IN THE MATTER OF

H&R BLOCK, INC.

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

Docket C-2162. Complaint, March 1, 1972—Decision, March 1, 1972

Consent order requiring a Kansas City, Mo., firm offering income tax preparation and other services to cease misrepresenting the terms and conditions of any guarantee, that respondent will reimburse customers for any addition he may have to make to his initial tax payment, that respondent will not assume liability for any additional taxes assessed, using information obtained from customer's tax data for purposes other than the tax return, and where respondent intends to transfer such information, to obtain customer's signature releasing the information.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that H&R Block, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent H&R Block, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 4410 Main Street in the city of Kansas City, State of Missouri.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale and sale of personal income tax preparation services, mutual funds and life insurance to the general public.

Respondent sells its aforesaid products and services directly and through various corporate subsidiaries, affiliates, and franchisees hereinafter referred to for convenience as respondent's representatives.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, monies, contracts, business forms and other commercial paper and printed materials in connection with said income tax preparation services, mutual funds and life insurance to be sent by United States

mail from respondent's place of business in the State of Missouri to its local offices and franchises and purchasers of respondent's products and services located in various other States of the United States, and maintains and all times mentioned herein has maintained a substantial course of trade in said services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent and its representatives have disseminated, and caused the dissemination of, certain advertisements concerning the said income tax preparation services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said income tax preparation services.

PAR. 5. Among the advertisements disseminated in the aforesaid manner, are certain radio and television commercial broadcasts and newspaper and periodical insertions. In these radio and television commercial broadcasts, respondent utilizes the services of John Cameron Swayze, a noted news commentator and television personality, to narrate the broadcast script. The narration by John Cameron Swayze includes certain statements and representations respecting Block's size and extent of operation, the complexity of income tax preparation, the security which members of the consuming public will experience when their tax returns are prepared by Block, the thoroughness of Block's preparation procedures and the Block guarantee of accuracy. Typical of the statements and representations in said advertisements, but not all inclusive thereof, are the following:

A. Television

1. John Cameron Swayze for H & R Block, America's Largest Income Tax Service.

Tax reforms *this year* will affect every taxpayer.

Millions of Americans will be using the 1040 Long Form for the first time, because the 1040A Short Form, has been eliminated. *But* * * * the Long Form itself has been changed dramatically. It's completely revised. And the surtax is still with us, too * * * at a *higher* effective rate. All this confusion means that now, more than ever, you need the security and peace of mind H&R Block can provide.

They'll prepare, double-check and guarantee your return.

See H&R Block, the Income Tax People. (emphasis in original).

2. Signs play an important part in our lives. Most of us take them for granted, but here's one it will pay you to look for. It's the H&R Block sign, which appears in front of more than 4000 offices coast to coast.

It means that Block will prepare, double-check and guarantee your return for accuracy, making sure you receive every legitimate deduction. It means that the cost for all this service and peace of mind is surprisingly low, and deductible next year.

So look for this sign, and trust H & R Block. There's no finer Tax Service in America. You'll be glad you got together.

3. It does make a difference who prepares your income tax, especially this year.

John Cameron Swayze here, with just *two* of the differences which have made H & R BLOCK America's Largest Income Tax Service.

First * * * income tax is BLOCK'S only business. They'll prepare and double-check your return to make sure you receive every legitimate deduction. Second * * * H & R BLOCK stands behind its work with this written guarantee * * *. If we make any error that costs you penalty or interest, we will pay that penalty or interest. The cost for this service? Surprisingly low, and the charge is deductible next year.

H & R BLOCK, a *good* place to place *your* confidence. You'll be glad you got together.

4. I'm John Cameron Swayze for H & R Block. Keeping abreast of the constantly changing tax rules and regulations is a full-time job. That's why you can't be a once-a-year expert when it comes to preparing your own income tax return.

The new Tax Reform Act, which will affect *everyone* for the first time this year, has brought about the most sweeping changes in history.

H & R Block understands these new regulations and will prepare, check and *guarantee* your return starting as low as $5.

For peace-of-mind and accuracy—trust your tax return to the "Income Tax People". And look for this sign * * *

H & R Block, a good place to place your confidence. (emphasis in original).

5. Signs play an important part in our lives. Most of us take them for granted, but here's one it will pay you to look for. It's the H & R Block sign which appears in front of more than 5,000 offices worldwide.

It means that Block knows the provisions of the new Tax Reform Act, which will affect *Every* taxpayer this year.

It means that Block will prepare, double-check and guarantee your tax return, making sure you receive every legitimate deduction.

It means that the cost for all this service and peace of mind is surprisingly low, and deductible next year. So look for this sign, and trust H & R Block.

There's no finer Tax Service in America. (emphasis in original).

6. We guarantee accurate preparation of every tax return. If we make any errors which cost you penalty or interest, we will pay that penalty or interest. That's the H &R Block guarantee.

I'm John Cameron Swayze with some plain talk about H & R Block.

They feel when you pay for their service, you are entitled to complete satisfaction. If Block's service falls short through no fault of yours, they must accept that responsibility at no additional cost to you.

So, it's little wonder over 8 million Americans will trust their tax returns to H & R Block this year. You should, too.

H & R Block—A good place to place your confidence.

7. We guarantee accurate preparation of every tax return.

I'm John Cameron Swayze, speaking for H & R Block, The Income Tax People. Since 1955, Block has been trying hard to provide the *finest* tax service available anywhere.

That's why, this year, H & R Block will *go* anywhere in the continental United States to prepare your tax return.

If you are unable to come to one of the more than 5,000 H & R Block offices, Block will come to you, *wherever* you live or work. The cost for this special service will be slightly more than their regular fee, but they sincerely believe that competent, *guaranteed* tax preparation should be available to everyone. Just call your nearest H & R Block office and they'll come to you.
That's H & R Block, a good place to place your confidence. (emphasis in original).

B. Newspaper and direct mail:

1. Fast accurate service guaranteed accurate by trained tax preparers.

* * * * * * *

The yearly tax changes hold no mystery for our Tax detectives.

* * * * * * *

Trained tax men take your data and bale it up fast so you have every tax deduction you've got coming.

* * * * * * *

* * * offer to appear with you, should your return be selected for audit by IRS.

* * * * * * *

We will appear with you at an audit without cost to you.

* * * * * * *

Every year Internal Revenue selects a number of returns for audit or review. If you receive any notice, call H & R Block first. This is part of our year round service at no extra charge to you.

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondent and its representatives have represented, and are now representing, directly or by implication, that:

1. Respondent will reimburse the taxpayer for any payments the taxpayer may be required to make in addition to his initial tax payment, if such additional payment results from an error made by respondent and its representatives in the preparation of the tax return.

2. If the customers' tax return is audited, respondent and its representatives will provide representation, without charge, by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service.

PAR. 7. In truth and in fact:

1. Respondent and its representatives do not reimburse the taxpayer for all payments he is required to make in addition to his initial tax payment if such additional payment results from an error made by respondent and its representatives in the preparation of the tax return.

2. Respondents and its representatives do not provide representation by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service to their customers, in instances where the customer's tax return is audited.

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

PAR. 8. In the further course and conduct of its business, respondent and its representatives enter into a relationship with their tax preparation customers which is impliedly represented as, and is inherently, confidential and private in nature. As a result of the aforesaid relationship, respondent and its representatives are provided and receive certain information from their tax preparation customers. Data culled from the aforesaid information is given by respondent and its representatives to J.B. Grossman, Inc., which is a wholly-owned subsidiary of respondent and is managed, directed and controlled by respondent. On the basis of this data, J.B. Grossman, Inc., compiles several mailing lists of respondent's and its representatives' income tax preparation customers. Included on one such list is the name, address and occupation of the customer. Only customers that earn more than a certain stated income are included on this list. Other lists contain only the names and addresses of the customers. This data is of both a personal and financial nature and is private and confidential.

The aforesaid list which includes the name, address and occupation, and is limited with respect to the income of the customer is then furnished by respondent, through J.B. Grossman, Inc., to H & R Block Financial Services, a joint venture between respondent and Pennsylvania Life Insurance Company. The aforesaid joint venture, H & R Block Financial Services, is engaged in the sale of life insurance and mutual funds to the general public. Persons on the list provided by respondent to H & R Block Financial Services are contacted by direct mail literature and various other means for the purpose of soliciting the purchase of mutual funds and life insurance from H & R Block Financial Services.

The other lists which include the names and addresses of the customers of respondent and its representatives are sold or rented by J.B. Grossman, Inc., to various other business concerns, either directly or through mailing list brokers. Persons on these lists are contacted by the various business concerns which purchase the lists, through direct mail literature and other means, for the purpose of soliciting the purchase of various products and services.

Respondent uses, and has used, the aforesaid information gathered as a result of the preparation by respondent and its representatives of its customers' income tax returns in the manner hereinabove described without the prior knowledge and consent of its customers, and respondent has failed to disclose such use and intended use to its customers.

PAR. 9. The aforesaid acts and practices of the respondent, and the special relationship created by respondent with its customers as described in Paragraph Eight hereof, had had, and now has, the capacity and tendency to mislead respondent's customers into the erroneous and mistaken belief that the information they provided respondent will only be used for the purpose of preparation of their income tax returns and will remain confidential.

Therefore, the respondent's failure to disclose the use of the aforesaid information for purposes other than the preparation of its customers' tax returns is false, misleading and deceptive.

Furthermore, respondent's use of the aforesaid information for purposes other than the preparation of its customers' tax returns without the prior knowledge and consent of its customers is contrary to, and in substantial disregard of, the special relationship between respondent and its customers as described in Paragraph Eight, hereof, and is, and was, unfair.

PAR. 10. In the course and conduct of its business, and at all times mentioned herein, respondent and its representatives have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of income tax preparation services of the same general kind and nature.

PAR. 11. The use by respondent and its representatives of the aforesaid false, misleading and deceptive statements and representations, and unfair acts and practices, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondent's and its representatives' income tax preparation services by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

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

1. Respondent H&R Block, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 4410 Main Street in the city of Kansas City, State of Missouri.

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

ORDER

It is ordered, That respondent H&R Block, Inc., a corporation, and its officers, and respondent's employees, agents, representatives, or successors and assigns, directly or through any corporate or other device, in connection with the preparation of income tax returns or the compilation of customer mailing lists, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

2. Representing, directly or by implication, that respondent will reimburse its customers for any payments the customer may be required to make in addition to his initial tax payment, in instances where such additional payments result from an error by respondent in the preparation of the tax return; *Provided, however*, nothing herein shall prevent truthful representations that respondent will reimburse its customers for interest or penalty payments resulting from respondent's error.

3. Failing to disclose, clearly and conspicuously, whenever respondent makes any representation, directly or by implication, as to its responsibility for, or obligation resulting from, errors attributable to respondent in the preparation of tax returns, that respondent will not assume the liability for additional taxes assessed against the taxpayer.

4. Representing, directly or by implication, that respondent will provide legal representation to customers whose tax returns may be audited; or misrepresenting, in any manner, the type or manner of assistance provided by respondent to customers whose returns may be audited.

5. Using any information concerning any customer of respondent, including the name and/or address of the customer, obtained as a result of the preparation of the customer's tax return for any purpose which is not essential or necessary to the preparation of said tax return, without clearly and conspicuously disclosing to the customer, prior to the obtaining of any information relative to the preparation of the tax return, that respondent intends to use the information for purposes other than the preparation of the customer's return, the exact information which will be used, the particular use which will be made of such information and a description of the parties or entities to whom the information will be made available: *Provided, however*, That nothing herein shall prohibit respondent from using names and addresses only of customers for the purpose of communication with such customers solely concerning respondent's income tax preparation business.

487-883—73——21

6. Failing to provide each customer in instances where the information described in Paragraph 5 hereof will be used for any purpose other than the preparation of the tax return, with a form to be signed by the customer prior to the obtaining of any such information clearly stating that respondent intends to use the information for purposes other than the preparation of the return, the exact information to be used, the particular use to be made of such information, a description of the parties or entities to whom the information will be made available, and a statement that the customer consents to the use of such information.

It is further ordered, That:

(a) respondent herein deliver a copy of this decision and order to each of its present and future franchisees and any other person, partnerships or corporations authorized by respondent to engage in the commercial preparation of income tax returns;

(b) respondent inform each such person so described in Paragraph (a) above that respondent is obligated by the terms of this order to notify the Commission of persons who continue on their own the deceptive practices prohibited by this order;

(c) respondent, in its continuing business dealings with each said person described in Paragraph (a), take note of any failure to observe the requirements of this order and advise the Federal Trade Commission of such failure.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, send a letter to the last known address of each of its customers and the customers of its franchisees for the most recent past year, clearly and accurately explaining (1) the terms, conditions and limitations of respondent's policy regarding its responsibility for, or obligation resulting from errors attributable to respondent in the preparation of tax returns; and, (2) the type or manner of assistance provided by respondent to customers whose returns may be audited.

It is further ordered, That respondent herein shall notify the Commission at least 30 days prior to any proposed change in the structure of 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 respondent corporation which may affect compliance obligations arising out of this order.

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

Complaint

IN THE MATTER OF

CANAVERAL INTERNATIONAL CORP., ET AL.

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

Docket C-2163. Complaint, March 2, 1972—Decision, March 2, 1972

Consent order requiring a Miami, Fla., seller and distributor of mobile homes and other associated respondents to cease violating the Truth in Lending Act by failing to disclose to customers the annual finance charge, the total payments, the method of computing penalty charges, the cash price, the unpaid balance of cash price, the deferred payment price, the cash downpayment, and other disclosures required by Regulation Z of the said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Canaveral International Corp., a corporation, Baker Mobile Homes, Inc., a corporation, Colonial Coach Estates, Inc., a Florida corporation and Colonial Coach Estates, Inc., a Georgia corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Canaveral International Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 7100 Biscayne Boulevard, Miami, Florida.

Respondent Baker Mobile Homes, 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 2089 N.W. 79th Street, Miami, Florida.

Respondent Colonial Coach Estates, 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 9315 Memorial Highway, Tampa, Florida.

Respondent Colonial Coach Estates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Georgia, with its principal office and place of business located at 8000 State Highway 85, Riverdale, Georgia.

