Uam Square, Springdale, Pa. and its main office and principal place of business located at 1 Martin Ave., Cherry Hill, N.J.

Respondent Marc Wolf, 1216 Cardinal Lake Dr., Cherry Hill, N.J., is an individual and is the president of Melmar Industries, Inc., a New Jersey corporation; is the secretary-treasurer of Melmar Industries, Inc., a Pennsylvania corporation; is the president of Prestige Industries Incorporated, a corporation; and is vice president of Gold Bond Industries, Inc., a corporation. Respondent Marc Wolf is responsible for formulating, controlling and directing the policies, acts and practices of the corporate respondents.

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

ORDER

*It is ordered*, That respondents Melmar Industries, Inc., a New Jersey corporation, Melmar Industries, Inc., a Pennsylvania corporation, Prestige Industries Incorporated, a corporation, Gold Bond Industries, Inc., a corporation, their successors and assigns, and their officers, and Marc Wolf, individually and as an officer of the aforesaid corporations, and any subsidiary or affiliated company, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale or distribution of swimming pools, swimming pool accessories or any other home improvement

products, at retail, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any advertising, sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the purchase of swimming pools, swimming pool accessories or any other home improvement products at retail from respondents or any of them.

2. Making representations purporting to offer swimming pools, swimming pool accessories or any other home improvement products for sale at retail when the purpose of the representation is not to sell the advertised products but to obtain leads or prospects for the sale of other such products at higher prices.

3. Disparaging in any manner, or refusing to sell any swimming pool, swimming pool accessory or any other home improvement product which is offered for sale at retail.

4. Representing, directly or by implication, that any swimming pool, swimming pool accessory or any other home improvement product is offered for sale when such offer is not a bona fide offer to sell such product at retail.

5. Representing, directly or by implication, that the price for any swimming pool, swimming pool accessory or any other home improvement product sold by respondents at retail is a special or sale price, when such price does not constitute a significant reduction from an established selling price at which such product has been sold in substantial quantities by respondents in the recent, regular course of their retail business.

6(a) Representing that by purchasing any of said swimming pools, swimming pool accessories or other home improvement products, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such swimming pools, swimming pool accessories or other home improvement products have been sold or offered for sale at retail in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of business.

(b) Representing that by purchasing any of said swimming pools, swimming pool accessories or other home improvement products, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said swimming pools, swimming pool accessories or other home improvement products at retail in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said swimming

pools, swimming pool accessories or other home improvement products at the compared price or some higher price.

(c) Representing that by purchasing any of said swimming pools, swimming pool accessories or other home improvement products, at retail, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable products unless substantial sales of such products of like grade and quality are being made at retail in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained representative samples of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with swimming pools, swimming pool accessories or other home improvement products of like grade and quality.

7. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of swimming pools, swimming pool accessories or any other home improvement products sold at retail by respondents.

8. Failing to maintain adequate records (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims and similar representations of the type described in Paragraphs 5, 6(a)-(c) and 7 of this order are based, and (b) from which the validity of any savings claim, including former pricing claims and comparative value claims and similar representations of the type described in paragraphs 5, 6(a)-(c) and 7 of this order may be determined.

9. Representing, directly or by implication, that a purchaser of products sold by respondents at retail will receive a "free" television set, pool furniture or any other prize or award unless all conditions, obligations or other prerequisites to the receipt of such television set, pool furniture or other prize or award are clearly and conspicuously disclosed.

10. Representing, directly or by implication, that any swimming pool, swimming pool accessory or any other home improvement product is guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

11. Failing to incorporate the following statement on the face of all sales contracts, all notes or other instruments of indebtedness executed by or on behalf of respondents' customers with such conspicuousness and clarity as is likely to be read and understood by the purchaser:

*NOTICE*

If you are obtaining credit in connection with this purchase, you will be required to sign a promissory note, a sales contract or other instrument of indebtedness which may be purchased from the seller by a bank, finance company or any other third party. If such is the case, you will be required to make your payments to someone other than the seller. You should be aware that if this happens you may have to pay the note, contract or other instrument of indebtedness in full to its new owner even if your purchase contract is not fulfilled.

12. Misrepresenting, directly or indirectly, that the swimming pools of any of respondents' purchasers or prospective purchasers will be used for any type of advertising or demonstration purpose or as a model pool or that as a result of such use, respondents' purchasers will be granted reduced prices or will receive discounts, referral fees or allowances of any type.

13. Contracting for any retail sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise, which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

14. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION form for an explanation of this right.

15. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.
IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY

YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE OR SEND A TELEGRAM, TO (*Name of seller*), AT (*address of seller's place of business*), NOT LATER THAN MIDNIGHT OF (*Date*).

I HEREBY CANCEL THIS TRANSACTION.

_____

(Date)

_____

(Buyer's signature)

*Provided, however,* That the "Notice of Cancellation" required by this paragraph need not be furnished in those transactions in which respondents have timely furnished the buyer with the notice of the right of rescission required by Paragraph 11 of Part II of this order.

16. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

17. Including in any sales contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

18. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

19. Misrepresenting in any manner the buyer's right to cancel.

20. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any

goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

21. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

22. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or abandon any shipped or delivered goods.

*Provided, however*, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the State in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the State in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

PART II

*It is further ordered*, That respondents Melmar Industries, Inc., a New Jersey corporation, Melmar Industries, Inc., a Pennsylvania corporation, Prestige Industries Incorporated, a corporation, Gold Bond Industries, Inc., a corporation, their successors and assigns, and their officers, and Marc Wolf, individually and as an officer of the aforesaid corporations, and any subsidiary or affiliated company, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the arrangement, extension or advertisement of consumer credit in connection with the retail sale of swimming pools, swimming pool accessories or any other home improvement products, as "advertisement" and "consumer credit" are defined in Section 226.2(b) and Section 226.2(k), respectively, of Regulation Z (12 CFR §226) of the Truth in Lending Act (15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Causing to be disseminated to the public in any manner whatsoever, any advertisement, for the purposes of aiding, promoting or assisting, directly or indirectly, any extension of consumer credit unless such advertisement states all of the following items prescribed under Section 226.8 of Regulation Z, in the manner and form required by Section 226.10(d)(2) of Regulation Z:

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(a) The cash price or the amount of the loan, as applicable;

(b) The amount of the downpayment required or that no downpayment is required, as applicable;

(c) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(d) The amount of the finance charge expressed as an annual percentage rate; and

(e) The deferred payment price.

2. Failing to employ the term "annual percentage rate" as required by Section 226.8(b)(2) of Regulation Z.

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

4. Including the amount of the finance charge in the computation of the amount financed, contrary to the requirements of Section 226.8(c)(7) of Regulation Z.

5. Failing to include the charge for credit life insurance, when not required to be placed within the finance charge, within the amount financed, as required by Sections 226.4(a)(5) and 226.8(c)(4) of Regulation Z.

6. Failing to disclose the annual percentage rate with an accuracy to the nearest quarter of one percent, as required by Section 226.5(b)(1) of Regulation Z.

7. Failing to employ the term "cash downpayment" to describe the downpayment in money, as required by Section 226.8(c)(2) of Regulation Z.

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

9. Failing to make a clear identification of the property in which a security interest is obtained and held as required by Section 226.8(b)(5) of Regulation Z.

10. Failing to notify the buyer of said buyer's right to rescind the contract, as provided for by Section 226.9 of Regulation Z.

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

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

PART III

*It is further ordered*, That respondents distribute a copy of this order to all operating divisions of said corporations and also distribute a copy of this order to all personnel, agents or representatives concerned with the promotion, sale and distribution of swimming pools, swimming pool accessories or any other home improvement products at retail and secure from each such person a signed statement acknowledging receipt of said order.

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

*It is further ordered*, That the 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 address and a statement as to the nature of the 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.

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IN THE MATTER OF

## EPSHTEIN TRADING CORPORATION, ET AL.

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

*Docket C-2720. Complaint, Aug. 25, 1975-Decision, Aug. 25, 1975*

Consent order requiring a New York City importer and distributor of furs and fur products, among other things to cease falsely invoicing its merchandise.

*Appearances*

For the Commission: *Jerry R. McDonald.*

For the respondents: *Pro se.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Epshtein Trading Corporation, a corporation, and Jacob L. Epshtein, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Epshtein Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 224 W. 29th St., New York, N.Y.

Individual respondent Jacob L. Epshtein is an officer of Epshtein Trading Corporation. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondents are engaged in the importation and sale of furs.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale in commerce, and in the importation into the United States, and in the transportation and distribution in commerce, of furs; and have imported for sale, sold, offered for sale, transported and distributed furs which have been shipped and received in commerce, as the terms "commerce" and "fur" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said furs were falsely and deceptively invoiced with respect to the names or designations of the animals that produced the said furs in violation of Section 5(b)(1) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced furs, but not limited thereto, were furs which were invoiced as "mink" or "South Korean mink" when in truth and in fact said furs were not produced by the designated animals. In accordance with Section 7 of the Fur Products Labeling Act and pursuant to the designations established thereunder by the Fur Products Name Guide, said furs were, in fact, produced by animals named in said guide, as "Kolinskys" or "Chinese Weasels", and were required to be designated "Kolinsky" or "Chinese Weasel."

PAR. 4. Certain of said furs were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to said furs the names

of animals other than the name or names of the animals that produced the said furs in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Epshtein Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 224 W. 29th St., New York, N.Y.

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

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

ORDER

*It is ordered*, That respondents Epshtein Trading Corporation, a corporation, its successors and assigns, and its officers, and Jacob L. Epshtein, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the introduction, or importing for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of furs or fur products, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from falsely or deceptively invoicing any fur or fur product by:

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

2. Setting forth on an invoice pertaining to such fur or fur product any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur.

3. Setting forth on an invoice pertaining to such fur or fur product the name or names of any animal or animals other than the name of the animal producing the fur as specified in the Fur Products Name Guide.

