

Complaint

92 F.T.C.

IN THE MATTER OF
CAPITAL BUILDERS, INC., ET AL.

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

Docket 9041. Complaint, July 15, 1975¹ — Decision, Aug. 8, 1978

This order, among other things, requires a Charleston, W. Va. home improvements firm to cease misrepresenting or failing to make relevant disclosures regarding prices, interest rates, savings, discounts and financing arrangements. Further, the firm must cease failing to furnish consumers, in connection with the extension of credit, those materials and disclosures required by Federal Reserve System regulations. The company is additionally required to establish a \$35,000 escrow account for making restitution to entitled customers, and to effectuate such restitution in a manner prescribed in the order.

Appearances

For the Commission: *Aaron H. Bulloff, Allan M. Huss and Sharon J. Devine.*

For the respondent: *Stanley E. Preiser, Preiser & Wilson, Charleston, W. Va.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Capital Builders, Inc., a corporation, and Jerome Finn and Richard Landman, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and of the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Capital Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and

¹ Complaint reported as amended by Commission order dated November 18, 1975.

place of business located at 517 Elizabeth St., East, Charleston, West Virginia.

Respondents Jerome Finn and Richard Landman are the principal officers of said corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of residential aluminum siding and other home improvements to the public and in the installation thereof.

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, advertising, and promotional material, contracts, and other business papers and documents, to be shipped and transmitted from and to their place of business, located as aforesaid in the State of West Virginia, to their prospective purchasers and to purchasers thereof located in various States of the United States other than the State of West Virginia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase and installation of their home improvement products, respondents have made numerous statements and representations in their promotional material, and through oral statements and representations made by their salesmen or representatives to prospective purchasers, respecting the nature of their offer and its price.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set out herein, and through oral statements made by their salesmen or representatives, respondents represent, and have represented, directly or by implication, that:

(1) Respondent's products are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling price.

(2) After the installation of respondents' aluminum siding is

completed, the homes of purchasers will be used for demonstration and advertising purposes by the respondents; and that as a result of allowing their homes to be used as models, purchasers will be granted reduced prices or will receive allowances or discounts.

(3) Purchasers of respondents' products will pay a specified interest rate.

(4) Purchasers of respondents' products will have no liens placed against their property.

(5) Financing of respondents' consumer credit transactions will be through local financing institutions.

PAR. 6. In truth and in fact:

(1) Respondents' products have not been offered for sale at special or reduced prices, and savings have not thereby been afforded purchasers because of reductions from respondents' regular selling price. In fact, respondents do not have regular selling prices, but the prices at which respondents' products are sold vary from customer to customer, depending on the resistance of the prospective purchaser.

(2) Purchasers have not been granted reduced prices, nor have they received allowances or discounts as a result of respondents' claims that the purchasers' property would be used as a display model. Respondents' claim was a representation designed to break down the prospective purchaser's sales resistance, and not to afford the purchaser a reduction in price.

(3) In many instances, purchasers of respondents' products pay interest rates different from the rates represented to them by respondents' salesmen.

(4) Purchasers of respondents' products have liens placed against their property either in the form of a second mortgage evidenced by a trust deed or in the form of a security interest created by operation of state law and perfectable under state law.

(5) In many instances, respondents finance transactions in which they extend credit through financing institutions located outside the State of West Virginia.

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

PAR. 7. In the usual course of their business as aforesaid, respondents employ a liquidated damages clause in their contracts, which requires purchasers to pay thirty percent (30%) of the contract price if they cancel the contract at any time before work is started. The amount fixed by this liquidated damages clause is not a reasonable forecast of just compensation for the harm that would be caused by a breach of the contract, or the harm that would be caused

by a breach of the contract is not one that is incapable of, or is very difficult of, accurate estimation. As such, the liquidated damages clause serves as a penalty to the purchaser or attempts to impose a penalty on the purchaser, and, accordingly, is an unfair act or practice.

PAR. 8. In the conduct of their aforesaid business, at all times mentioned herein, respondents have been in substantial competition, in or affecting commerce, with corporations, firms, and individuals in the sale of aluminum siding and other home improvement products of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts, and practices, has had, and now has, the capacity and tendency to lead 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 or affecting commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

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

PAR. 11. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time in the past have regularly extended, consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 12. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, and in connection with their credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused, and are now causing, customers to execute a document entitled "Contract," a retail installment contract, for the purchase and installation of residential aluminum

siding. Subsequently, at the time of or after installation, after the credit transaction for the installation of the siding is consummated, respondents have their customers execute a document entitled "Contract and Disclosures." Only the document entitled "Contract and Disclosures" contains the consumer credit cost disclosures required by Regulation Z.