Respondent Canaveral International Corp. owns all of the shares of the other respondents and controls the policies, acts and practices of the other respondents, including the acts and practices hereinafter set forth.

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

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing their customers to enter into contracts for the sale of respondents' goods and services. On these contracts, hereinafter referred to as "the contract," respondents provide certain consumer credit cost disclosures. Respondents do not provide these customers with any other consumer credit cost disclosures prior to the consummation of the "credit sale" as required by Section 226.8(a) of Regulation Z.

By and through use of the contract, respondents:

1. Fail to provide customers with the following consumer credit cost disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z in the manner, form and amount required by Section 226.6 and 226.8 of Regulation Z:

a. The finance charge expressed as an annual percentage rate.

b. The "total of payments."

c. The amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments.

d. A description of the penalty charge that may be imposed by respondents or their assignee for prepayment of the principal of the obligation with an explanation of the method of computation of such penalty and the conditions under which it may be imposed.

e. An identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

f. The "cash price."

g. The "unpaid balance of cash price."

h. All other charges which are included in the amount financed but which are not part of the finance charge.

i. The "unpaid balance" and "amount financed."

j. The "finance charge."

k. The "deferred payment price."

2. Fail to clearly and conspicuously disclose the type of security interest acquired in connection with their credit sales and the property to which the security interest relates as required by Sections 226.6(a) and 226.8(b)(5) of Regulation Z.

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

4. Fail to use the term "trade-in" to describe the downpayment in property made in connection with their credit sales, as required by Section 226.8(c)(2) of Regulation Z.

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

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

DECISION AND ORDER

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

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

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

1. Respondent Canaveral International Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 7100 Biscayne Boulevard, Miami, Florida.

Respondent Baker Mobile Homes, 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 2089 N.W. 79th Street, Miami, Florida.

Respondent Colonial Coach Estates, 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 9315 Memorial Highway, Tampa, Florida.

Respondent Colonial Coach Estates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 8000 State Highway 85, Riverdale, Georgia.

Respondent Canaveral International Corp. owns all of the shares of the other respondents and controls the policies, acts and practices of the other 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 Canaveral International Corp., a corporation, Baker Mobile Homes, Inc., a corporation, Colonial Coach Estates, Inc., a Florida corporation, and Colonial Coach Estates, Inc., a Georgia corporation, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act

(Pub.L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to provide customers with the following consumer credit cost disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z in the manner, form and amount required by Sections 226.6 and 226.8 of Regulation Z:

a. The finance charge expressed as an annual percentage rate.

b. The "total of payments."

c. The amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments.

d. A description of the penalty charge that may be imposed by respondents or their assignee for prepayment of the principal of the obligation with an explanation of the method of computation of such penalty and the conditions under which it may be imposed.

e. An identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

f. The "cash price."

g. The "unpaid balance of cash price."

h. All other charges which are included in the amount financed but which are not part of the finance charge.

i. The "unpaid balance" and "amount financed."

j. The "finance charge."

k. The "deferred payment price."

2. Failing to clearly and conspicuously disclose the type of security interest acquired in connection with their credit sales and the property to which the security interest relates as required by Sections 226.6(a) and 226.8(b)(5) of Regulation Z.

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

4. Failing to use the term "trade-in" to describe the downpayment in property made in connection with their credit sales, as required by Section 226.8(c)(2) of Regulation Z.

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

6. 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 and 226.10 of Regulation Z.

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

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

It is further ordered, That the 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

O & P MOTORS, INC., ET AL.

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

Docket C-2164. Complaint, March 2, 1972—Decision, March 2, 1972

Consent order requiring a Jacksonville, Fla., seller and distributor of used automobiles to cease violating the Truth in Lending Act in its consumer credit transactions by failing to disclose the cash price, cash downpayment, trade-in, total downpayment, unpaid balance of cash price, amount financed, annual percentage rate, and other terms required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing Regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that O & P Motors, Inc., a corporation, and Patricia V. Olsen, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and

implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent O & P Motors, 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 1950 Main Street, Jacksonville, Florida.

Respondent Patricia V. Olsen is an officer of the corporate respondent. She formulates, directs, and controls the policy, acts and practices of the corporation, including the acts and practices hereinafter set forth. Her address is the same as that of corporate respondent.

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

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute the Used Car Order Contract, hereinafter referred to as the "Order Contract."

Respondents have caused and are causing certain customers to also sign blank Retail Installment Contracts, hereinafter referred to as "installment contract," thereby failing to furnish these customers with any consumer credit cost disclosure before the consummation of the contract as required by Section 226.8(a) of Regulation Z. Respondents do not provide these customers with any other consumer credit cost disclosure.

By and through the use of the order contract, respondents:

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

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

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

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

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

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

7. Fail to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z.

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

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

10. Fail in some instances to disclose the number of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

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

12. Retain a security interest in property in connection with the credit sale and fail to describe the type of that security interest as required by Section 226.8(b)(5) of Regulation Z.

PAR. 5. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their goods and services, as "advertisement" is defined in Regulation Z. These advertisements aid, promote or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods and services. By and through the use of the advertisements, respondents:

1. State that no downpayment can be arranged when in truth and in fact respondents do require downpayments and do not customarily arrange for and will not arrange for a credit sale with no downpayment, thereby violating Section 226.10(a)(1) of Regulation Z.

2. State the amount of the downpayment required and the amount of monthly installment payments which can be arranged in connection with a consumer credit transaction, 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:

(i) The cash price;

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

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

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

(v) The deferred payment price.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

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

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

1. Respondent O & P Motors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1950 Main Street, Jacksonville, Florida.

Respondent Patricia V. Olsen is an individual and is president of O & P Motors, Inc. She directs, formulates, and control the acts and practices of the respondent corporation including the acts and practices under investigation.

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 O & P Motors, Inc., a corporation, its successors and assigns, and its officers, and Patricia V. Olsen, individually and as an officer of said corporation, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub.L. 90-321 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

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

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

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

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

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

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

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

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

9. Failing to disclose the "annual percentage rate" determined in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

10. Failing to disclose the number of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

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

12. Failing to describe the type of security interest retained or acquired as required by Section 226.8(b)(5) of Regulation Z.

13. Stating, in any advertisement, that no downpayment can be arranged when in truth and in fact respondents do require downpayments and do not customarily arrange for a credit sale with no downpayment, thereby violating Section 226.10(a)(1) of Regulation Z.

14. Stating, in any advertisement, the amount of the downpayment required and the amount of monthly installment payments which can be arranged in connection with a consumer credit transaction, 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:

(i) The cash price;

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

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

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

(v) The deferred payment price.

15. Failing in any consumer credit transaction or advertising to make all 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, 226.8 and 226.10 of Regulation Z.

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

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

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

IN THE MATTER OF

GREGORY & GOLDBERG, INC., ET AL.

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

Docket C-2165. Complaint, March 6, 1972—Decision, March 6, 1972

Consent order requiring a New York City manufacturer and seller of women's apparel, including feather fabrics, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gregory & Goldberg, Inc., a corpora-

tion, and Harry Goldberg individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gregory & Goldberg, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Harry Goldberg is the president and principal officer of said corporate respondent. He formulates, directs and controls the acts and practices and policies of said corporation.

Respondents are engaged in the manufacture and sale of women's apparel, including but not being limited to the manufacture and sale of feather fabric, with their office and principal place of business located at 135 West 36th Street, New York, New York.

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

Among such fabrics mentioned hereinabove were the feather fabrics described above.

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

DECISION AND ORDER

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

with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

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

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

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

Respondent Harry Goldberg is the president and principal officer of the corporate respondent. He formulates, directs and controls the acts and practices and policies of said corporate respondent.

Respondents are engaged in the manufacture and sale of women's apparel, including but not being limited to the manufacture and sale of feather fabric, with their office and principal place of business located at 135 West 36th Street, New York, New York.

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

ORDER

It is ordered, That respondents Gregory & Goldberg, Inc., a corporation, and its officers, and Harry Goldberg, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after a sale or shipment in commerce, any product, fabric, or related

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

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

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

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the fabrics which gave rise to the complaint, (2) the amount of said fabrics in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said fabrics and effect the recall of said fabrics and of the results thereof, (4) any disposition of said fabrics since April 1, 1970, and (5) any action taken or proposed to be taken to bring said fabrics into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabrics, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate

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

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

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

IN THE MATTER OF

ORR'S OF BETHLEHEM, INC.

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

Docket C-2166. Complaint, March 6, 1972—Decision, March 6, 1972

Consent order requiring a Bethlehem, Pa., seller and distributor of ladies', men's and children's wearing apparel and accessories, including women's fake fur coats, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

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

PARAGRAPH 1. Respondent Orr's of Bethlehem, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania.

Respondent is engaged in the business of the sale and distribution of products, namely ladies', men's and children's wearing apparel

and accessories, including but not limited to women's fake fur coats. Its principal and executive offices are located at 559 Main Street, Bethlehem, Pennsylvania. It has two other branches located in Easton, Pennsylvania and in Phillipsburg, New Jersey, respectively designated as Orr's of Easton and Orr's of Warren.

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

Among such products mentioned hereinabove were women's fake fur coats.

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

DECISION AND ORDER

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

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

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

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

1. Respondent Orr's of Bethlehem, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania.

Respondent is engaged in the business of the sale and distribution of products, namely: ladies', men's and children's wearing apparel and accessories, including but not limited to women's fake fur coats. Its principal and executive office is located at 559 Main Street, Bethlehem, Pennsylvania.

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

ORDER

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

It is further ordered, That the respondent notify all of its stores to whom have been delivered the products which gave rise to the

complaint, or the flammable nature of said products, and effect recall of said products from such stores and, if identified, their customers.

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

It is further ordered, That the respondent herein shall, within ten (10) days after service upon it of this order, file with the Commission a special report in writing setting forth the respondent's intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products and of results thereof, (4) any disposition of said products since October 30, 1971, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Upon request of the Commission the respondent shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

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

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

IN THE MATTER OF

F. W. WOOLWORTH CO.

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

Docket C-2167. Complaint, March 6, 1972—Decision, March 6, 1972

Consent order requiring a New York City seller and distributor of textile fiber products and flammable fabrics, including ladies' pajamas, to cease violating the Textile Fiber Products Identification Act and the Flammable Fabrics Act by misbranding its textile fiber products and importing and selling any fabric which fails to conform to the standards of the Flammable Fabrics Act.

COMPLAINT

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

PARAGRAPH 1. Respondent F. W. Woolworth Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

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

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

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

Among such products mentioned hereinabove were ladies' pajamas.

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

PAR. 4. Respondent is now, and for some time last past has been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; which has sold, offered for sale, advertised, delivered, transported and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 5. Certain of the textile fiber products were misbranded by respondent in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were ladies' pajamas with labels which failed:

(1) To disclose the true percentage of the fibers present by weight; and

(2) To disclose the true generic name of one of the fibers present.

PAR. 6. Said acts and practices of the respondent as set forth in Paragraph Five were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption

hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs, Bureau of Consumer Protection, proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, the Flammable Fabrics Act, as amended, and the Textile Fiber Products Identification Act; and

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

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

1. Respondent F. W. Woolworth Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

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

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

ORDER

It is ordered. That respondent F. W. Woolworth Co., a corporation, and its officers, and respondent's representatives agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for

introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any ladies' pajamas; or any product, fabric or related material, imported by or manufactured under the control or direction of F. W. Woolwoth Co., as the terms "commerce," "product," "fabric," or "related material" are defined in the Flammable Fabrics Act, as amended; or any other product, fabric or related material, the manufacturer of which has not furnished a guaranty under Section 8(a) of the Flammable Fabrics Act, as amended and which ladies' pajamas, products, fabrics or related material fail to conform to an applicable standard or regulation, issued, amended or continued in effect under the provisions of the aforesaid Act; *Provided, however*, nothing herein shall accord to the respondent immunity from any subsequent proceedings under Sections 3, 6(a) or 6(b) of the Flammable Fabrics Act, as amended. Further, nothing herein shall limit the authority of the Commission to extend the terms of the order to products, fabrics or related materials presently excluded from this order in any subsequent proceeding against the respondent.

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

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

It is further ordered, That the respondent herein shall, within ten (10) days after service upon it of this order, file with the Commission a special report in writing setting forth the respondent's intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since April 16, 1971, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not

respondent has in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combination thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Upon request of the Commission the respondent shall submit samples of not less than one square yard in size of any product, fabric or related material.

It is further ordered, That respondent F. W. Woolworth Co., a corporation and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product, which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

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

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

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

Complaint

IN THE MATTER OF

SKYLARK ORIGINALS, INC., ET AL.

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

Docket 8771. Complaint, Nov. 27, 1968—Decision, March 9, 1972 *

Order requiring an Asbury Park, N.J., corporation selling ladies' clothing and wigs to cease misrepresenting the prices at which their merchandise has been sold and the savings available to purchasers, failing to make refunds on merchandise guaranteed, failing to maintain an adequate supply of merchandise advertised, and failing to make deliveries of products within time specified by respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Skylark Originals, Inc., a corporation, and Daniel L. Freedman and Beverly Freedman individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Skylark Originals, Inc., is a corporation, organized, existing and doing business under, and by virtue of, the laws of the State of New York, with its principal office and place of business located at 806 Munroe Avenue, Asbury Park, New Jersey. Respondent Skylark Originals, Inc., also does business under the name Patti Fashions.

Respondents Daniel L. Freedman and Beverly Freedman are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of ladies' clothing, wigs and other products to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused,

* Petition for Review filed by respondent May 1, 1972 with U.S.C.A. 3rd Cir.

their said business products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers and in their catalogs which are disseminated by and through the United States mails to prospective purchasers located in various states other than the State of New Jersey with respect to the prices, guarantees, refunds, style, color and availability of said products.

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

Skylark Knock-out Knits
(dresses)

Style 339—Reg. $8.95—$5.95
Style 355—Reg. $8.95—$5.98
Style 752—Reg. $8.98—$5.98

Order these superb values by mail * * * f-a-s-t service * * * money back guarantee! ! Return garment in 10 days, if not satisfied. 3 Easy Ways To Order Assures you prompt, pleasing service.