*It is further ordered*, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the 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 thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

IN THE MATTER OF

# KAISER STEEL CORPORATION

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

*Docket No. 8878. Complaint, Mar. 3, 1972-Decision, Aug. 27, 1975*

Consent order requiring an Oakland, Calif., steel company, among other things to transfer the business of MSL Tube, acquired from MSL Industries, Inc., to a wholly-owned subsidiary, Kaiser Steel Tubing, Inc., whose records must be audited annually by an independent public accountant.

*Appearances*

For the Commission: *Stephen Miller, Harold J. Lamboley, D. Kenneth Kaplan* and *Perry W. Winston.*

For the respondents: *Wilmer, Cutler & Pickering,* Wash., D.C. and *Raymond Haile,* Oakland, Calif.

## COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Kaiser Steel Corporation, a corporation, has violated Section 7 of the Clayton Act as amended, (15 U.S.C. §18) and that a proceeding in respect thereof would be in the public interest, issues its complaint pursuant to Section 11 of the Clayton Act, (15 U.S.C. §22) stating its charges as follows:

## I. Definitions

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

(a). Electric resistance welded mechanical steel tubing denotes tubing formed from flat-rolled steel into solid-wall tubing in an electric resistance welded tube mill. It can be made from hot-rolled, cold-rolled or galvanized steel and may be in a round, square, rectangular or a special shape form. It includes structural tubing used in highway and building construction and, in smaller sizes for such applications as the manufacture of furniture, bicycles and lawn mowers. Electric resistance welded steel tubing is used for a wide variety of mechanical and structural purposes as opposed to pressure tubing which is used for the conduction of fluids and/or gases under pressure.

(b). Eleven Western States include the States of California, Oregon, Washington, Arizona, New Mexico, Idaho, Utah, Montana, Wyoming, Colorado and Texas.

## II. Respondent Kaiser Steel Corporation

2. Kaiser Steel Corporation (hereafter "Kaiser") is a corporation organized and existing under the laws of the State of Nevada, with its principal office and place of business at 300 Lakeside Dr., Oakland, Calif.

3. Kaiser's business is conducted through three divisions: Resources, Steel and Metal Products. In addition to being the nation's tenth largest steel producer, it is the biggest steel producer in the West. In recent years, Kaiser has become a major world-wide developer of basic resources, principally iron ore, iron ore pellets and high-quality coking coal. Its primary marketing area is the seven western states.

4. For its fiscal year ending Dec. 31, 1969, Kaiser had net sales of $420.8 million, net earnings of $25.7 million, and total assets of $643.5 million.

5. At all times relevant herein, Kaiser sold and shipped, and is now selling and shipping products in interstate commerce throughout the United States; hence, Kaiser was, at the time of the acquisition challenged herein, and is now, engaged in commerce as "commerce" is defined in the Clayton Act.

## III. Acquired Assets

6. MSL Industries, Inc. (hereafter "MSL") is a corporation organized and existing under the laws of the State of Minnesota with its principal office and place of business in Chicago, Ill. Prior to Mar. 31, 1970, MSL Tubing and Steel Co., (hereafter "MSL Tube") was an operating division of MSL, consisting of land, buildings and equipment located in Vernon, Calif. Prior to Mar. 31, 1970, MSL Realty, a Delaware corporation, organized to do business in California, was a wholly-owned subsidiary of MSL.

7. At the time of its acquisition, MSL Tube was the West Coast's largest manufacturer of electric resistance welded mechanical steel tubing. In addition, MSL Tube processed and distributed secondary sheet steel and slit coil products. The geographic sales area of MSL Tube's products included primarily the States of California, Oregon, Washington, Arizona, New Mexico, Idaho, Utah, Montana, Wyoming, Colorado and Texas. MSL Realty's assets included land leased to MSL Tube.

8. For its fiscal year ending Dec. 31, 1969, MSL had net sales of $131.4 million, net earnings of $304,000, and total assets of $110.8 million. In 1969, MSL Tube had net sales of $12.8 million, net earnings of $1.4 million and total assets of $8.2 million.

9. At all times relevant herein, MSL Tube sold and shipped products in interstate commerce and was engaged in "commerce" within the meaning of the Clayton Act.

## IV. Acquisition

10. On Mar. 31, 1970, Kaiser acquired the properties, assets and facilities comprising MSL's west coast tube manufacturing business located in Vernon, Calif., and all of the outstanding common stock of MSL Realty for $10.4 million.

## V. Trade and Commerce

11. The manufacture of electric resistance welded mechanical steel tubing entails feeding a width of strip steel into a welding mill where a series of special rolls form the flat steel into a tubular shape. The butted edges are then electrically welded under heat and pressure. Steel, the primary ingredient in the manufacture of electric resistance welded mechanical steel tubing, represents between 65 percent and 90 percent of the total cost of manufacturing the product.