Therefore, respondents have failed to make the consumer credit cost disclosures required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of the Regulation.

PAR. 13. By and through the use of respondents' contract to perform home improvements, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the respondents' customers. Respondents' retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind their transactions until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures in the manner and form required by Regulation Z, whichever is later, as required by Section 226.9(a) of Regulation Z.

Having consummated a rescindable consumer credit transaction, respondents or their representatives have, in many instances, initiated installation of the home improvements, and, subsequently, respondents have delivered or caused to be delivered to their customers a written notice of the customers' right to rescind, which notice is ante-dated to the date of consummation of the contract.

By and through their actions as alleged above, respondents have:

(1) Failed to give notice to the customer of his right to rescind the credit transaction by furnishing him with two copies of the "notice to customers required by federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(2) Failed to delay the making of any physical change in the property of the customer until after the rescission period has expired, as required by Section 226.9(c)(2) of Regulation Z.

(3) Failed to delay performance of any work or service for the customer until after the rescission period has expired, as required by Section 226.9(c)(3) of Regulation Z.

(4) Failed to delay the making of deliveries to the residence of the customer until after the rescission period has expired, as required by Section 226.9(c)(4) of Regulation Z.

(5) Failed to provide customers with two copies of the "effect of

rescission," set forth in Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

PAR. 14. Having consummated a rescindable consumer credit transaction, as alleged in Paragraph Thirteen above, respondents include the following language in the contract:

Owner agrees that in event of cancellation of this contract before work is started, owner shall pay contractor thirty percent (30%) of the contract price as liquidated damages for the breach.

By and through the use of this quoted language, respondents have:

(1) Represented, directly or by implication, that customers will or may be liable for damages, penalties, or any other charges if they exercise the right to rescind provided by Section 226.9 of Regulation Z, contrary to the provisions of Section 226.9(d) of Regulation Z.

(2) Supplied additional information, not required by Regulation Z, which is stated so as to mislead or confuse the customer concerning his right to rescind the credit transaction, in violation of Section 226.6(c) of Regulation Z.

PAR. 15. 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 issued its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulations promulgated thereunder, and the respondents having been served with a copy of that complaint, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint as issued 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 stipulations of fact, and conclusions of law, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period

of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following findings of fact, conclusions of law, and order:

I

JURISDICTIONAL FINDINGS

1. Respondent Capital Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its former office and principal place of business located at 1105 Main St., in the City of Charleston, State of West Virginia.

Respondents Jerome Finn and Richard Landman are the principal officers of said corporation. They formulate, direct, and control the policies, acts, and practices of said corporation, and their addresses are 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.

FINDINGS OF FACT

1. Jerome Finn is president of Capital Builders, Inc. (hereinafter "Capital").

2. Richard Landman is vice-president and treasurer of Capital. Jerome Finn and Richard Landman are the sole officers of Capital.

3. As the officers and directors of Capital, Jerome Finn and Richard Landman formulate, direct, and control the acts and practices of Capital and its employees, and formulate and direct the acts and practices of its agents.

4. Capital Builders, Inc., by its agents or employees, entered into transactions with various customers for the purchase of home improvements.

5. Purchases of respondents' home improvements were financed by at least eight lending institutions, including Kanawha Banking and Trust, Charleston National Bank, Kanawha Valley Bank, North American Acceptance Corporation, F.B.S. Financial, Inc., and General Electric Credit Corporation.

6. Stipulations 7 through 27 relate to purchases of respondents' home improvements financed by Kanawha Banking and Trust, Charleston National Bank, and Kanawha Valley Bank, all located in Charleston, West Virginia, for the period July 1, 1973 to October 1, 1975, inclusive (hereinafter referred to as "financing bank").

7. In many instances, customers of Capital were solicited by telephone and subsequently by a salesman representing Capital, and when the customer agreed to purchase home improvements from Capital, a "short form" contract for the purchase was executed by and between the customer and Capital.

8. In many instances the salesman obtained financial information at the time the customer signed a "short form" contract with Capital. This financial information included information regarding outstanding debts, employment, income, and ownership of the real property to be improved.

9. In many instances prior to the time the customer signed the "short form" contract with Capital, the salesman informed the customer of one or more specific finance terms, including the amount financed, the period of repayment, the amount of monthly payment, and the interest rate.