GUARANTEE

Your every SKYLARK purchase is guaranteed *unconditionally!* You must be completely satisfied with it or you may return it for exchange or full refund. No questions * * * no arguing * * * no delay! *You get your money back right away!*

YOU ARE THE SOLE JUDGE. *YOU* DECIDE! This is an important confidence-building feature of Skylark *extra*-special service!

WE'LL REFUND YOUR MONEY *IN* FULL

Skylark guarantees unconditionally to return your money on request, *at once,* if you're not absolutely satisfied.

GLAMOR WIGS in a choice of beautiful Colors and Styles. Selection of 5 Styles and 10 Attractive Colors.

ONLY $4.95—Worth Much More
Inventory Clearance Sale for a Limited Time Only

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

1. That the aforesaid prices designated by the abbreviation "Reg.," for regular, are the actual bona fide prices at which the dresses referred to have been openly and actively offered for sale in good faith for a reasonably substantial period of time in the recent regular course of respondents' business and that purchasers save the difference between respondents' advertised selling prices and the corresponding higher price amounts.

2. That respondents unconditionally guarantee the return of the purchaser's money in full and at once on request of the purchaser.

3. That the advertised wigs are being offered by respondents,

(a) in five styles and in ten colors,

(b) at a reduced price,

(c) from a limited supply and

(d) for a limited time.

PAR. 6. In truth and in fact:

1. The aforesaid prices designated by the abbreviation "Reg.," for regular, are not the actual bona fide prices at which the dresses have been openly and actively offered for sale in good faith for a reasonably substantial period of time in the recent regular course of respondents' business but at a remote period in the past if at all. Moreover, purchasers do not save the difference between respondents' selling prices and the corresponding higher price amounts since the higher price amounts are fictitious and the savings based thereon are likewise fictitious.

2. A substantial number of purchasers who return merchandise to respondents for refund do not receive payments at once but only after numerous requests and long delays if at all. Nor do respondents repay in full the money paid by purchasers, failing many times to include postage and other charges, and in some instances New York sales taxes. Moreover, the guarantee is subject to terms, conditions and limitations which are not set forth in the advertising.

3. The advertised wigs offered by respondents;

(a) are available in two styles, not five, and in nine colors instead of ten,

(b) are not being sold at a reduced price but at their regular price,

(c) are not from a limited supply, and

(d) are not limited in point of time.

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

PAR. 7. In a substantial number of instances, respondents have engaged in the practice of failing to deliver merchandise in accordance with the promise in their advertisements of "fast service" and prompt delivery. Purchasers in many instances have been required to wait weeks, sometimes months, for delivery of their orders and in some instances only after they have had the Better Business Bureau intervene in their behalf.

Therefore, the aforesaid act and practice was and is unfair, false, misleading and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of ladies' clothing and wigs of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

Mr. Charles W. O'Connell supporting the complaint.

Mr. Robert Ullman, *Bass & Ullman*, New York, New York for respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

JULY 19, 1971

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint against respondents on November 27, 1968, charging them with engaging in false and deceptive practices in violation of Section 5 of the Federal Trade Commission Act. The respondents filed an answer by their counsel in which they admitted certain allegations of the complaint but denied that they had violated Section 5 of the Federal Trade Commission Act as charged in the complaint.

A stipulation of facts with an agreed upon order was entered into by counsel in support of the complaint and counsel for the respondents which was later submitted to the Commission and rejected by the Commission on September 25, 1970. On April 19, 1971, counsel in support of the complaint and counsel for the respondents submitted a stipulation of facts (CX 17) which included a number of exhibits. The stipulation and attached exhibits were made a part of the record in lieu of testimony and evidence in support and in opposition to the charges in the complaint. It was further stipulated that the stipulation with attached exhibits shall constitute the entire record and that further hearings for the reception of evidence were waived. Thereafter, counsel in support of the complaint filed proposed findings of fact and counsel for the respondents filed a memorandum objecting to certain of the provisions in the proposed order originally attached to the complaint.

This matter is before the hearing examiner for final consideration on the complaint, answer, evidence, the findings of fact and conclusions and briefs filed by counsel for respondents and counsel supporting the complaint. Consideration has been given to the proposed findings of fact and conclusions and briefs submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected; and the hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusions drawn therefrom and issues the following order:

FINDINGS OF FACT

1. Respondent Skylark Originals, Inc., (Skylark) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 806 Munroe Avenue, Ashbury Park, New Jersey (CX 17).

2. Skylark has also done business under the trade name Patti Fashions for the purpose of advertising in the New York, New York metropolitan area, using various New York City addresses, including 80 Nassau Street and 120 West 57th Street.

Orders sent to Patti Fashions were forwarded to and filled by Skylark's headquarters in New Jersey. Respondents had no retail outlets and since 1950 they have advertised and sold merchandise as hereinafter described (CX 17).

3. Respondent Daniel L. Freedman is president and Beverly Freedman is secretary of the corporate respondent and they are

members of its board of directors. Mr. Freedman is sole stockholder of the corporation. These individuals have formulated, directed and controlled the acts and practices hereinafter referred to. Their address is the same as that of the corporate respondent (CX 17).

4. Respondents Skylark Originals, Inc., Daniel L. Freedman and Beverly Freedman are not presently engaged in the business described herein. Skylark mailed its last catalog in April 1969, discontinued shipments of merchandise around October 1969, and closed its premises in September 1970 (CX 17).

5. Respondents have been engaged in the advertising, offering for sale, sale and distribution of ladies' clothing, wigs, and other products to the public.

The principal items of merchandise offered were dresses. The price range of Skylark dresses were $3.98 to $30 with the majority of sales in the $8 to $12 category (CX 17).

6. Skylark has been a mail order house selling through its catalog by means of advertisements in New York, New York newspapers and in other newspapers throughout the country, as well as in magazines of national circulation. Commission Exhibit 1 is typical of Skylark catalogs. Commission Exhibits 2 through 10 are examples of Skylark advertisements.

The Skylark catalog was distributed three times a year: in January, April and September for the spring, summer and fall seasons, respectively. Approximately 1¼ million catalogs were sent each season.

Skylark's advertising budget for fiscal November 1, 1965 to October 31, 1966 was $773,814, with 20 percent thereof expended for publication of the catalog and 80 percent for national advertising in newspapers and magazines (CX 17).

7. In addition to its own products, Skylark's catalog has advertised products of other firms, such as wigs, girdles, artificial flowers, false eyelashes, teeth whitener and chin straps under its own name. Customers purchase such merchandise by means of order coupons bearing the name and address of Skylark Originals, Inc. Orders for these products were received by Skylark and forwarded to such firms who shipped direct to the purchaser. Skylark received, in lieu of payment for such advertisements, a commission on each resulting sale. Skylark earned approximately $30,000 to $40,000 in commissions annually from advertising outside products. Commission Exhibit 11 shows wigs offered in this manner (CX 17).

8. In the course and conduct of their business as aforesaid, respondents for some time last past have caused their said products,

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

Skylark's gross sales in 1965 and 1966 were respectively $3,611,180.80 and $3,853,391.72 and for the first four months in 1967 were $1,398,152 (CX 17).

9. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, the respondents have made numerous statements and representations in advertisements inserted in newspapers and in their catalogs disseminated by and through the United States mails to prospective purchasers located in various states other than the State of New Jersey with respect to the prices, guarantees, refunds, style, color and availability of said products (CX 17).

10. Respondents from time to time have advertised products with a designated "reg." (for regular) price and a lower selling price in juxtaposition (CX 12 A-T, 17).

11. Through the use of abbreviation "reg." for "regular," respondents represented that said prices were the actual bona fide prices at which the dresses and girdles referred to in the Tenth Finding have been openly and actively offered for sale in good faith for a reasonably substantial period of time in the recent, regular course of respondents' business and that purchasers save the difference between respondents' advertised selling prices and the corresponding higher price amounts. *Spiegel, Inc.* v. *F.T.C.*, 411 F. 2d 481 (7th Cir., 1969); *Arnold Constable Corp.*, D. 7657, 58 F.T.C. 49 (1961).

12. The aforesaid prices designated by the abbreviation "reg.," for regular, are not the actual bona fide prices at which the dresses and girdles have been openly and actively offered for sale for a reasonably substantial period of time in the recent, regular course of respondents' business but at a remote period in the past, if at all. Moreover, purchasers do not save the difference between respondents' selling prices and the corresponding higher price amounts referred to in the Tenth Finding since the higher price amounts are fictitious and the savings based thereon are likewise fictitious (CX 12 A–T, CX 17).

13. Respondents unconditionally guarantee the return of the purchaser's money in full and at once on request of the purchaser (CXs

1, p. 43; 12 A, p. 23; 12 C, pp. 10, 23, 32, 45; 12 G, p. 45; 12 H, pp. 1, 41; 12 I, pp.1, 45; 12 J, pp. 1, 43; 13; 17, p. 4).

14. The guarantee is not unconditional. It is subject to terms, conditions and limitations which are not set forth in the advertising. Commission Exhibit 14 is a form which was to be filled out by the purchaser and enclosed in the package when merchandise was returned to Skylark for exchange or refund pursuant to Skylark's advertised guarantees. This form states in part: "We can guarantee no refund unless you insure your return parcel" and "all returns must be made within 48 hours of receipt of package." (CX 17, pp. 4–5).

15. A substantial number of purchasers who returned merchandise to respondents for refund did not receive refunds at once as represented but only after numerous requests and long delays and after intervention of the Better Business Bureau. Nor did respondents repay in full the money paid by purchasers, failing many times to include postage and other charges, and in some instances New York sales taxes (CXs 16 A1 through 16 J2; 17, pp. 5 and 6).

16. Respondents represented that wigs advertised in their catalogs were being offered:

(a) in five styles and ten colors,
(b) at a reduced price,
(c) from a limited supply, and
(d) for a limited time (CX 11).

17. The said wigs advertised by Skylark—

(a) were available only in two styles, not five, and in nine colors, instead of ten;
(b) were not being sold at a reduced price but at their regular price;
(c) were not from a limited supply; and
(d) were not being offered for a limited time.

The advertised wigs were available in only two basic styles. The wig styles are identified in the advertisement as 109, 114, 112, 102 and 108. If the customer ordered either 112 or 108, the wig with the shorter hair style, 108 would be sent. If the customer ordered either 109, 112 or 102, the longer haired wig, style 109 would be sent. The basic style 108 could be converted into style 112 while basic style 109 could be converted into styles 114 or 102 although the advertisement did not so state (CX 17, p. 6).

The advertisement lists ten hair colors; namely, black, off black, dark brown, brown, dark blonde, light blonde, auburn, platinum,

pink and mixed grey, whereas off black and dark brown were the same color used interchangeably (CXs 11, 17, p. 6).

The wigs were offered at the same price of $4.95 over more than a four-year period, therefore, the price of $4.95 was the customary and usual price, not a reduced price (CX 17, p. 6).

That the wigs are not from a limited supply or are not offered for a limited time is clear from the repeated offering of the same style wigs year after year (CX 17, p. 6).

18. The wigs herein referred to were advertised in the name of Skylark Originals, Inc., and sold under the arrangement hereinbefore described for Imperial Fashions, 378 South Franklin Street, Hempstead, L.I., New York. Skylark received $1 from Imperial for each wig sold through its catalog. From 1963 through February 1967, 43,680 of such wigs were sold through the Skylark catalogs for which Skylark received commissions of $43,117.26. The copy for the wig advertisement was furnished by Imperial Fashions (CX 17, p. 5).

19. Skylark had numerous customer complaints, some relating to styling, during the time the wig advertisement was run in its catalog (CX 17, p. 6).

20. In its advertisements, the respondents have emphasized that they give "f-a-s-t service," "F-a-s-t delivery," "Superior service" and "prompt service" (CXs 5, p. 3; 7; 10; 12 D; 12 M, p. 5; 12 E, pp. 2, 14; 12 F, pp. 33, 43). However, in a substantial number of instances, respondents have failed to deliver merchandise in accordance with the promise in their advertisements of fast service and prompt delivery. Purchasers have been required to wait weeks, sometimes months, for delivery of their orders and in some instances only after they have had the Better Business Bureau intervene in their behalf have they received delivery (CX 15 A through J, CX 17, p. 5).

21. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of ladies' clothing and wigs of the same general kind and nature as that sold by respondents.

CONCLUSIONS

1. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had the capacity and tendency to mislead members of the purchasing public

into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondents' products and products of others advertised by respondents by reason of said erroneous and mistaken belief.

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

3. In its memorandum in opposition to the form of order annexed to the Commission's complaint, respondents object to certain provisions of the original order and to the final paragraph of the order contained in this initial decision. Respondents assert that the provisions of Paragraph 3 of the order are unreasonable in that they include a requirement that respondents refund not only the price of the merchandise returned but also all charges paid by purchasers, and further, that to require that the refund be made within 30 days is unreasonable. These contentions are without any merit since it appears reasonable that a purchaser be repaid completely for all costs resulting from responding to respondents' advertisements. Likewise there is nothing unreasonable in requiring respondents to make refunds within 30 days of the receipt of returned merchandise.

4. Respondents also object to apparent duplication between Paragraphs 4 and 5 of the order. This contention is also without merit.

5. Respondents also object to the requirements in Paragraphs 6 and 9 of the order which require respondents to have on hand in advance all advertised products in sufficient quantity to fill all orders and to fill all orders in the time specified in the ads, or a reasonable time, if no time is specified. These contentions are likewise without merit since it cannot be said to be unreasonable to require a seller to have on hand the products which he advertises or to fill orders for such products within a reasonable time.

6. Respondents also move to dismiss subparagraph 3(a) of Paragraph 5 and Paragraph 6 of the complaint on the ground that the allegations are picayune and *de minimus*. This contention is likewise without merit in view of the findings heretofore made.

7. Respondents also object to being required to give the Commission at least 30 days notice prior to making any change in the corporate respondent. Respondents do not object to giving the required notice promptly after any change in the status of the corporate respondent, but object to being required to give 30 days notice prior to

such change. This appears to be a reasonable provision in the order so that the Commission may be informed at all times as to the actual status of all corporations whom it has found to have violated the provisions of the Federal Trade Commission Act. Consequently, this contention is likewise without merit.