12. Due principally to freight costs, the manufacture and sale of electric resistance welded mechanical steel tubing has tended to be a regional industry. In 1969, the six west coast companies engaged in the manufacture of such products, all of which were based in California, had $22.1 million sales representing over 68 percent of the market for electric resistance welded mechanical steel tubing in the eleven Western States market; MSL Tube, the largest manufacturer, accounted for approximately 27 percent of total sales. In 1969, the six companies had $18.1 million sales representing over 72 percent of the sales of electric resistance welded mechanical steel tubing in the State of California; MSL Tube, the largest manufacturer, accounted for approximately 30 percent of California sales.

13. In 1969, the six companies producing electric resistance welded mechanical steel tubing in the California market had not been integrated or affiliated with steel manufacturers.

## VI. The Effects of the Acquisition

14. The effect of the acquisition of MSL Tube and MSL Realty may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of electric resistance welded mechanical steel tubing in the State of California and in the eleven Western States in the following ways, among others:

(a). The ability of MSL Tube's nonintegrated competitors effective-

ly to compete in the manufacture and sale of electric resistance welded mechanical steel tubing has been and/or may be substantially impaired.

(b). The entry of new electric resistance welded mechanical steel tubing competitors may have been and/or may be inhibited or prevented.

(c). The dominant position of MSL Tube in the electric resistance welded mechanical steel tubing industry has been, or may be, further strengthened and entrenched vis-a-vis its competitors with the result that the likelihood of any reduction in such dominant position is remote.

## VII. Violation Charged

15. The acquisition of MSL Tube and MSL Realty by Kaiser on Mar. 31, 1970, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

## Decision and Order

The Federal Trade Commission having initiated a complaint charging that the respondent named in the caption hereof has violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18; and

Respondent and complaint counsel, by joint motion dated Sept. 10, 1974 having moved to have the matter removed from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued Sept. 24, 1974, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its rules; and

The executed agreement contains a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint which the Commission issued, 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 provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25(d) of its rules, now in further conformity with the procedure prescribed in Section 3.25(d) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Kaiser Steel Corporation is a corporation organized,

existing and doing business under and by virtue of the laws of the State of Nevada, with its principal place of business located at 300 Lakeside Dr., in the City of Oakland, State of California.

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

ORDER

For purposes of this order, the following definitions shall apply:

"ERWMSST," or Electric Resistance Welded Mechanical and Structural Steel Tubing, means tubing formed from flat-rolled steel into solid-wall tubing in an electric resistance welded tube mill and used for mechanical or structural applications. It can be made from hot-rolled, cold-rolled or galvanized sheet steel and may be in a round, square, rectangular or a special shape form. ERWMSST does not include pipe or tubing which is used for the conduction of fluids and/or gases ("pipe" or "pressure tubing").

"Respondent" means Kaiser Steel Corporation and any of its domestic subsidiaries and their respective successors and assigns.

"The Business of MSL Tube" means the tubing business acquired by respondent from MSL Industries, Inc. and all additions subsequently made thereto, including the physical plant located in Vernon, Calif. and presently owned by respondent and operated by the Kaiser Steel Tubing Division of respondent; the nine tube mills presently at such physical plant; and all related inventories, accounts receivable and current liabilities of the Kaiser Steel Tubing Division.

"California ERWMSST Producer(s)" means (1) the manufacturers of ERWMSST listed in Appendix A and (2) any other individual or corporation not affiliated with any of the manufacturers listed in Appendix A which, subsequent to the date of this order, commences to manufacture and sell ERWMSST within the State of California.

"Secondary Sheet Steel" means sheet steel which does not meet the producer's quality standards for prime sheet steel and which is for this reason sold at prices lower than the producer's prices for prime sheet steel.

"Affiliated Person" means a person who is at the time of any action taken pursuant to Paragraph III of this order an officer, director, employee or agent of respondent or who owns or controls, directly or indirectly, more than one percent of the outstanding shares of the capital stock of respondent.

I

*It is ordered*, That:

A. Respondent shall, within six months after the date this Order becomes final, transfer, assign and convey The Business of MSL Tube to a wholly-owned subsidiary, hereinafter called Kaiser Steel Tubing, Inc. ("KST"). KST shall maintain, in accordance with good accounting practice, separate and complete corporate records and accounts, which shall be audited annually by an independent public accountant. KST shall preserve such records for a period of at least five years.

B. Respondent shall not sell any type of sheet steel, including Secondary Sheet Steel, to KST at a price (including extra charges and discounts) lower than respondent's then current list price unless, to respondent's reasonable belief, other California ERWMSST producers can substantially satisfy their requirements for such type of sheet steel by purchases at such lower price.

C. With regard to all other commercial transactions between respondent and KST, Respondent shall establish procedures to insure that such transactions are no more favorable to KST than would be the case if they were entered into between respondent and independent parties on reasonable commercial terms. Respondent shall not enter into any such commercial transaction with KST except on terms which accord with these procedures. Respondent shall report annually to the Commission all such commercial transactions with KST in the preceding year involving more than $25,000. In addition, such transactions shall be reviewed by the independent accountants described in Paragraph I(A) above, and respondent shall submit to the Commission the reports containing the opinion of said accountants as to whether such transactions complied with the procedures established pursuant to this paragraph.