10. In many instances it was understood by both the customer and the salesman for Capital that the "short form" contract was to be financed and that Capital would arrange the financing.

11. This "short form" contract did not contain any disclosure of consumer credit information, including the period of repayment, the amount of monthly payment, the annual percentage rate, or the finance charge, nor was a "Notice to the Customer" as set forth in Section 226.9(b) of Regulation Z (hereinafter "Notice to the Customer"), provided to or left with the customer.

12. In some instances, after execution of the "short form" contract, Capital obtained and paid for building permits and/or property descriptions.

13. Capital's usual practice was to have its salesmen transmit the customer's financial information to Capital's office personnel, who, in turn, forwarded this financial information, as well as the amount financed and the number of payments, to an employee of the installment loan department of the financing bank.

14. In each transaction, the amount of finance charge, amount of each monthly payment, deferred payment price and annual percentage rate were determined by an employee or agent of Capital from instructions and charts provided by the financing bank.

15. The financing bank approved or disapproved the financing of the transaction, and so notified Capital's office personnel.

16. After approval of financing of the transaction by the financing bank, and after execution of the "short form" contract by and between the customer and Capital, Capital contracted for the performance of its obligations with various subcontractors.

17. These subcontractors in fact performed the obligations of Capital under the contract, and were paid therefor by Capital.

18. The financing bank's procedures required Capital to furnish the bank with a note payable to Capital, a Contract and Disclosure Statement ("long form" contract), and a "Notice to the Customer," each signed by the customer. However, in most instances, the Kanawha Valley Bank required the customer to furnish Kanawha Valley Bank with a notice and disclosure form on forms provided by Kanawha Valley Bank, and utilized these forms in lieu of the long form contract and note provided by Capital. In these latter instances, the note and disclosure was mailed by Kanawha Valley Bank directly to the customer, and returned directly to Kanawha Valley Bank. In some instances, the financing bank required the customer to execute a deed of trust to secure the transaction.

19. The financing bank's procedures also required that the aforementioned documents be completed by Capital on forms provided or approved by the financing bank.

20. Capital's agent or employee, who in some instances was not the original salesman, returned to the customer's home to complete and obtain the customer's signature on the above-required documents, except in those instances when Kanawha Valley Bank provided the customer with its forms directly.

21. In many instances, work on the property had already commenced and had been completed at the time of this second visit, or when the note and second contract were provided to the customer.

22. At this second visit, Capital's agent or employee obtained the customer's signature on the note, Contract and Disclosure Statement ("long form" contract), and the "Notice to the Customer." In most instances, Capital's agent or employee dated these documents with the date that the customer executed the contract with the salesman for the purchase of home improvements, even though this second visit occurred at a later date.

23. Capital's agent or employee left copies of the notice, "long form" contract, and "Notice to the Customer" with the customer at this second visit.

24. Upon completion of Capital's obligation under the contract, the customer executed a "Property Improvement Completion Certificate" (hereinafter "Completion Certificate") which he gave to Capital, its subcontractor, agent or employee.

25. Except when the customer returned the note directly to Kanawha Valley Bank, respondents negotiated the note to the financing bank and delivered to the financing bank the Contract and

Disclosure Statement ("long form" contract), the "Notice to the Customer," and the "Completion Certificate."

26. After the financing bank received these documents, it disbursed the amount financed directly to Capital, either by check or by direct deposit to an account of Capital.

27. At all times material hereto, Capital and the financing banks were engaged in a regular course of dealing with regard to the financing of home improvement transactions, as herein set forth.

28. Stipulations 29 through 34 relate to purchases of respondents' home improvements financed by North American Acceptance Corporation of Atlanta, Georgia, F.B.S. Financial, Inc. of Cincinnati, Ohio, L & F Title & Mortgage Company of Charleston, West Virginia, and General Electric Credit Corporation of Pikesville, Maryland (hereinafter "finance companies"). L & F Title & Mortgage Company is a division of Capital.

29. In some instances, Capital, its agents or employees, followed the procedures outlined in Stipulations 7 through 14, but the financing bank disapproved the loan.

30. Capital then sought to obtain financing through one of the finance companies enumerated in Stipulation 28.

31. Capital, its agents or employees, followed the procedures enumerated in Stipulations 15 through 22, except the financing institutions were finance companies, and not financing banks.

32. In some instances, Capital's agent or employee did not inform the customer that financing had been obtained through an out-of-state finance company rather than through a local bank.