ORDER

It is ordered, That respondents Skylark Originals, Inc., a corporation, and its officers, trading under its own name or under the name Patti Fashions or any other trade names or names, and Daniel L. Freedman and Beverly Freedman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of ladies' clothing, wigs or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the abbreviation "Reg." or the word "regular" or any other abbreviation, word, term or expression of similar import or meaning to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by the respondents for a reasonably substantial period of time in the recent, regular course of their business; or misrepresenting, in any manner, the price at which such merchandise has been sold or offered for sale by the respondents.

2. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise; or misrepresenting, in any manner, the savings or amount of savings available to purchasers or prospective purchasers of respondents' merchandise.

3. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including representations as to former prices and similar representations of the type described in Paragraphs 1 and 2 of this order are based, and (b) from which the validity of such claims and representations can be determined.

4. Failing, when requested, pursuant to a guarantee of satisfaction or of full refund, to refund the purchase price of merchandise together with all charges paid by purchasers in connection with such purchase voluntarily and within the time speci-

fied in respondents' advertisements, or if no time is specified, within a reasonable time not to exceed 30 days.

5. Failing to fulfill promptly all of respondents' obligations and requirements under the terms set forth in, or represented directly or by implication to be contained in, any guarantee in connection with the sale of said products.

6. Representing, directly or by implication, that any product or service is guaranteed, unless:

(1) 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, and

(2) the guarantor does in fact perform all of the actual and represented obligations under the terms of the guarantee.

7. Advertising for sale merchandise of a stated style, model, material or color or of other stated features or characteristics unless such merchandise as so represented and described is in fact on hand and available to fill orders.

8. Representing, directly or by implication, that any offer is limited in time or in any other manner unless any represented limitation or restriction is actually imposed and in good faith adhered to.

9. Failing to make deliveries of products within the period of time specified by respondents, or if no time is specified, within a reasonable time.

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

It is furthered 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.

Opinion of the Commission

By Dixon, *Commissioner:*

This matter is before the Commisnion on the appeal of respondents from an initial decision of the hearing examiner holding that respondents had violated Section 5 of the Federal Trade Commis-

sion Act and ordering respondents to cease and desist from the practices found to be unlawful.

Respondent Skylark Originals, Inc., has been a mail order house selling through its catalog by means of advertisements in New York City newspapers and in other newspapers throughout the country, as well as in magazines of national circulation. The complaint charges that respondent Skylark violated and the individual respondents violated the Federal Trade Commission Act by engaging in false and misleading advertising of ladies' clothing and wigs by advertising fictitious prices at which their products were claimed to have been sold; falsely advertising that they unconditionally guarantee the return of the purchaser's money on request; falsely advertising that their wigs were available in five styles and ten colors at reduced prices from a limited supply for a limited time; and falsely advertising that their merchandise that their merchandise would be delivered promptly.

Several attempts were made by counsel to dispose of the matter on the basis of a consent or an agreed order to cease and desist, but in each instance the order agreed to by counsel was rejected by the Commission. Thereafter, counsel entered into a stipulation as to the facts with the agreement that such stipulation and attached exhibits would be made a part of the record in lieu of testimony and evidence in support of and in opposition to the charges in the complaint. The hearing examiner then entered his initial decision based on the complaint, answer and stipulated facts, including therein an order to cease and desist which is very similar to the notice order which had originally been issued with the complaint.

Respondents' principal arguments on appeal are directed at the order to cease and desist. They take exception first of all to Paragraph 4 which prohiibts them from "Failing, when requested, pursuant to a guarantee of satisfaction or full refund, to refund the purchase price of merchandise together with all charges paid by purchasers in connection with such purchase voluntarily and within the time specified in respondents' advertisements, or if no time is specified, within a reasonable time not to exceed 30 days."

Two different aspects of this provision are challenged. The first concerns the requirement that refunds made by respondents pursuant to a guarantee of satisfaction or of full refund should include all charges paid by the purchaser in connection with the purchase. Respondents claim, in this connection, that they should not be required to return "postage and other charges" to the purchaser.

We find little merit to this argument. Respondents emphasize throughout their sales literature that the merchandise featured therein is offered subject to an unconditional money-back guarantee. The prospective purchaser is informed that "With Skylark's money-back guarantee you risk nothing." She is also encouraged to send the "complete payment" with her order.[1] And she is told "Don't Think of it as 'Spending.' It's a gilt-edged investment. You can't possibly lose * * * Skylark's money-back guarantee assures you complete satisfaction."

The main issue raised by the pleadings on this point is whether the prospective purchaser may reasonably interpret respondents' guarantee, especially in light of the above representations, to mean that she will receive a refund of all the money she has spent. We have no doubt that she would. Certainly, in the absence of a clear disclosure to the contrary she would have no reason to believe that she would receive less than a full refund of her expenditures. Respondents' full refund guarantee takes on added importance when we consider that they deceptively advertised the product characteristics of several items offered for sale. In these circumstances, we consider it an unfair practice for the seller not to abide by the broadest interpretation of the guarantee.

Respondents nevertheless make the argument that the requirement that "postage and other charges" be refunded is without precedent and goes beyond the generally understood and accepted industry practice. There is nothing in the record to support this contention, however, and respondents so concede. They have attempted to fill this evidentiary gap by asking the Commission, after oral argument had been heard, to take notice of the following paragraph in its Guides Against Deceptive Advertising of Guarantees:

> III. "Satisfaction or Your Money Back" representations
>
> (a) "Satisfaction or Your Money Back," "10 Day Free Trial," or similar representations will be construed as a guarantee that the full purchase price will be refunded at the option of the purchaser.

The Commission will, of course, take official notice of its own guides and respondents' request is granted. We fail to see, however, how the language of the guide helps respondents' case. In the absence of an indication that something more than the purchase price is involved, a "money-back" guarantee would of course refer only to

[1] Complete payment includes a charge in addition to the cost of the merchandise. The purchaser is told "Add only 40c to the cost of each garment. Skylark pays all Post Office and handling charges."

the purchase price. The guide in question does not purport to go beyond this point. Where as here, however, the purchaser's cost necessarily includes charges in addition to the price of the merchandise, the purchaser could reasonably interpret a promise of full refund to refer to her total payment and not merely to the purchase price.

If respondents wish to offer less than a full refund of the purchase price plus other charges, including postage, it would be a simple matter for them to do so. All that would be required would be a truthful disclosure in their advertising of the extent of the obligation they wish to assume under their guarantee.

Respondents next take exception to that part of Paragraph 4 would require them to make refunds within 30 days when no time period is specified in their advertising. They claim that the imposition of such a limitation is unreasonable since in many instances it would not be possible to make the refund within such a short period of time. According to respondents, such an absolute requirement would force them to make refunds even if their records indicated that a refund had already been made, or even if the merchandise had not been returned. Moreover, they claim that this period may not be adequate because situations could arise where there would be genuine disputes over the amount of the refund or because of some unanticipated contingency or because the mail may be delayed or lost. They also insist that they should not be denied the right to make good certain inquiry into requests for refunds which they have good reason to question.

These arguments are not persuasive. The record reveals that respondents' customers have been forced to wait up to six months for refunds and have finally received them only after the Better Business Bureau had intervented on their behalf. Respondents do not suggest that delays were occasioned by any of the factors mentioned above, and, in fact, give no explanation for their failure in these instances to make refunds promptly.

It is noted, in this connection, that respondents send to purchasers a form to be used when returning merchandise for exchange or refund with the instructions that the form must be enclosed with the returned merchandise. Under these circumstances, if the customer complies with the terms of the refund guarantee, it is difficult to understand why respondents would need more than 30 days to return the purchaser's money. Since respondents guarantee satisfaction there would be no basis for making inquiry into the purchaser's reason for requesting a refund and if they mailed the refund by the

30th day after receipt of the request and the returned merchandise they would be in compliance with the order.

So that there may be no doubt as to the meaning of the order, we will redraft the paragraph in question to make clear that respondents are obligated to make the refund within the 30-day period when the request by the purchaser is made in accordance with the terms of the guarantee [2] and that the 30-day period will not begin until the merchandise has been received. As so drafted, the paragraph will read:

> Failing, when request is made pursuant to a guarantee of satisfaction or of full refund and in accordance with the terms of such guarantee, to refund the purchase price of merchandise together with all charges paid by purchasers in connection with such purchase voluntarily and within the time specified in respondents' advertisements, or if no time is specified, within a reasonable time not to exceed 30 days from the date of receipt of the returned merchandise.

Respondents next take exception to Paragraph 7 of the order which would prohibit them from "Advertising for sale merchandise of a stated style, model, material or color or other stated features or characteristics unless such merchandise as so represented and described is in fact on hand and available to fill orders." They contend that this provision would impose upon them an absolute liability to have on hand, in advance, all advertised merchandise in sufficient quantity to fill all orders which they may receive. They further argue that the prohibition as drafted is unreasonable since it fails to take into account that respondents may have legitimate reasons for being unable to promptly fill all orders. They point out, in this connection, that it was stipulated by counsel that respondents could not always predict with complete accuracy which items in their catalogs would be in demand and the quantum of such demands.

We agree that respondents should not be held liable for failing to have goods on hand when the shortage is caused by demand which could not reasonably have been foreseen. Hence, Paragraph 7 of the order will be revised to read:

> Advertising for sale merchandise of a stated style, model, material or color or other stated features or characteristics unless respondents have made arrangements to obtain, and to maintain, sufficient merchandise as so represented and described to fill all reasonably anticipated orders of such merchandise.

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[2] These terms must, of course, be spelled out in the advertising. See Par. 6(1) of the order, p. 356 herein.

Similar objection is made with respect to Paragraph 9 of the order which would prohibit respondents from "Failing to make deliveries of products within the period of time specified by respondents, or if no time is specified, within a reasonable time." Respondents claim that in some instances it may be impossible, for reasons beyond their control, to make deliveries within the time specified or within "a reasonable time" and that under such circumstances they should not be held responsible for failure to make timely deliveries, but should instead be permitted to notify the prospective purchaser that there will be a delay and give her the option of an immediate refund of the purchase price. We believe that the requirement that respondents offer the purchaser an immediate refund will afford ample protection to the public in those instances in which an order for merchandise can not be filled immediately for reasons beyond respondents' control. Accordingly, the paragraph will be redrafted to read:

> Failing to make deliveries of products within the period of time specified by respondents or, if no time is specified, within a reasonable time, not to exceed 30 days from the date of receipt of the order: *Provided, however*, That where an order for merchandise cannot be immediately filled for reasons beyond respondents' control, respondents shall promptly notify the prospective purchaser of such fact, stating the anticipated date of delivery and giving him the option of an immediate refund.

Respondents also argue that subparagraph (2) of Paragraph 6 of the hearing examiner's order substantially duplicates Paragraph 5.[3] We do not agree. Unlike subparagraph (2) of Paragraph 6, Paragraph 5 is applicable whether or not the guarantee is advertised. Also, Paragraph 5 applies only to respondents' obligation under a guarantee whereas subparagraph (2) of Paragraph 6 applies regardless of whether respondents or some other person is the guarantor.

Respondents also contend that the evidence fails to sustain the allegation in Paragraphs Five and Six of the complaint that respondents falsely represented that their advertised wigs are available in five styles and ten colors. Respondents point out that their two basic style wigs can be converted into five different hair styles and that, although the wigs come in only nine different colors, one

[3] Paragraph 5 prohibits respondents from "Failing to fulfill promptly all of respondents' obligations and requirements under the terms set forth in, or represented directly or by implication to be contained in, any guarantee in connection with the sale of said products." Subparagraph (2) of Paragraph 6 prohibits respondents from "Representing, directly or by implication, that any product or service is guaranteed, unless * * * the guarantor does in fact perform all of the actual and represented obligations under the terms of the guarantee."

of the colors may be used interchangeably as off-black and dark brown. We find no error in the hearing examiner's holding on this point. Since respondents had only two basic styles of wigs the claim that they had five styles was at best misleading. Their advertising should properly have informed prospective purchasers that the two wigs (a long-hair wig and a short-hair wig) could be converted into other styles. Also, we believe the designation of one color by different names has the capacity to mislead or deceive.

The last exception to the order concerns the provision requiring respondents to notify the Commission at least 30 days prior to any proposed change in the corporate respondent. While conceding that for enforcement purposes the Commission should be notified of change in the status of the corporation, respondents contend that the requirement that notice be given 30 days before the change is unduly burdensome and unnecessary. We agree that in this case advance notice is unnecessary. The order will be modified to require appropriate notification within 30 days after any change has occurred.

Respondents finally contend that the practices challenged by the complaint have been terminated and that the public interest does not require or warrant the issuance of an order to cease and desist. In support of this contention respondents rely on the showing that Skylark discontinued shipments of merchandise in October 1969 and on the absence of any evidence that respondents had engaged in any of the practices alleged in the complaint after 1967. Thus, according to respondents, there is no evidence by which to conclude that the practices alleged in the complaint would either be continued or renewed by respondents.

Contrary to this argument, however, the fact that illegal conduct has been discontinued does not render a controversy moot, *Carter Products, Inc.* v. *Federal Trade Commission*, 323 F. 2d 523 (5th Cir., 1963); *Clinton Watch Company* v. *Federal Trade Commission*, 291 F. 2d 838 (7th Cir., 1961), nor does it cast upon complaint counsel the burden of proving that the practices will be resumed, as respondents appear to believe. As the court held in *P. F. Collier & Son Corp.*, v. *Federal Trade Commission*, 427 F. 2d 261 (6th Cir., 1970) "Where an illegal trade practice is once proved against an enterprise, and is capable of being perpetuated or being resumed, it may be presumed to have continued, and an order may issue to prevent it, even upon a showing that it has been discontinued or abandoned."

The Commission is vested with a broad discretion in the determination of whether an unlawful practice has been surely stopped and

whether an order to cease and desist is required. It is incumbent upon a person who claims abandonment to show to the Commission's satisfaction that the practice will not be resumed. Respondents herein have failed to make such a showing. We have no reason to believe that they will not go back into the same business and engage in the same practices. The appeal on this point is therefore denied.

To the extent indicated herein, respondents' appeal is granted and in all other respects it is denied. The initial decision of the hearing examiner, modified to conform with this opinion, will be adopted as the decision of the Commission.