II

*It is further ordered*, That

A. Respondent shall in each calendar year make available for sale to each California ERWMSST producer, at a price not exceeding respondent's then current published list price (including applicable extra charges and discounts), subject to credit terms appropriate under the circumstances, and on conditions of sale not less favorable than those offered to KST, a quantity of sheet steel for use in the manufacture of ERWMSST equal to the average of such producer's annual purchases of sheet steel from respondent for use in the manufacture of ERWMSST for the three years during the period 1969 through 1973, inclusive, in which such company purchased the greatest quantities of sheet steel from respondent (its "base years"). In making such allocations, respondent shall use its best efforts to make available to each such ERWMSST producer, hot-rolled, cold-rolled and galvan-

ized sheet steel in the same ratio as those types of steel were purchased by such producer from respondent during its base years. Respondent shall make available for sale to any California ERWMSST producer (1) whose average annual purchases of sheet steel from respondent for use in the manufacture of ERWMSST during its "base years" were less than 1,000 tons, or (2) who commenced the manufacture and sale of ERWMSST in the State of California subsequent to the date of this order, a minimum annual allocation of 1,000 tons of hot-rolled sheet steel for use in the manufacture of ERWMSST.

B. In any calendar year respondent shall increase the quantities of sheet steel made available to California ERWMSST producers pursuant to Paragraph II(A) by the same percentage by which its sales of sheet steel to KST for use in the manufacture of ERWMSST in the most recent calendar year exceeded its 1974 sales of sheet steel to KST for that purpose.

C. Respondent shall in each year, to the extent Secondary Sheet Steel is available, include in the quantity of sheet steel made available for sale to each California ERWMSST producer pursuant to this paragraph, at such producer's option, secondary sheet steel for use in the manufacture of ERWMSST in the same proportion that respondent's sales of secondary sheet steel to KST for use in the manufacture of ERWMSST in the then current calendar year bear to its total sales of sheet steel to KST for that purpose during such calendar year.

D. Respondent shall not be obligated to deliver sheet steel offered for sale to California ERWMSST producers pursuant to the provisions of this paragraph during any period when its ability to produce or deliver sheet steel is substantially impaired by reason of labor difficulties, war, civil commotion, act of God, governmental action, failure of equipment, sources of supply or transportation, or other occurrence beyond respondent's control; and the quantity of sheet steel which respondent shall be obligated to make available for sale to California ERWMSST producers in any year in which such an occurrence takes place shall be reduced in proportion to the total reduction in respondent's production of sheet steel, caused by such occurrence, below its projected production for that year.

III

*It is further ordered*, That within one year from the date this order becomes final, respondent shall, or shall cause KST to, with respect to each of three tube mills and associated equipment (including jib crane; pay-off reel; coil end joining table; looping system; forming mill; welder; tube cooling section; sizing mill; cut-off device; drive system and console table) suitable for the manufacture of ERWMSST in

commonly used sizes from approximately 1/2 inch to approximately 1 1/2 inch diameter, presently included among the business of MSL Tube, either (1) sell such mill or mills and associated equipment to persons who are not affiliated persons; or (2) impound such mill or mills and associated equipment, provided that any mill or mills and associated equipment so impounded shall not again be used by respondent or KST for the production of ERWMSST within the State of California without prior consent of the Commission.

IV

*It is further ordered*, That if respondent or KST elects to sell any tube mill pursuant to alternative one of Paragraph III of this order, nothing in this order shall be deemed to prohibit respondent from retaining, accepting, and enforcing in good faith any security interest therein, not to exceed five years in duration, for the sole purpose of securing to respondent or KST full payment of the price, with interest, at which such tube mill is sold; *Provided, however*, That should respondent or KST, by exercise of such security interest regain direct or indirect control of any such tube mill, it shall be redivested or impounded in accordance with Paragraph III of this order, within one year from the date of reacquisition.

V

*It is further ordered*, That KST shall not sell or offer to sell ERWMSST and steel mill products together at a single price. Nothing in this paragraph shall prevent KST from offering carload or truckload discounts which are computed on the sale of quantities of both tubing and such other products, based on cost savings attributable to the sale of those products together.

VI

*It is further ordered* That respondent shall, within 60 days from the date this order becomes final, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the provisions of this order and in fulfilling its objectives. Every 60 days thereafter, until respondent has taken one of the alternative actions required by Paragraph III of this order, respondent shall submit a subsequent report on its progress in complying with Paragraph III. Respondent shall submit annually, within 90 days after the end of its fiscal year, a detailed written report of its actions in complying with the remaining provisions of this order.

VII

*It is further ordered*, That, pending sale or impoundment of the tube mills which are the subject of Paragraph III of this order, respondent shall not make any changes in, other than in the ordinary course of business, or permit any deterioration of, any of such tube mills which may impair such mill's capacity for the manufacture of ERWMSST.