33. Capital, its agents or employees, followed the procedures enumerated in Stipulations 23 through 26, except the financing institutions were finance companies and not financing banks, and in all cases payment was made to Capital by check issued by the finance company.

34. At all times material hereto, Capital and each finance company were engaged in a regular course of business with regard to the financing of home improvement transactions as herein set forth.

CONCLUSIONS OF LAW

1. Capital Builders, Inc. arranged for the extension of credit within the meaning of Section 226.2(h) of Regulation Z, the implementing regulation promulgated under the Truth in Lending Act.

2. The credit extended by Kanawha Valley Banking and Trust, Charleston National Bank, Kanawha Valley Bank, The Guaranty Bank, Union Federal Savings and Loan, North American Accep-

tance Corporation, F.B.S. Financial, Inc., General Electric Credit Corporation, and L & F Title & Mortgage Company in each transaction described in the foregoing Stipulations of Fact is "consumer credit" as defined by Section 226.2(p) of Regulation Z.

3. Each transaction described in the foregoing Stipulations of Fact constituted a single consumer credit transaction from the bank or finance company to the customer through the instrumentality of Capital Builders, Inc.

4. Each of the consumer credit transactions described in the foregoing Stipulations of Fact is a transaction which gave rise to a right of rescission as set forth in Section 226.9 of Regulation Z.

ORDER

I

It is ordered. That respondents Capital Builders, Inc., a corporation, its successors and assigns, and its officers, and Jerome Finn and Richard Landman, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, distribution, or installation of aluminum siding, storm windows, storm doors, or any other products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, orally or in writing, or by any other means, that any price for respondents' products and/or services is a special or reduced price, unless such price constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such products and/or services were sold or offered for sale to the public on a regular basis by respondents in the recent, regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

(2) Representing, directly or by implication, orally or in writing, or by any other means, that the home of any of respondents' customers or prospective customers has been specially selected as a model home to be used, or will be used, as a model home, or otherwise, for advertising, demonstration, or sales purposes, or that such customers will thereby be granted any allowance, discount, or commission; *provided, however,* that nothing in this order shall prohibit respondents from representing, after a contract has been executed between respondents and a purchaser of respondents' products or services, that purchasers or prospective purchasers can earn future compen-

sation by providing the names of prospective purchasers to respondents' personnel connected with the sale of respondents' products or services.

(3) Representing, directly or by implication, orally or in writing, or by any other means, that the purchaser will pay any interest rate other than that which the purchaser will actually pay; *provided, however*, that nothing in this order shall prohibit respondents from stating the lending institution's prevailing rate of finance charge expressed as an annual percentage rate, as "annual percentage rate" is defined in Section 226.2(g) of Regulation Z.

(4) Failing to disclose, clearly and conspicuously, that purchasers will have liens placed against their property, when such is the case.

(5) Failing to disclose, clearly and conspicuously, that financing of credit transactions will not be through local financing institutions, when such is the case. For purposes of this order, local financing institutions shall be deemed to be institutions which have a main office or a branch office within the county or any county adjacent to which the purchaser or prospective purchaser resides.

(6) Using any liquidated damages clause in their contract form.

(7) Failing, for a period of ten years after the effective date of this order, to maintain adequate records:

(a) For a continuing period of three (3) years from the date of transaction which disclose the factual basis for any representations or statements as to special or reduced prices, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraphs Five (1) and (2) of the complaint.

(b) For a continuing period of three (3) years from the date of transaction with regard to each and every contract hereafter entered into between respondents and their customers, which disclose the amount each customer was charged, exclusive of interest or finance charges, for material and labor; and for those contracts involving siding or the installation of siding, or both, the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, and the total amount of money paid to salesmen, agents, or representatives for the solicitation of said contracts.

The information prescribed in subparagraph (7) need not be aggregated onto separate documents. Respondents' retention of records of the type prescribed in subparagraph (7) shall be deemed *prima facie* evidence of compliance with subparagraph (7).

(8) Failing to maintain for a continuing period of three (3) years from the date of transaction, all invoices, notices for payment, and all similar documents which respondents receive in the regular course of their business from suppliers, subcontractors, and other persons, and, for a continuing period of three (3) years from the date of transaction, copies of all contracts entered into between respondents and their customers. This provision notwithstanding, respondents shall continue to preserve evidence of compliance with the requirements of Truth in Lending, as required by Section 226.6(i) of Regulation Z.