Final Order

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision granting in part and denying in part the appeal and directing modification of the initial decision:

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

It is ordered, That respondents Skylark Originals, Inc., a corporation, and its officers, trading under its own name or under the name Patti Fashions or any other trade name or names, and Daniel L. Freedman and Beverly Freedman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of ladies' clothing, wigs or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the abbreviation "Reg." or the word "regular" or any other abbreviation, word, term or expression of similar import or meaning to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by the respondents for a reasonably substantial period of time in the recent, regular course of their business; or misrepresenting, in any manner, the price at which such merchandise has been sold or offered for sale by the respondents.

2. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers or respondents' merchandise; or misrepresenting, in any manner, the savings or amount of savings available to purchasers or prospective purchasers of respondents' merchandise.

3. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including representations as to former prices and similar representations of the type described in Paragraphs 1 and 2 of this order are based, and (b) from which the validity of such claims and representations can be determined.

4. Failing, when request is made pursuant to a guarantee of satisfaction or of full refund and in accordance with the terms of such guarantee, to refund the purchase price of merchandise together with all charges paid by purchasers in connection with such purchase voluntarily and within the time specified in respondents' advertisements, or if no time is specified, within a reasonable time not to exceed 30 days from the date of receipt of the returned merchandise.

5. Failing to fulfill promptly all of respondents' obligations and requirements under the terms set forth in, or represented directly or by implication to be contained in, any guarantee in connection with the sale of said products.

6. Representing, directly or by implication, that any product or service is guaranteed unless:

(1) 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, and

(2) the guarantor does in fact perform all of the actual and represented obligations under the terms of guarantee.

7. Advertising, for sale merchandise of a stated style, model, material or color or other stated features or characteristics unless respondents have made arrangements to obtain, and to maintain, sufficient merchandise as so represented and described to fill all reasonably anticipated orders of such merchandise.

8. Representing, directly or by implication, that any offer is limited in time or in any other manner unless any repre-

sented limitation or restriction is actually imposed and in good faith adhered to.

9. Failing to make deliveries of products within the period of time specified by respondents or, if no time is specified, within a reasonable time, not to exceed 30 days from the date of receipt of the order; *Provided, however*, That where an order for merchandise cannot be immediately filled for reasons beyond respondents' control, respondents shall promptly notify the prospective purchaser of such fact, stating the anticipated date of delivery and giving him the option of an immediate refund.

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

It is further ordered, That respondents notify the Commission within thirty (30) days after any 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 hearing examiner's initial decision as modified herein be, and it hereby is, adopted as the decision of the Commission.

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

IN THE MATTER OF

CAREER SEARCH INTERNATIONAL, INC., ET AL.

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

Docket 8868. Complaint, Nov. 2, 1971—Decision, March 9, 1972

Order requiring an individual with headquarters in New York City who operates seven corporations in New York, Massachusetts, Pennsylvania, the District of Columbia and California, which prepare and distribute personal resumes for job seekers and furnish other career guidance and counseling service to cease misrepresenting the corporate respondents as the largest in the world, guaranteeing that clients will be placed in better jobs, mis-

representing that their staff counselors previously occupied key positions in industry, misrepresenting that they maintain offices in all major cities in the United States as well as in foreign cities, that respondents provide career guidance and counseling services, failing to make refunds of deposits after receipt of clients' notice of withdrawal, and failing to disclose that portion of the fees paid by clients for vocational-psychological tests is rebated to respondents; respondents are also ordered to cease using the word "Harvard" or any other term implying connection with an educational institution.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Career Search International, Inc., a New York corporation, Career Search International, Inc., a Massachusetts corporation, Career Search International, Inc., a Pennsylvania corporation, Career Search International, Inc., a District of Columbia corporation, Career Search International, Inc., a California corporation, The Executive Center, Inc., a New York corporation, The Executive Center, Inc., a Massachusetts corporation and Arthur M. Shain individually and as chairman of the board of directors and principal stockholder of said Career Search International, Inc., corporations and as an officer, chairman of the board of directors and sole stockholder of The Executive Center, Inc. corporations, hereinafter referred to as respondents have violated the provisions of said Act, and it appearing to the Commission that a proceding 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, Career Search International, Inc., a New York corporation in which respondent Arthur M. Shain owns 100 percent of the capital stock, 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 350 Fifth Avenue in the city of New York, State of New York. This office functions as the headquarters office of Career Search International, Inc.

Respondent, Career Search International, Inc., a Massachusetts corporation in which respondent Arthur M. Shain owns 81 percent of the capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 47 Church Street in the City of Wellesley, State of Massachusetts.

Respondent, Career Search International, Inc., a Pennsylvania corporation in which respondent Arthur M. Shain owns 100 percent of the capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at 1 Oliver Plaza in the city of Pittsburgh, State of Pennsylvania.

Respondent, Career Search International, Inc., A District of Columbia corporation in which respondent Arthur M. Shain owns 100 percent of the capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 2021 L Street, N.W., District of Columbia.

Respondent, Career Search International, Inc., a California corporation in which respondent Arthur M. Shain owns 81 percent of the capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 9460 Wilshire Boulevard in the city of Beverly Hills, State of California.

Respondent, The Executive Center, Inc., a New York corporation in which respondent Arthur M. Shain owns 100 percent of the capital stock 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 350 Fifth Avenue, in the city of New York, State of New York.

Respondent, The Executive Center, Inc., a Massachusetts corporation in which respondent Arthur M. Shain owns 100 percent of the capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located at 47 Church Street in the city of Wellesley, State of Massachusetts.

Respondent, Arthur M. Shain, is chairman of the board of directors of each of the corporate respondents and is either the sole or majority shareholder in each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the New York corporations, Career Search International, Inc., and The Executive Center, Inc., 350 Fifth Avenue in the city of New York, State of New York. He is responsible for the acts and practices of the aforementioned corporate respondents.

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Career Search International, Inc., prior to a corporate name change in 1969, previously identified itself, as advertised, and conducted business as Harvard Executive Research Center, Inc.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale and selling of their services and facilities in the preparation and distribution of personal resumes of job seekers to prospective employers, performance of career guidance and counseling services, and otherwise undertaking to secure employment for such persons.

PAR. 3. In the course and conduct of their business, respondents operate and conduct, and have operated and conducted, said business from their headquarters office in New York, New York; and now cause, and for some time last past have caused, their advertisements, correspondence and customers to pass between New York, New York, and various other states of the United States; and maintain, and at all times mentioned herein have maintained a substantial course of trade in said business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their services, the respondents have made numerous statements in advertisements in newspapers and company stationery with respect to the nature, type and effectiveness of their employment placement program for executives.

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

1. The world's largest executive placement service.
2. Guarantees you a better job.
3. The man from Harvard is a business executive who holds the key to your rewarding future.
4. There is no financial risk on your part.
5. We are not a job counseling firm nor an employment agency.
6. Other offices located in all major cities.
7. Brussels—Paris—Madrid.
8. There must be a reason why over 800 executives seek our services every week.
9. An International Executive Recruiting Service with offices in principal cities throughout the world.

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

1. Respondent organization is, in terms of size, personnel and number of offices, the largest such placement service in the world

in comparison to all other competitor organizations active in the job placement field.

2. Respondents unconditionally guarantee that they will in all instances place all of their clients in better paying and more rewarding jobs than they hold at the time such clients contract with respondents for their placement services.

3. All staff counselors of Career Search International, Inc. have previously occupied key executive positions in a specific business or industry prior to their affiliation with respondents.

4. Respondents do not exact or require the payment of any sums of money in the form of fees, retainers, or deposits by their clients when clients contract for the services of respondents.

5. The services rendered by respondents are not those of an employment agency.

6. Respondents operate and maintain offices in all major cities in the United States.

7. Respondents operate and maintain offices in the European cities of Brussels, Belgium; Paris, France; and Madrid, Spain.

8. A minimum of 800 executives contract with and utilize the services of respondents every week during the course of each year.

9. Respondents operate and maintain offices in principal cities throughout the world.

PAR. 6. In truth and in fact:

1. Respondents have not operated and do not now operate the world's largest executive placement service.

2. Respondents do not guarantee that their clients will be placed in better paying and/or more rewarding jobs than they presently hold.

3. Respondents' staff members who allegedly provide counsel and guidance to clients do not possess that type of degree of experience and educational background to be designated as a professional counselor.

4. Respondents require that clients furnish deposits of money ranging from $500 to $2,500, which in numerous instances, they have declined to return to clients who have withdrawn from respondents' program.

5. The services performed by respondents are essentially identical to those of an employment agency.

6. Respondents have never operated or maintained offices in all major cities in the United States.

7. Respondents have never operated or maintained offices in the cities of Paris, France and Madrid, Spain.

8. Eight hundred (800) executives do not contract with and utilize the services of respondents on a weekly basis.

9. Respondents have never operated or maintained offices in principal cities throughout the world.

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

PAR. 7. In the futher course and conduct of their business, and for the purpose of inducing prospective clients to enter into contracts and pay fees, respondents, through oral statements by officers and staff members in consultation and interviews with said clients, have represented directly or by implication that:

1. There is no financial risk involved on the part of the client and that, while a deposit is required to evidence the client's good faith and interest in respondents' placement service, said deposit will be refunded in full (a) immediately upon the receipt of written notification of the client's withdrawal from respondents' program, or (b) within thirty days of receipt of written notification of the client's withdrawal from respondents' program.

2. Respondents' clients receive career counseling and guidance by staff experts who had previously held responsible executive positions in various professional fields.

3. Respondents provide career counseling and guidance service and assist in developing a program designed to aid the client in achieving career goals.

4. Respondents have job openings available which require the specific qualifications possessed by the prospective clients.

5. Respondents refuse to accept prospective clients unless they possess qualification which ensure prompt placement by respondents.

PAR. 8. In truth and in fact:

1. There is financial risk involved on the part of respondents' clients inasmuch as respondents require the posting of a deposit which, in many instances, is not returned to clients upon their withdrawal from respondents' program.

2. Few, if any, staff members of respondents possess any measurable degree of experience or education in the particular fields of employment in which they profess to be counselors.

3. Respondents perform no career counseling and guidance services, nor do they assist in developing programs designed to aid clients in achieving career goals.

4. Respondents seldom, if ever, have current job openings which require the specific qualifications possessed by prospective clients;

further, respondents seldom, if ever, place any clients in positions which are currently listed as job openings in their fields.

5. The qualifications of the prospective clients and the probable success in placing such prospective clients are not factors in respondents' decision to accept such persons as clients; respondents accept as a client any person willing to execute respondents' agreement and pay the deposit required by respondents.

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

PAR. 9. In the course and conduct of their business and in furtherance of their sales program for inducing prospective clients to enter into contracts and pay fees, respondents have utilized various types of written agreements which have borne affirmative misrepresentations of facts and deceptive omissions of material facts as follows:

1. Certain of respondents' written agreements affirmatively represent therein that deposits posted by clients will be refunded in full immediately upon the respondents' receipt of written notice of the clients' withdrawal from the program. Other of respondents' written agreements affirmatively represent therein that deposits posted by clients will be refunded in full within thirty (30) days of respondents' receipt of written notice of the clients' withdrawal from the program.

2. Certain of respondents' written agreements affirmatively represent therein that there are no fees or charges for services of the respondents to the client at any time. Other of respondents' written agreements make no mention of or reference to the imposition of fees or charges in the event of withdrawal by the client from respondents' program.

PAR. 10. In truth and in fact:

1. Respondents do not refund the client's deposit either (a) immediately, or (b) within thirty (30) days, as represented in their written agreements; but instead, refuse to refund the client's deposit until the expiration of a twenty-four (24) month period of time from the date of the agreement executed by respondents with the client.

2. Respondents do charge the client for expenses incurred and miscellaneous services rendered to the client upon the withdrawal of the client from respondents' program.

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

PAR. 11. In the course and conduct of their business, and in furtherance of a deceptive sales program for inducing prospective clients to enter into contracts and pay fees, respondents have engaged in the following unfair and deceptive acts and practices:

Respondents have solicited, persuaded, and caused large numbers of their clients to agree to contract for and pay for a battery of vocational-psychological tests for a fee of $125 or other fixed sums of money, which fees are paid by such clients directly to certain designated independent testing organizations.

PAR. 12. By and through the use of these practices and representations, the respondents represent and have represented directly or by implication that the entire fee for the administering and evaluation of the tests is due, owing to, and to be paid to such designated independent testing organizations.

PAR. 13. In truth and in fact, respondents have, pursuant to mutual agreement with such designated testing organizations, received a portion of such fees in the form of a rebate or credit of $50 or other fixed sums of money per client. Respondents by failing to disclose these facts to their clients have misrepresented the nature and extent of such clients' indebtedness to the designated testing organizations and to respondents themselves.

PAR. 14. In the course and conduct of their aforesaid business, respondents have used for advertising purposes and for the purpose of trade the name or other identification of Harvard College, Cambridge, Massachusetts without the consent of the aforesaid Harvard College.

PAR. 15. By and through the use of the name or other identification of the aforesaid Harvard College during the course of their business, respondents have represented, by implication, that they are affiliated with Harvard College, a prestigious educational institution.

PAR. 16. In truth and in fact, respondents are not and have never been connected or affiliated in any manner with Harvard College. Therefore such representations were and are false, misleading and deceptive.

PAR. 17. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale and performance of services and facilities of the same general kind and nature as those sold and performed by respondents.

PAR. 18. 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 public into the erroneous and mistaken belief that said statements and representations were and are true; and into entering substantial numbers of contracts and agreements with respondents for their services and facilities by reason of said erroneous and mistaken belief.

PAR. 19. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors; and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Martin J. Dolan, Jr. supporting the complaint.

Mr. Daniel Markewich, Markewich Rosenhaus Markewich & Friedman, New York, New York for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

JANUARY 27, 1972

This proceeding was commenced by the issuance of a complaint on November 2, 1971, charging the corporate respondents and Arthur M. Shain, individually and as an officer of said corporation, with unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act by making certain false, misleading and deceptive claims with respect to the nature, type and effectiveness of their employment placement program for executives.

Respondents have failed to file answers to the complaint within thirty (30) days as set forth in the notice served with said complaint and as provided by Section 3.12(a) of the Commission's Rules of Practice for Adjudicative Proceedings, have failed to appear at the initial hearing set for December 28, 1971, and they are now in default under Section 3.12(c) of said rules. By letter dated December 6, 1971, Daniel Markewich, Esq., counsel for respondents, advised the examiner "* * * that, pursuant to Rule 3.12(c), respondents Career Search International, Inc., et al., Docket No. 8868, will be defaulting."