VIII

*It is further ordered*, That, for a period of ten years from the date this order becomes final, respondent shall not, without the prior approval of the Federal Trade Commission, acquire, or acquire and hold, directly or indirectly, the whole or any part of the assets, stock, share capital, or other actual or potential equity interest or right of participation in the earnings of any domestic concern, corporate or noncorporate, engaged in the manufacture of ERWMSST in the States of Arizona, California, Idaho, Nevada, Oregon, Utah and Washington.

IX

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

X

*It is further ordered*, That the provisions of this order shall remain in effect for a period of ten years from the date this order becomes final.

APPENDIX A

California ERWMSST Producers:

Bernard Epps & Co., 3165 E. Slauson Avenue, Los Angeles, California 90058.

California Steel and Tube, Inc., 16049 Stephens Street, City of Industry, California 91744.

Cal-Metal Corporation, 1351 West Sepulveda Blvd., Torrance, California.

Harris Tube Division of Automation Industries, Inc., 8720 South San Pedro Street, Los Angeles, California 90003.

Pacific Tube Company 5710 Smithway Street, Los Angeles, California 90040.

Torrance Tube Division of Cyprus Mines Corporation, 1739 213th Street, Torrance, California.

Western Tube & Conduit Corporation, 2730 East 37th Street, Los Angeles, California 90058.

IN THE MATTER OF

# STATE CREDIT ASSOCIATION, INC., ET AL.

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

*Docket C-2722. Complaint, Aug. 27, 1975–Decision, Aug. 27, 1975*

Consent order requiring a Seattle, Wash., debt collection agency, among other things to cease misrepresenting the attachment, garnishment or foreclosure of any assets, wages, or property without making various disclosures to the alleged debtor, and instituting suits in counties other than where the defendant resides or the debt was incurred. Further, respondent is required to comply with the F.T.C.'s "Guides Against Debt Collection Deception."

*Appearances*

For the Commission: *Gregory L. Colvin.*
For the respondents: *David Gossard*, Seattle, Wash.

## COMPLAINT

The Federal Trade Commission, having reason to believe that State Credit Association, Inc., a corporation, and D. Keith Lasswell, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent State Credit Association, Inc. (hereinafter SCA) is a Washington corporation with its office and principal place of business located at 1314 Howell St., Seattle, Wash.

Respondent D. Keith Lasswell is an officer of SCA. He formulates, directs and controls the policies, acts and practices of said corporation, including those hereinafter set forth, and his business address is the same as that of SCA.

PAR. 2. Respondents are now and have been engaged in the business of collecting or attempting to collect alleged money obligations as agents or assignees of various creditors. Allegations stated below in the present tense include the past tense.

PAR. 3. In the course of its business, SCA engages in substantial interstate commercial intercourse, including transmittal of letters, checks and documents through the United States mails among the various States of the United States. In the course of its business, SCA solicits and receives accounts and other kinds of money obligations for collection from persons and firms, including interstate corporations,

located outside the State of Washington. SCA, in such instances, acts as agent or assignee of said creditors. Some of SCA's collection activities involve money obligations incurred outside of the State of Washington and allegedly owed by persons or firms resident inside the State of Washington. Some of SCA's collection activities involve money obligations incurred inside the State of Washington and allegedly owed by persons or firms resident outside the State of Washington. Further, SCA frequently refers money obligations for collection to persons and firms located outside the State of Washington, and, according to its own letterhead, maintains agents throughout the United States and the World. Thus, respondents are engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

## Deceptive Forms

PAR. 4. In the course of its business, SCA causes to be transmitted, to those whom it pursues for collection of alleged money obligations, printed forms, copies of which are set forth below:

# NOTICE OF IMPENDING ACTION

THIS ____ DAY OF ____ 19__

CLAIM OF

You are hereby notified that it is our intention to immediately proceed to ascertain, what assets, wages or other property, real or personal, belonging to you may be held subject to the debt claimed herein. We intend to, upon advice of our counsel, take whatever action is deemed most appropriate in this matter.

FEDERAL TRADE COMMISSION
File No. 732 3077 COMMISSION INVESTIGATIONAL Exhibit No. 7
In the Matter of: State Credit Assn. Inc.
Date 12-6-73 Witness Caldwell Reporter Barr

Commencement of this action will be withheld for five days to permit you to settle without recourse to such action. It is in your interest to consider how you will be affected now and in the future if such intended action is carried out.

**FURTHER DELAY CAN COST YOU**
(as awarded by the court)

| | |
|---|---|
| Principal | $ |
| Interest | $ |
| Court Costs | $ |
| TOTAL | $ |

SEND $ ____ NOW TO

STATE CREDIT ASSOCIATION, INC.
P.O. Box 9444 — Queen Anne Station
158 Thomas
Seattle, Washington 98109
Phone MU 2-5713

© 1968 A. M. CAREN

# 48 HOUR NOTICE

FINAL NOTICE

FEDERAL TRADE COMMISSION

File No. 132 3177 COMMISSION INVESTIGATIONAL EXHIBIT No. 8

In the Matter of State Credit Assn

Date 11-16-73 Witness Issued Reporter JM

ON THE ACCOUNT OF $ _____

NOTICE IS HEREBY GIVEN THAT THIS ITEM HAS ALREADY BEEN REFERRED FOR LEGAL ACTION.