By reason of such default, respondents have waived their right to appear and contest the allegations of the complaint and the hearing examiner under Section 3.12(c) of the rules is authorized, without further notice to the respondents, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

FINDINGS

1. Respondent, Career Search International, Inc., a New York corporation in which respondent Arthur M. Shain owns 100 percent of the capital stock, is a corporation organized, existing and doing business under by virtue of the laws of the State of New York, with its office and principal place of business located at 350 Fifth Avenue in the city of New York, State of New York. This office functions as the headquarters office of Career Search International, Inc.

Respondent, Career Search International, Inc., a Massachusetts corporation in which respondent Arthur M. Shain owns 81 percent of the capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 47 Church Street in the city of Wellesley, State of Massachusetts.

Respondent, Career Search International, Inc., a Pennsylvania corporation in which respondent Arthur M. Shain owns 100 percent of the capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at 1 Oliver Plaza in the city of Pittsburgh, State of Pennsylvania.

Respondent, Career Search International, Inc., a District of Columbia corporation in which respondent Arthur M. Shain owns 100 percent of the capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 2021 L Street, N.W., District of Columbia.

Respondent, Career Search International, Inc., a California corporation in which respondent Arthur M. Shain owns 81 percent of the capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 9460 Wilshire Boulevard in the city of Beverly Hills, State of California.

Respondent, The Executive Center, Inc., a New York corporation in which respondent Arthur M. Shain owns 100 percent of the capital stock 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 350 Fifth Avenue, in the city of New York, State of New York.

Respondent, The Executive Center, Inc., a Massachusetts corporation in which respondent Arthur M. Shain owns 100 percent of the

capital stock, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located at 47 Church Street in the city of Wellesley, State of Massachusetts.

Respondent, Arthur M. Shain, is chairman of the board of directors of each of the corporate respondents and is either the sole or majority shareholder in each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the New York corporations, Career Search International, Inc., and The Executive Center, Inc., 350 Fifth Avenue in the city of New York, State of New York. He is responsible for the acts and practices of the aforementioned corporate respondents.

Career Search International, Inc., prior to a corporate name change in 1969, previously identified itself, as advertised, and conducted business as Harvard Executive Research Center, Inc.

2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale and selling of their services and facilities in the preparation and distribution of personal resumes of job seekers to prospective employers, performance of career guidance and counseling services, and otherwise undertaking to secure employment for such persons.

3. In the course and conduct of their business, respondents operate and conduct, and have operated and conducted, said business from their headquarters office in New York, New York; and now cause, and for some time last past have caused, their advertisements, correspondence and customers to pass between New York, New York and various other States of the United States; and maintain, and at all times mentioned herein have maintained a substantial course of trade in said business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their services, the respondents have made numerous statements in advertisements in newspapers and company stationery with respect to the nature, type and effectiveness of their employment placement program for executives.

Typical and illustrative, but not all inclusive, of the aforesaid statments and representations are the following:

a. The world's largest executive placement service.

b. Guarantees you a better job.

c. The man from Harvard is a business executive who holds the key to your rewarding future.

d. There is no financial risk on your part.

e. We are not a job counseling firm nor an employment agency.

f. Other offices located in all major cities.

g. Brussels—Paris—Madrid.

h. There must be a reason why over 800 executives seek our services every week.

i. An International Executive Recruiting Service with offices in principal cities throughout the world.

5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, not specifically set out herein, the respondents represent, and have represented, directly or by implication that:

a. Respondent organization is, in terms of size personnel and number of offices, the largest such placement service in the world in comparison to all other competitor organizations active in the job placement field.

b. Respondents unconditionally guarantee that they will in all instances place all of their clients in better paying and more rewarding jobs than they hold at the time such clients contract with respondents for their placement services.

c. All staff counselors of Career Search International, Inc. have previously occupied key executive positions in a specific business or industry prior to their affiliation with respondents.

d. Respondents do not exact or require the payment of any sums of money in the forms of fees, retainers, or deposits by their clients when clients contract for the services of respondents.

e. The services rendered by respondents are not those of an employment agency.

f. Respondents operate and maintain offices in all major cities in the United States.

g. Respondents operate and maintain offices in the European cities of Brussels, Belgium; Paris, France; and Madrid, Spain.

h. A minimum of 800 executives contract with and utilize the services of respondents every week during the course of each year.

i. Respondents operate and maintain offices in principal cities throughout the world.

6. In truth and in fact:

a. Respondents have not operated and do not now operate the world's largest executive placement service.

b. Respondents do not guarantee that their clients will be placed in better paying and/or more rewarding jobs than they presently hold.

c. Respondents' staff members who allegedly provide counsel and guidance to clients do not possess that type or degree of experience and educational background to be designated as a professional counselor.

d. Respondents require that clients furnish deposits of money ranging from $500 to $2,500, which in numerous instances, they have declined to return to clients who have withdrawn from respondents' program.

e. The services performed by respondents are essentially identical to those of an employment agency.

f. Respondents have never operated or maintained offices in all major cities in the United States.

g. Respondents have never operated or maintained offices in the cities of Paris, France and Madrid, Spain.

h. Eight hundred (800) executives do not contract with and utilize the services of respondents on a weekly basis.

i. Respondents have never operated or maintained offices in principal cities throughout the world.

Therefore, the statements and representations as set forth in Findings 4 and 5 hereof were, and are, false, misleading and deceptive.

7. In the further course and conduct of their business, and for the purpose of inducing prospective clients to enter into contracts and pay fees, respondents, through oral statements by officers and staff members in consultation and interviews with said clients, have represented directly or by implications that:

a. There is no financial risk involved on the part of the client and that, while a deposit is required to evidence the client's good faith and interest in respondents' placement service, said deposit will be refunded in full (1) immediately upon the client's withdrawal from respondents' program, or (2) within thirty (30) days of receipt of written notification of the client's withdrawal from respondents' program.

b. Respondents' clients receive career counseling and guidance by staff experts who had previously held responsible executive positions in various professional fields.

c. Respondents provide career counseling and guidance service and assist in developing a program designed to aid the client in achieving career goals.

d. Respondents have job openings available which require the specific qualifications possessed by the prospective clients.

e. Respondents refuse to accept prospective clients unless they possess qualifications which ensure prompt placement by respondents.

8. In truth and in fact:

a. There is financial risk involved on the part of respondents' clients inasmuch as respondents require the posting of a deposit which, in many instances, is not returned to clients upon their withdrawal from respondents' program.

b. Few, if any, staff members of respondents possess any measurable degree of experience or education in the particular fields of employment in which they profess to be counselors.

c. Respondents perform no career counseling and guidance services, nor do they assist in developing programs designed to aid clients in achieving career goals.

d. Respondents seldom, if ever, have current job openings which require the specific qualifications possessed by prospective clients; further, respondents seldom if ever, place any clients in positions which are currently listed as job openings in their files.

e. The qualifications of the prospective clients and the probable success in placing such prospective clients are not factors in respondents' decision to accept as a client any person willing to execute respondents' agreement and pay the deposit required by respondents.

Therefore, the statements and representations as set forth in Finding 7 hereof were, and are, false, misleading and deceptive.

9. In the course and conduct of their business and in furtherance of their sales program for inducing prospective clients to enter into contracts and pay fees, respondents have utilized various types of written agreements which have borne affirmative misrepresentations of facts and deceptive omissions of material facts as follows:

a. Certain of respondents' written agreements affirmatively represent therein that deposits posted by clients will be refunded in full immediately upon the respondents' receipt of written notice of the client's withdrawal from the program. Other of respondents' written agreements affirmatively represent therein that deposits posted by clients will be refunded in full within thirty (30) days of respondents' receipt of written notice of the client's withdrawal from the program.

b. Certain of respondents' written agreements affirmatively represent therein that there are no fees or charges for services of the respondents to the client at any time. Other of respondents' written agreements make no mention of or reference to the imposition of

fees or charges in the event of withdrawal by the client from respondents' program.

10. In truth and in fact:

a. Respondents do not refund the client's deposit either (1) immediately, or (2) within thirty (30) days, as represented in their written agreements; but instead, refuse to refund the client's deposit until the expiration of a twenty-four (24) month period of time from the date of the agreement executed by respondents with the client.

b. Respondents do charge the client for expenses incurred and miscellaneous services rendered to the client upon withdrawal of the client from respondents' program.

Therefore, the statements and representations as set forth in Finding 9 hereof were, and are, false, misleading and deceptive.

11. In the course and conduct of their business, and in furtherance of a deceptive sales program for inducing prospective clients to enter into contracts and pay fees, respondents have engaged in the following unfair and deceptive acts and practices: Respondents have solicited, persuaded, and caused large numbers of their clients to agree to contract for and pay for a battery of vocational-psychological tests for a fee of $125 or other fixed sums of money, which fees are paid by such clients directly to certain designated independent testing organizations.

12. By and through the use of these practices and representations, the respondents represent and have represented directly or by implication that the entire fee for the administering and evaluation of the tests is due, owing to, and to be paid to such designated independent testing organizations.

13. In truth and in fact, respondents have, pursuant to mutual agreement with such designated testing organizations, received a portion of such fees in the form of a rebate or credit of $50 or other fixed sums of money per client. Respondents by failing to disclose these facts to their clients have misrepresented the nature and extent of such clients' indebtedness to the designated testing organizations and to respondents themselves.

14. In the course and conduct of their aforesaid business, respondents have used for advertising purposes and for the purpose of trade the name or other identification of Harvard College, Cambridge, Massachusetts without the consent of the aforesaid Harvard College.

15. By and through the use of the name or other identification of the aforesaid Harvard College during the course of their business,

respondents have represented, by implication, that they are affiliated with Harvard College, a prestigious educational institution.

16. In truth and in fact, respondents are not and have never been connected or affiliated in any manner with Harvard College. Therefore such representations were and are false, misleading and deceptive.

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

18. 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 public into the erroneous and mistaken belief that said statement and representations were and are true; and into entering substantial numbers of contracts and agreements with respondents for their services and facilities by reason of said erroneous and mistaken belief.

CONCLUSIONS

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

2. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.

3. The complaint herein states a cause of action and this proceeding is in the public interest.

ORDER

It is ordered, That respondents, Career Search International, Inc., a New York corporation; Career Search International, Inc., a Massachusetts corporation; Career Search International, Inc., a Pennsylvania corporation; Career Search International, Inc., a District of Columbia corporation; Career Search International, Inc., a California corporation; The Executive Center, Inc., a New York corporation; The Executive Center, Inc., a Massachusetts corporation, their successors and assigns, and their officers, and Arthur M. Shain, individually and as chairman of the board and principal stockholder of said Career Search International, Inc. corporations and as an officer, chairman of the board of directors and sole stockholder of the Executive Center, Inc., and respondents' agents, rep-

resentatives, employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of job or career counseling services, job or employment placement services, applicant for employment services, or any article, material or device in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do, forthwith cease and desist from, directly or by implication:

1. Representing that the corporate respondents are the largest executive placement service in the world or misrepresenting in any manner the size of the corporate respondents.

2. Representing that respondents guarantee that their clients will be placed in better jobs as a result of respondents' services.

3. Representing that respondents' staff counselors have previously occupied key executive positions in a specific business or industry prior to their affiliation with respondents or misrepresenting in any manner the professional qualifications, experience, or reputation of members of respondents' staff.

4. Representing to prospective clients that there is no financial risk involved on the part of its clients.

5. Representing that the services rendered by respondents are not those of an employment agency.

6. Representing that respondents maintain offices in all major cities in the United States unless such offices as represented are maintained.

7. Representing that respondents maintain offices in the foreign cities of Paris, France and Madrid, Spain, or in any other foreign or domestic city unless such offices as represented are maintained.

8. Misrepresenting, in any manner, the number of persons who contract with and utilize the services of respondents on a weekly basis or any other time period basis.

9. Representing that respondents' clients receive career counseling and guidance by staff experts who had previously held responsible executive positions in various professional fields.

10. Representing that respondents provide career counseling and guidance services and assist in developing a program designed to aid the client in achieving career goals.

11. Representing that respondents have job openings available which require the specific qualifications possessed by prospective clients.

12. Representing that respondents refuse to accept prospective clients unless they possess qualifications which ensure prompt placement by respondents.

13. Failing or refusing to refund in full the deposits posted by clients in accordance with the provisions in respondents' contract or the oral representations made by respondents' staff members or employees within the specified period represented after receipt of clients' notice of withdrawal from respondents' program.

14. Failing or refusing to disclose to prospective clients that they are required to pay for expenses incurred and miscellaneous services rendered to the client upon the withdrawal of the clients from respondents' program.

15. Failing or refusing to disclose to clients that a portion of the fee paid by the clients to the testing organization designated by the respondents for vocational-psychological tests and evaluation is rebated or credited to respondents.

It is further ordered, That respondents Career Search International, Inc., a New York corporation; Career Search International, Inc., a Massachusetts corporation; Career Search International, Inc., a Pennsylvania corporation; Career Search International, Inc., a District of Columbia corporation; Career Search International, Inc., a California corporation; The Executive Center, Inc., a New York corporation; The Executive Center, Inc., a Massachusetts corporation, their successors and assigns, and their officers, and Arthur M. Shain, individually and as chairman of the board of directors, and principal stockholder of said Career Search International, Inc. corporations and as officer, chairman of the board of directors, and sole stockholders of The Executive Center, Inc. corporations; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of job or career counseling services, job or employment placement services, applicant for employment placement services or any article, material or device in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "Harvard" or any other name or any other identification which implies an affiliation or connection with Harvard College or any other educational institution in respondents' corporate or trade names, advertising materials, stationery, directory listings, and otherwise using such terms in the course and conduct of their business.

It is further ordered, That respondents deliver a copy of this order to cease and desist to each of its branch offices, and to all present and future officers and staff members or other persons engaged in the offering for sale and sale of respondents' services or any

articles, materials or devices in connection therewith; and to 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 any 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 any 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.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective August 15, 1971), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 9th day of March, 1972, become the decision of the Commission.

It is further ordered, That the corporate respondents herein, their officers, and Arthur M. Shain, individually and as officer, director and principal stockholder of said corporations, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

TIMES FURNITURE COMPANY, ET AL.

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

Docket C-2168. Complaint, March 9, 1972—Decision, March 9, 1972

Consent order requiring a Los Angles, Calif., seller and distributor of furniture to cease violating the Truth in Lending Act by failing in its credit transactions to make disclosures required by Regulation Z of said Act. Respon-

dent is also required where credit customer is charged with credit life insurance to mail to such customer a letter explaining the insurance and giving customer the option of cancelling it.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulations 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 Times Furniture Company, a corporation, and Samuel Barbas, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Times Furniture Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 940 West 58th Street, Los Angeles, California.

Respondent Samuel Barbas is president-treasurer and a major stockholder of corporate respondent. He formulates, directs and controls the policy, acts and practices of the corporation, 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 many years have been engaged in the offering for sale, sale, and distribution of furniture and other merchandise to the public through retail stores.

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

PAR. 4. Subsequent to July 1, 1969, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused customers to enter into transactions in which the customer selects merchandise and executes a blank retail installment conditional sale contract, hereinafter referred to as "the contract." The merchandise is retained by respondents until the customer pays an

amount agreed upon by the customer and respondents, at which time the terms of the executed contract are completed, with the total of payments to date being shown as the downpayment. The entire transaction is a single credit transaction within the meaning of Regulation Z, and is consummated at the time the customer executes the contract in blank. Respondents provide these customers with no credit cost disclosures other than on the contract.

By and through use of the contract, respondents:

1. Fail to make the disclosures required by Section 226.8 before the transaction is consummated, as prescribed by Section 226.8(a) of Regulation Z.

2. Fail to include in the finance charge any charges or premiums for credit life, accident, health, or loss of income insurance, written in connection with any credit transaction when the customer has signed a written indication of desire for insurance prior to receiving written disclosure to him of the cost of such insurance, as prescribed by Section 226.4(a)(5)(ii) of Regulation Z.

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

PAR. 5. By and through the use of an advertisement on a sign of Times Furniture Company, located directly above the driveway at 846 South Hill Street, Los Angeles, respondents have represented the period of repayment without stating all of the following items, in the terminology prescribed under Section 226.10(d)(2) of Regulation Z:

(a) The cash price;

(b) The amount of the downpayment required;

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

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

(e) The deferred payment price.

PAR. 6. By and through the acts and practices set forth above, respondents fail to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents have violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, The Truth in Lending Act and the implementing regulation promulgated thereunder, and 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 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 agreement and having accepted same and the agreement containing the consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Times Furniture Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 940 West Fifty-eighth Street, Los Angeles, California.

Respondent Samuel Barbas is president-treasurer and a major stockholder 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 Times Furniture Company, a corporation, and Samuel Barbas, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in con-

nection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to make the disclosures required by Section 226.8 before the transaction is consummated, as prescribed by Section 226.8(a) of Regulation Z.

2. Failing to include in the finance charge any charges or premiums for credit life, accident, health, or loss of income insurance, as prescribed by Section 226.4(a) of Regulation Z.

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

4. Stating, in any advertisement, the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, 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 it states all of the following items 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;

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

(e) the deferred payment price.

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

It is further ordered, That respondents, in connection with each sale of credit life insurance written in connection with its credit sales on or after July 1, 1969, in which respondents failed to obtain

a specific dated and separately signed affirmative written indication of the customer's desire for such insurance and thereafter failed to include the charges for such insurance in the amount of finance charge debited to the customer's account monthly, shall mail to each customer to whom such sale of credit life insurance was made and whose account is in open or current status, the following notice, and accompanying letter.

We hereby supply you with the following information concerning your credit life insurance policy:

1. The cost of credit life insurance which has been charged to you since you opened this account with Times Furniture Company is (to be provided by respondent).

2. Such insurance was not and is not required as a condition to Times' extending credit to you.

3. You have a right to request cancellation of this policy. You may exercise your right to cancel by signing (on line 1) that portion of the enclosed notice cancelling your credit life insurance policy and returning it to Times Furniture Company, in the accompanying self-addressed envelope. Such cancellation is effective when received by Times Furniture Company. You understand that once having cancelled you will have no rights under the policy even though the policy may have been in effect up to the time of cancellation.

4. If you desire to continue your credit life insurance policy, you should sign that portion of the enclosed notice (on line 2) which indicates your desire for insurance coverage and return it to Times Furniture Company in the accompanying self-addressed envelope.

Credit Life Insurance Notice

I hereby request cancellation of my credit life insurance covering the above account. I understand that upon receipt of this cancellation I will have no benefits under any insurance policy with respect to the above account.

(1) _____ Date _____.
(Signature of customer in whose name account is recorded)

I desire to continue my credit life insurance policy.

(2) _____ Date _____.
(Signature of customer in whose name account is recorded)

It is important that you return this notice before _____.

Respondents' obligations under this provision shall not be fulfilled until each customer affected by it has returned the notice specified herein, provided that as long as respondents can demonstrate that any such customer cannot be contacted or that any such customer failed to reply after respondents expended reasonable efforts, in writing or orally, to effect such reply monthly for a period of four consecutive months after mailing the notice to such customer, respondents shall have complied with this provision.

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

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

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

Provided further, That entry of this order by the Commission does not constitute an admission by respondents that they have violated the law as alleged in the complaint which the Commission has issued.

IN THE MATTER OF

GEORGE B. EIPPER, DOING BUSINESS AS SEATTLE SIDING COMPANY, ET AL.

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

Docket C-2169. Complaint, March 9, 1972—Decision, March 9, 1972

Consent order requiring a Seattle, Wash., seller and installer of residential siding to cease violating the Truth in Lending Act by failing to disclose the sum of the cash price and all charges included in the amount financed, using a form waiver of the right of recission, and make all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it

by said Acts, the Federal Trade Commission, having reason to believe that George B. Eipper, an individual trading as Seattle Siding Company, and John M. Small, an individual, 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. Respondent George B. Eipper is an individual trading as Seattle Siding Company with his principal office and place of business located at 4000 Aurora Avenue North, Seattle, Washington.

Respondent John M. Small is an individual and manager of Seattle Siding Company and participates in the direction, formulation and control of the policies, acts and practices of Seattle Siding Company, including the acts and practices hereinafter set forth. His address is the same as that of respondent George B. Eipper.

PAR. 2. Respondents are now, and for some time last past have been engaged in the installation and sale of residential siding to the public and the advertising and promotion of same by various means.

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

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have entered into and are entering into contracts for the sale of respondents' goods and services. On these contracts, hereinafter referred to as "the contract" respondents have provided certain consumer credit cost information, but have not provided their customers with certain other consumer credit cost disclosures. By and through use of the contract, respondents have failed to disclose the "deferred payment price" which is the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, as required by Section 226.8(c)(8)(ii) of Regulation Z.

PAR. 5. By and through use of the contract, as set forth in Paragraph four, respondents have retained or acquired a security interest in real property which was or was expected to be used as

the principal residence of the customer. The customer thereby has the right to rescind the transaction, as provided in Section 226.9(a) of Regulation Z. Having consummated a rescindable credit transaction, respondents utilized a printed form waiver of the right of rescission in violation of Section 226.9(e)(3) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Truth in Lending Act.

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

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

1. Respondent George B. Eipper is an individual trading as Seattle Siding Company with its principal offices and principal place of business located at 4000 Aurora Avenue North, Seattle, Washington.

Respondent John M. Small is an individual and manager of Seattle Siding Company. He participates in the direction, formulation and control of the policies, acts and practices of Seattle Siding Company. His address is the same as that of respondent George B. Eipper.

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

ORDER

It is ordered, that respondents George B. Eipper, an individual trading as Seattle Siding Company, or under his own or any other name or names, and John M. Small, an individual, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 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. Failing to disclose accurately the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(ii) of Regulation Z.

2. Utilizing a printed form waiver of the right of rescission in violation of Section 226.9 (e)(3) of Regulation Z.

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

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

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

Complaint

IN THE MATTER OF

GROFF IMPORTERS, INC., ET AL.

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

Docket C-2170. Complaint, March 9, 1972—Decision, March 9, 1972

Consent order requiring a San Diego, Calif., seller of women's and misses' wearing apparel, including ladies' scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

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

PARAGRAPH 1. Respondent Groff Importers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its office and principal place of business is located at 305 8th Avenue, San Diego, California.

Respondent William F. Groff is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth. His address is the same as the said corporate respondent.

Respondents are now, and for some time last past have been, engaged in the importation and sale of women's and misses' wearing apparel, including, but not limited to, ladies' scarves.

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

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

Among such products mentioned hereinabove were ladies' and misses' scarves.

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

DECISION AND ORDER

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

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

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

1. Respondent Groff Importers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 305 8th Avenue, San Diego, California.

Respondent William F. Groff is an officer of the said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the said corporate respondent.

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

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

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

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identiy of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the

flammability of said products, and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since February 22, 1971, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric or related material with this report.

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

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

IN THE MATTER OF

JOSEPH H. LAMBERT, ET AL., DOING BUSINESS AS H & L INVESTMENT CO.

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

Docket C-2171. Complaint, March 10, 1972—Decision, March 10, 1972

Consent order requiring a Stockton, Calif., firm making loans for the purchase of used cars to cease violating the Truth in Lending Act by failing to disclose the number of payments scheduled, failing to describe those which are "balloon payments," failing to use the term finance charge where

required, and failing to make all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joseph H. Lambert, Leo A. Lambert, and Dean E. Lambert, individually and as copartners doing business as H & L Investment Co., hereinafter referred to as respondents, have violated the provisions of said Acts, and of the regulations 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. Respondents, Joseph H. Lambert, Leo A. Lambert, and Dean E. Lambert, are individuals and copartners doing business as H & L Investment Co., with their office and principal place of business located at 1335 South American Street, Stockton, California.

PAR. 2. Respondents are now, and for some time last past have been, engaged in extending loans in connection with consumer purchase of used cars.

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

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their extensions of consumer credit, respondents have caused and induced and are causing and inducing, certain of their customers to execute promissory notes, hereinafter referred to as the "Note" on which the respondents provide certain consumer credit cost information.

By and through the use of the note respondents:

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

2. Fail to disclose the number of payments scheduled to repay the indebtedness, and fail to describe payments which are more than twice the amount of an otherwise scheduled equal payment by

the term "balloon payment," as required by Section 226.8(b)(3) of Regulation Z.

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

4. Fail to describe the type of security interest in property held, retained or acquired in connection with extensions of credit, as required by Section 226.8(b)(5) of Regulation Z.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Truth in Lending Act, and the regulations promulgated under the Truth in Lending 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 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 complaints, 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 charge in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedures prescribed in Section 2.34(b) of its rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Joseph H. Lambert, Leo A. Lambert, and Dean E. Lambert are copartners doing business as H & L Investment

Co. with their office and principal place of business located at 1335 South American Street, Stockton, California.

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

ORDER

It is ordered, That respondents Joseph H. Lambert, Leo A. Lambert, and Dean E. Lambert, individuals and copartners doing business as H & L Investment Co., or under any other name or names, and respondents representatives, agents and employees, directly or through any corporate or other device, in connection with any consumer credit extension as "consumer credit" is 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. Failing to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.8(b)(2) of Regulation Z.

2. Failing to disclose the number of payments scheduled to repay the indebtedness, and failing to describe payments which are more than twice the amount of an otherwise scheduled equal payment by the term "balloon payment" as required by Section 226.8(b)(3) of Regulation Z.

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

4. Failing to describe the type of security interest in property held, retained or acquired in connection with extensions of credit, as required by Section 226.8(b)(5) of Regulation Z.

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

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

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the

Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

CHARLES EDWIN PORTER, DOING BUSINESS AS FLORIDA TRAINING CENTER, ET AL.

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

Docket C-2172. Complaint, March 17, 1972—Decision, March 17, 1972

Consent order requiring a Tampa, Fla., individual offering courses in key punch operations and bank teller techniques to cease violating the Truth in Lending Act in his consumer credit transactions by failing to disclose the total number of payments, the cash price, the unpaid balance of cash price, the amount financed, the deferred payment price, and other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Charles Edwin Porter, individually and doing business as Florida Training Center and Commercial Training Institute, hereinafter 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 Charles Edwin Porter is an individual doing business as Florida Training Center and Commercial Training Institute. The office and principal place of business of Florida Training Center and Commercial Training Institute is located at 709 Franklin Street, Suite 204, Tampa, Florida.

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

the course of instructions in key punch operations and bank teller techniques.

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

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of his business as aforesaid and in connection with his credit sales, as "credit sale" is defined in Regulation Z, respondent has caused and is causing his customers to sign an Application for Enrollment which becomes a binding contract when accepted by him. On these Application for Enrollment contracts, hereinafter referred to as "the contract," respondent provides certain consumer credit cost information. Respondent does not provide his customers with any other consumer credit cost disclosures.

By and through the use of the contract, respondent:

1. Fails to make all disclosures required to be made by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

2. Fails to use the term "cash price" to describe the price at which respondent offers, in the regular course of business, to sell for cash the property or services which are the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z.

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

4. Fails to disclose the difference between the cash price and total downpayment, and to describe that sum as the "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.

5. Fails to disclose the amount of credit extended, and to describe that sum as the "amount financed," as required by Section 226.8 (c)(7) of Regulation Z.

6. Fails to use the term "deferred payment price" as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Fails to disclose the number of payments scheduled to repay the indebtedness, and the sum of such payments using the term "total of payments" as required by Section 226.8(c)(3) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failure to comply with the provisions of Regulation Z constitutes a violation 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 name 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, 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 Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Charles Edwin Porter is an individual doing business as Florida Training Center and Commercial Training Institute with his principal office and place of business located at 709 Franklin Street, Tampa, Florida.

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 Charles Edwin Porter, individually and doing business as Florida Training Center and Commercial Training Institute, and his agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to make all disclosures required to be made by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

2. Failing to disclose the number of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

3. Failing to disclose the price at which respondent, in the regular course of business, offers to sell for cash the property or services which are the subject of the credit sale, and to describe that price as the "cash price," as required by Section 226.8(c)(1) of Regulation Z.