We will at any time after 48 Hours take action as determined by our counsel as necessary and appropriate to secure payment in full, together with such costs and fees as will accrue.

PAY THIS AMOUNT NOW

ESTIMATED COSTS
(AS A COURT MAY AWARD)

IF SUIT IS TO BE STOPPED

Principal $ _____

Interest $ _____

Court Costs $ _____

Fees $ _____

TOTAL Could Be $ _____

STATE CREDIT ASSOCIATION, INC.
P.O. Box 9444 — Queen Anne Station
158 Thomas
Seattle, Washington 98109
Phone MU 2-2913

THIS IS YOUR

# NOTICE OF CREDIT DEFAULT

You have Five (5) Days from This Date

**Individuals whose account has been in arrears need not regard their credit standing completely jeopardized. They should IMMEDIATELY, upon receipt of this notice, send payment in full to the undersigned.**

Dated this _____day of_____19____

RE: _____ $_____

Interest at the Annual Percentage Rate of _____% since _____ amounting to $_____ has been added to and is included in the account claimed above.

**YOU ARE HEREWITH NOTIFIED:**

1. That the above account has, for value received, been assigned to us for Immediate Collection Procedures.
2. That the above entitled Account is in **DEFAULT** and that Immediate Collection Procedures will be taken unless this is paid AT ONCE.
3. That Merchants and Professional Men are reluctant to extend Credit to individuals who have a Record of Unpaid Collection Accounts.
4. That Credit Privileges are often refused to Individuals who have unpaid delinquent accounts.
5. **That to prevent this matter proceeding further you must IMMEDIATELY pay the same in full.**

**PROTECT YOUR CREDIT STANDING** By Promptly Sending $_____ to

**STATE CREDIT ASSOCIATION, INC.**
**P.O. Box 9444 — Queen Anne Station**
**158 Thomas**
**Seattle, Washington 98109**
**Phone MU 2-2913**

FEDERAL TRADE COMMISSION
File No. 7323077 COMMISSION INVESTIGATIONAL Exhibit No. 9
In the Matter of: State Credit Assn
Date 11-6-73 Witness Haswell Reporter JM

**This is in no way a Legal Form or a Simulated Legal Form. It is advisable to Pay the amount called for Immediat since Legal Forms served by the Sheriff require payment of Court Costs and Service Fees in addition.**

PAR. 5. Through the use of statements and representations in said forms, SCA has misrepresented, directly or by implication, that:

A. Form 1

1. SCA will attach, garnish, foreclose, or otherwise take possession of some part of the assets, wages, or other property of the person against whom collection activities are being pursued, without allowing or being required to allow such person any defense or recourse except payment of the demanded amount of money.

2. Legal action on the allegedly unpaid obligation is about to be initiated.

3. If SCA does not receive full payment of the allegedly unpaid obligation within the specified time period, SCA will commence suit.

B. Form 2

1. The allegedly unpaid obligation has been referred to an attorney.

2. An attorney is actively involved in pursuing or reviewing a collection matter in preparation for initiation of legal action.

3. Legal action on the allegedly unpaid obligation has been or is about to be initiated.

4. If SCA does not receive full payment of the allegedly unpaid obligation within the specified time period, SCA will commence suit.

C. Form 3

1. SCA engages in credit reporting activities or engages in providing information to credit reporting agencies.

2. The existence of the allegedly unpaid obligation has impaired such person's credit standing already and can only be corrected by full payment to SCA.

3. Failure to make full payment to SCA of the alleged obligation within the specified time period will result in impairment of the credit standing or credit privileges of the person against whom collection activities are being pursued.

These threats have the capacity and tendency to mislead those who allegedly owe such money obligations as to their legal rights and as to the status of the collection activities being conducted against them, and thus tend to induce payment by such persons.

Therefore, the statements and representations referred to in Paragraphs Four and Five are deceptive and unfair.

## Gag Calling

PAR. 6. In the course of its business, SCA collects or attempts to collect information by telephone using an assumed identity, or disguising the purpose for which information is desired. Such a practice is commonly known as "gag calling" in collection terminology.

Since recipients of such calls may be misled as to the true identity or

purpose of the callers, they may be induced to provide information which is not in their interest to supply and which they normally would not voluntarily furnish. Therefore, this practice is deceptive and unfair.

### Questioning of Others in the Debtor's Home

PAR. 7. In the course of its business, SCA telephones private residences and if the alleged debtor is not home, SCA proceeds to question other persons in the home, including minor children, about telephone numbers, places of employment or other information to facilitate collection.

Many persons in such a situation, especially minor children, cannot understand the nature or importance of information requested and are not in a position to determine whether or how they should respond to such questions. Thus, SCA may obtain private information from the child or other person which is not in the alleged debtor's interest to supply and which such debtor normally would not voluntarily furnish.

Therefore, this practice is unfair.

### Use of Judicial Process

PAR. 8. SCA regularly resorts to use of judicial process in collection matters not resolved by private settlement. The defendants in such cases are predominately low-income or middle-income persons not represented by counsel. SCA sues in its own name as assignee of the alleged money obligations and usually obtains default judgments against such defendants.

PAR. 9. SCA commences almost all its collection lawsuits in the district and superior courts of King County, Wash. In many of the superior court suits defendants reside, or incurred the underlying obligations, outside of King County, in places up to 200 or more miles from the court. Courts located in the county where defendants reside or where they incurred the underlying obligations could be used for these suits. Through such use of distant and inconvenient forum, SCA effectively deprives defendants of a reasonable opportunity to appear, answer and defend the lawsuits. Therefore, this practice is unfair.

PAR. 10. For its superior court lawsuits, SCA uses confusingly worded summonses which give defendants inadequate or misleading directions as to the proper procedure for responding. These summonses have the tendency to mislead defendants into defaulting. Thus, SCA effectively deprives defendants of a reasonable opportunity to appear, answer and defend the lawsuits. Therefore, this practice is unfair and deceptive.

PAR. 11. The use of the deceptive statements and representations

described above has the tendency and capacity to lead alleged debtors into the erroneous and mistaken belief that the statements and representations are true. As a result of this belief, and as a result of these and other unfair practices described above, such alleged debtors are coerced and intimidated into paying the amounts claimed against them.

PAR. 12. The acts and practices alleged above are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty 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:

A. Respondent State Credit Association, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1314 Howell St., Seattle, Wash.

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

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

ORDER

I

*It is ordered,* That respondents State Credit Association, Inc., a corporation, its successors and assigns, and its officers, and D. Keith Lasswell, individually and as an officer of SCA, and respondents' agents, representatives and employees, hereinafter collectively "respondents," directly or through any corporation, subsidiary, division or other device, in connection with the collection of money obligations or any other form of obligation or claim in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing in writing, orally, visually, or in any other manner, directly or by implication, that:

A. Respondents can or will attach, garnish, foreclose, or in any manner take possession of any part of the assets, wages or other property of anyone, or initiate any legal action unless (a) at the time of such representation, respondents have a present legal right to take such action, (b) respondents specify truthfully, in immediate conjunction with such representation, how soon such action will be taken if payment of the obligation is not made, and (c) respondents regularly take such action within the specified time period when no payment is made.

B. Any allegedly unpaid obligation has been referred to an attorney unless such is the fact.

C. An attorney is actively involved in pursuing or reviewing a collection matter in preparation for initiation of legal action unless such is the fact.

D. Legal action on an allegedly unpaid obligation has been or is being initiated unless such is the fact.

E. Respondents engage in credit reporting activities of any kind or engage in providing information to credit-reporting agencies.

F. The existence of an allegedly unpaid obligation has impaired or will impair any person's credit standing or credit privileges or that only payment to respondents can correct or avoid any credit impairment.

II

*It is further ordered,* That respondents, in any communication with any person or firm during any part of collection activities, refrain from engaging in any representations which disguise, obscure, or detract

from respondents' true identity or the true purpose of the communication.

III

*It is further ordered,* That respondents, when speaking to persons present in the alleged debtor's home other than the debtor himself or herself, do forthwith cease and desist from attempting to obtain any information other than (1) whether the caller may speak to the debtor and, if the debtor is not present, (2) when the debtor is expected to be home, and (3) whether there is a telephone number where the debtor can be reached. When speaking to persons under the age of twelve (which respondents may verify by direct question if necessary), respondents cannot attempt to obtain any information other than whether the caller may speak to an adult.

IV

*It is further ordered,* That respondents comply with all provisions of the Federal Trade Commission's "Guides Against Debt Collection Deception" existing at the time this Order is finally accepted.

V

*It is further ordered,* That respondents do forthwith cease and desist from instituting suits except in the county where the defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon, or, if there was no written contract, where the obligation was incurred. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

VI

*It is further ordered,* That when respondents institute suit in any superior court in Washington State, they shall attach, to any summons served upon defendants, a notice which gives defendants adequate directions as to the proper procedure for responding to the suit and avoiding default. The notice shall use clear and unconfusing language, and shall appear clearly, conspicuously, and in type at least as large as typewriter pica type. Should superior court rules or procedures change respondents shall forthwith modify the notice accordingly. The initial form of the notice, and any modifications thereof, shall be subject to approval by authorized representatives of the Federal Trade Commission. Respondents shall not make any representation in writing, orally,

visually or in any other manner, directly or by implication, which disguises, obscures, or detracts from the proper procedure for responding to the suit or for avoiding default.

VII

*It is further ordered*, That respondents shall forthwith deliver a copy of this order to each of their subsidiaries, operating divisions and employees engaged in collection activities.

VIII

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

IX

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

X

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