4. Failing to disclose the amount of any downpayment in money, and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

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

6. Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

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

8. 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 and 226.10 of Regulation Z.

It is further ordered, That a copy of this order to cease and desist be delivered to all present and future personnel of respondent 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 order from each such person.

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

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon 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 the order to cease and desist contained herein.

IN THE MATTER OF

TITAN ENTERPRISES, INC.,

DOING BUSINESS AS

V.I.P. INTERNATIONAL SCIENTIFIC CO., ET AL.

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

Docket C-2173. *Complaint, March 20, 1972—Decision, March 20, 1972.*

Consent order requiring a Chicago, Ill., corporation engaged in selling surgically-implanted hairpieces to cease making false claims for its PERMA-

TEQUE hair replacement system by misrepresenting that the replaced hair has all the characteristics of natural hair and that no maintenance costs are necessary, respondents are also required to affirmatively disclose that the application of its system involves surgery wherein discomfort, pain and medical problems may occur, they are also required to notify prospective purchasers to consult their personal physicians, no contract shall become binding prior to the third day after execution, nor shall any promissory note be negotiated to a third party until the fifth day after the physician consultation, and each prospective customer shall be notified of his right to cancel any contract within three days.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Titan Enterprises, Inc., a corporation trading as V.I.P. International Scientific Company, and Anthony J. Damato, individually and as an officer of said corporation, and Dean Forcucci, individually, hereinafter referred to as respondents, having violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Titan Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 173 W. Madison Street, Chicago, Illinois.

Respondent Anthony J. Damato is an officer of the corporation 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.

Respondent Dean Forcucci was the president of said corporation until November 1, 1971. He formulated, directed and controlled the policies, acts and practices of said corporation until that date. He is currently employed as the sales manager for said corporation and his address is the same as that of said corporation.

PAR. 2. Respondents operate the V.I.P. International Scientific Company salon and promote on their own behalf, among others, the PERMA-TEQUE hair replacement system (Hereinafter sometimes re-

ferred to as the "System".) The system involves a surgical procedure whereby a stainless steel thread treated with TEFLON is used to stitch a perimeter into the scalps of respondents' customers. Wefts of hair are then interwoven with the stainless steel perimeter. The V.I.P. International Scientific Company salon (hereinafter referred to as salon) sells, installs and maintains the system, except that the surgical procedure itself is performed by a medical doctor.

PAR. 3. In the course and conduct of their business, respondents promote the system by advertising in newspapers of general circulation which are distributed across state lines, and by mailing promotional literature to prospective customers who respond to such advertising. As a result of such newspaper advertising, and literature mailing, respondents have maintained a substantial course of trade in commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act, and as a result of such newspaper advertising and mailing of promotional literature, have disseminated and caused to be disseminated false advertisements by United States mails, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the PERMA-TEQUE hair replacement system, respondents, directly have made numerous statements and representations in advertisements inserted in newspapers of general circulation and in other promotional literature. Typical of the statements and representations contained in said advertisements and promotional literature, but not all inclusive, are the following:

PERMA-TEQUE

A new scientific discovery. A permanent head of hair that will not come off. Not a hairpiece, transplant or hair weave. Wash, Comb, Brush, Sleep, *Live in it.*

PERMA-TEQUE IS A PERMANENT MEDICAL TECHNIQUE

FOR HAIR REPLACEMENT * * *

SHE CAN MUSS IT, BUT SHE CAN'T REMOVE IT * * *

NOT TOUPEES OR HAIRPIECES

NOT HAIR WEAVING

NO MORE TIGHTENINGS

Medical Science, using space-age products, has created a magnificent new technique which is permanent, secure and absolutely undetectable * * *.

PAR. 5. Through the use of the above advertisements, and others of similar import and meaning but not expressly set out herein, and by oral statements and representations made by employees and agents of the respondents, respondents have represented directly or by implication that:

1. The PERMA-TEQUE system does not involve wearing a hairpiece, or toupee.

2. The hairpiece applied becomes part of the anatomy like natural hair, teeth, fingernails or skin and has characteristics of natural hair, including the following:

(a) The same appearance as natural hair upon normal observation and upon extreme close up examination.

(b) It may be cared for like natural hair, particularly in that actions such as washing, combing, brushing and mussing may be performed on it in the same manner as might a person with natural hair.

(c) The wearer may engage in physical activities with as much disregard for his hairpiece as might a person with natural hair.

3. After the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system, and that the customer will not incur charges over and above the charge for installing the system.

PAR. 6. In truth and in fact:

1. The system does involve the wearing of a hairpiece or toupee, inasmuch as the interweaving of the wefts of hair to a perimeter creates what is essentially a hairpiece or toupee.

2. The hairpiece applied does not become part of the anatomy like natural hair, teeth and fingernails. The system involves a stainless steel perimeter which is stitched into the scalp by a surgical procedure and which may be rejected by the body. The hairpiece differs from natural hair in many respects, including the following:

(a) It does not have the same appearance as natural hair in a substantial number of instances. It is often discernible as a hairpiece or toupee upon normal observation, and upon extreme close examination.

(b) It cannot be cared for like regular hair, but requires special care and handling. Strong pulling on the hair, such as may be expected to occur in washing, combing, brushing, and mussing, can cause pain because of the pressure exerted on the sutures in the scalp, many cause bleeding, and may cause the sutures to pull out. As a consequence, washing the hair and scalp is difficult. Because washing is difficult, foreign particles and dead skin tissue tend to accumulate beneath the PERMA-TEQUE hair application and become a significant source of irritation. The hair styles into which the hairpiece may be combed or brushed without professional treatments are limited.

(c) The wearer may not engage in physical activities with as much disregard for his hairpiece as might a person with natural hair. The wearer must at all times be careful that the hair does not pull or

get pulled, or become tangled, or strained. Discomfort and pain may be caused by common actions, such as rolling the head on a pillow during sleep.

3. The wearer cannot in most instances care for the hairpiece himself; he must seek professional or skilled assistance on many occasions. Medical problems associated with the surgery or the continuing presence of stainless steel thread in the scalp may require subsequent visits to a medical doctor. Wearers having some natural hair under the hair applied by respondents would have to have a haircut at regular intervals and such hair would be difficult to cut without skilled assistance. A substantial additional charge for such services would be incurred. Respondents' applied hair is subject to bleaching in sunlight and other discoloration normally associated with hairpieces, and where the hairpiece has been color-dyed, loss of dye through washing and normal wear; thus, replacement wefts of hair or hairpieces are required at intervals in order to maintain a color match with any natural hair the wearer may have. Because of the difficulty in washing the hair and scalp described previously in Paragraph Six, assistance is often required to wash the hair.

The statements and representations set forth in Paragraph Four and Paragraph Five were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, respondents, have represented in advertisements the asserted advantages of their system, as hereinbefore described. In many cases, respondents have represented their system to be painless and have not disclosed in such advertisements that a surgical procedure is a required step in the system. In no case have respondents' advertisements disclosed:

(a) that clients may experience discomfort and pain as a result of the surgical procedure, from the stainless steel sutures themselves, and from pulling normally incident to wearing the hairpiece;

(b) that clients will be subject to the risk of irritation, infections, and skin diseases as a result of the surgical procedure and as a result of the stainless steel thread remaining in the scalp;

(c) that permanent scarring to the scalp may result from the required surgical procedures, and as a result of the stainless steel thread remaining in the scalp.

The consequences described in this paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur. Furthermore, the surgical procedure has not been used in conjunction with respondents' system for a sufficient experimental period to determine the extent of seriousness of the

above side effects, and whether there are any other side effects, including but not limited to rejection of the stainless steel thread through the human body's natural rejection process.

Therefore, the advertisements referred to in Paragraph Seven are false and misleading and the acts and practices referred to in said paragraph are unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of their PERMA-TEQUE hair replacement system, respondents entice members of the purchasing public to their salon with advertisements of "a permanent head of hair that will not come off" as a solution to baldness and like advertisments to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations. In most cases respondents do not disclose details of their system unless and until a prospect visits their salon. When members of the purchasing public have visited the salon, they have been subjected to emotional sales pressure, for the purpose of persuading them to sign a contract for the application of the PERMA-TEQUE system, and to make a substantial downpayment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the stainless steel thread in the scalp. Persons are insistently urged to sign such contracts and make such down payments, through the use of persistent and emotionally forceful sales presentations employing the following tactics, among others:

1. Representing that consumer demands for application of the system was overwhelming, that most prospects preferred the system over other hairpieces, and that a prospect could only be assured of a PERMA-TEQUE hair replacement in the near future by signing a contract and/or making a downpayment immediately.

2. Inducing prospects to sign contracts and/or make downpayments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of the surgical procedure, and of the stainless steel thread being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery, by which time the client is likely to feel pressured to go through with the application.

Therefore, the advertisements referred to in Paragraph Eight were and are false and misleading, and the acts and practices set forth in such paragraph were and are false and deceptive.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are in substantial competition in commerce with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above unfair and deceptive representations and practices has had, and now has, the capacity and tendency to mislead consumers, and to unfairly influence consumers to hurriedly and precipitately sign contracts for the application of the PERMA-TEQUE hair replacement system, and to make partial or full payment therefor, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, or the seriousness of the surgical procedure, and the possibilities of discomfort, pain, disease or disfigurement related thereto, and related to the continual presence of the stainless steel thread in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms, and individuals selling baldness concealment cosmetics, devices, and treatments to the purchasing public.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Titan Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 173 West Madison Street, Chicago, Illinois.

Respondent Anthony J. Damato 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.

Respondent Dean Forcucci was the president of said corporation until November 1, 1971. He formulated, directed and controlled the policies, acts and practices of said corporation until that date. He is currently employed as the sales manager for 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 Titan Enterprises, Inc., a corporation, trading as V.I.P. International Scientific Company, or under any other trade name or names, its successors and assigns, and Anthony J. Damato, individually and as an officer of said corporation and Dean Forcucci, individually, (hereinafter sometimes referred to as "respondents"), and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of the PERMA-TEQUE hair replacement system or other hair replacement product or process involving surgery (hereinafter sometimes referred to as the "System"), in commerce, as "commerce" is defined in the Federal Trading Commission Act, or by the United States mails within the meaning of Section 12(a)(1) of the Federal Trade Commission

Act, do forthwith cease and desist from representing, directly or by implication:

1. That the system does not involve wearing a device or cosmetic which is like a hairpiece or toupee;

2. That after the system has been applied, the hair applied becomes part of the anatomy like natural hair, teeth, and fingernails and has the following characteristics of natural hair;

a. The same appearance in all applications as natural hair, upon normal observation, and upon extreme close-up examination;

b. It may be cared for like natural hair where care involves possible pulling on the hair;

c. The wearer may engage in physical activity and movement with the same disregard for his hair as he would if he had natural hair.

3. That after the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system, and that the customer will not incur maintenance costs over and above the cost of applying the system.

It is further ordered, That respondents, in advertising and in all oral sales presentations, offering for sale, selling or distributing the system, disclose clearly and conspicuously that:

1. The system involves a surgical procedure resulting in the implantation of stainless steel sutures in the scalp, to which hair is affixed.

2. By virtue of the surgical procedure involving implantation of stainless steel sutures in the scalp, and by virtue of the stainless steel sutures remaining in the scalp, there is a high probability of discomfort and pain, and a risk of infection, skin disease and scarring.

3. The system has been in use for too short a period of time to determine to a reasonable medical certainty the extent or seriousness of the above-described side-effects, or whether there are other side-effects.

4. Continuing special care of the system is necessary to minimize the probabilities and risks referred to in subparagraph two of this paragraph, and such care may involve additional costs for medications and assistance.

5. The purchaser is advised to consult with his personal physician about the system before deciding whether to purchase it.

Respondents shall set forth the above disclosures separately and

conspicuously from the balance of each advertisement or presentation used in connection with the advertising, offering for sale, sale, or distribution of the system, and shall devote no less than 15 percent of each advertisement or presentation to such disclosures: *Provided, however*, That in advertisements which consist of less than ten column inches in newspapers or periodicals, and in radio or television advertisements with a running time of one minute or less, respondents may substitute the following statement, in lieu of the above requirements:

Warning: This application involves surgery whereby stainless steel sutures are placed in the scalp. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician.

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

It is further ordered, That respondents provide prospective purchasers with a separate disclosure sheet containing the information required in the immediately preceding paragraph of this order, subparagraphs one through five, thereof, and that respondents require that such prospective purchasers, subsequent to receipt of such disclosure sheet, consult with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents regarding the nature of the surgery to be done, the probabilities of discomfort and pain, and risks of infection, skin disease, and scarring.

It is further ordered, That no contract for application of respondents' system shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents, or after the day on which said contract for application of the system was executed, whichever is later, and that:

1. Respondents shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the system, that the purchaser may rescind or cancel any obligation incurred, by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal

holidays, after the day of the purchaser's above-described consultation with a duly licensed physician or after the day on which said contract for application of the system was executed, whichever day is later.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician, or after the day on which said contract for application of the system was executed, whichever day is later.

4. Respondents shall obtain for each purchaser a certificate signed by the physician who was consulted as required by this order, such certificate specifying that the said physician has explained to the purchaser the nature of the surgery to be done, and has advised him of the probabilities of discomfort and pain, and risks of infection, skin disease and scarring, and specifying the date and approximate time of the consultation; and respondents shall retain all such certificates for three years.

It is further ordered, That respondents serve a copy of this order upon each physician participating in application of respondents' system, and obtain written acknowledgement of the receipt thereof. Respondents shall retain such acknowledgements for so long as such persons continue to participate in the application of respondents' system.

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

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, licensees, or franchisees, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to

be bound by the terms of this order; *Provided*, That if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

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

IN THE MATTER OF

SCHEFLIN-REICH, INC., ET AL.

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

Docket C-2174. Complaint, March 22, 1972—Decision, March 22, 1972.

Consent order requiring a New York City firm buying and selling furs to cease falsely and deceptively invoicing its fur products.

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 Scheflin-Reich, Inc., a corporation, and Joseph Reich and Murray Scheflin, individually and as officers 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 Scheflin-Reich, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Joseph Reich and Murray Scheflin are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are fur merchants with their office and principal place of business located at 333 Seventh Avenue, New York, New York,