II

It is further ordered, That respondents Capital Builders, Inc., a corporation, its successors and assigns, and its officers, and Jerome Finn and Richard Landman, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the extension of consumer credit or advertisements to aid, promote, or assist, directly or indirectly, in the extension of consumer credit, as "consumer credit," "credit sale," and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

(1) Failing to make the consumer credit cost disclosures prescribed by Section 226.8 of Regulation Z prior to consummation of the transaction as required by Section 226.8(a) of Regulation Z.

(2) Failing to give notice to the customer of his right to rescind the credit transaction by furnishing him with two copies of the "notice to customers required by federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(3) Failing to delay the making of any physical changes in the property of the customer until after the rescission period has expired, as required by Section 226.9(c)(2) of Regulation Z.

(4) Failing to delay performance of any work or service for the customer until after the rescission period has expired, as required by Section 226.9(c)(3) of Regulation Z.

(5) Failing to delay the making of deliveries to the residence of the customer until after the rescission period has expired, if the creditor has retained or will acquire a security interest other than one arising by operation of law, as required by Section 226.9(c)(4) of Regulation Z.

(6) Failing to provide the customer with two copies of the "effect of

rescission" set forth in Section 226.9(d) of Regulation Z, in the manner and form required by Section 226.9(b) of Regulation Z.

(7) Representing, directly or by implication, that customers will or may be liable for damages, penalties, or any other charges in the event they cancel a contract that is rescindable pursuant to Section 226.9 of Regulation Z.

(8) Supplying customers with any additional information, explanations, contract clause, or other statements pertaining to a transaction which mislead or confuse the customers or contradict, obscure, or detract from the disclosures required by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

(9) 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, at the time and in the manner, form, and amount required by Sections 226.6, 226.8, 226.9, and 226.10 of Regulation Z.

III

It is further ordered, That respondents shall, within ninety (90) days after service of this order, pay a pro rata share of the escrow account established in subparagraph (2) below to all of respondents' customers who are entitled to receive a share, as "entitled customer" is defined in subparagraph (1) below, subject to the monetary limitation in subparagraph (2) below. Respondents shall effectuate such restitution in the following manner:

(1) For purposes of this order, an "entitled customer" is a person who purchased a home improvement from respondents on credit, as "credit" is defined in Section 226.2(q) of Regulation Z, during the period July 1, 1973 to October 1, 1975, and who has not, at the time of the signing of this Agreement, instituted any private legal action against respondents alleging violations of Regulation Z. "Entitled customers" shall not include persons who received disclosure statements used and prepared by creditors other than respondents and mailed by the creditor directly to the customer.

(2) On or before the third day after the date this order becomes final, respondents shall deposit the sum of thirty-five thousand dollars (\$35,000) into an escrow account in a lending institution with which respondents have had no prior dealings. The escrow account shall be utilized for the payment of amounts due to such of respondents' customers entitled to restitution. Respondents' liability for restitution pursuant to the terms of this order shall not exceed thirty-five thousand dollars (\$35,000). Printing costs, postage costs, reasonable and ordinary secretarial fees (not to exceed \$200), and

escrow agent fees may be charged against the escrow account, but no other expenses shall be so charged.

(3) On or before the tenth (10th) day after the date this order becomes final, respondents shall compile a list containing the name and last known address of each entitled customer, as defined herein, and shall send or cause the escrow agent to send to that customer a copy of the letter set forth in subparagraph (4), *infra*, together with an envelope addressed to the escrow agent with postage prepaid.

(4) The letter to be sent to each entitled customer shall be as follows:

Dear Customer:

The Federal Trade Commission has ordered Capital Builders, Inc. to give back approximately \$35,000, to be divided among each of its customers who bought a home improvement from Capital between July 1, 1973, and October 1, 1975. Each customer gets an equal share.

The amount of the equal shares will be determined by the number of such customers who sign and send this notice to the independent escrow agent.

To get your share, you must sign and return the bottom part of this letter. It must be postmarked before (month, day, year—fourteen days after mailing). The escrow agent will send you a check. The money will be yours to keep. You must, however, continue your scheduled payments for your home improvement.

Your acceptance of this refund does not affect any rights or obligations you may have under the Truth in Lending Act, nor does it extend any statute of limitations. Capital has made no admission of wrongdoing in this matter.

If you wish to receive this payment, please sign below and return the bottom part of the notice in the enclosed pre-addressed, pre-stamped envelope.

CAPITAL BUILDERS, INC.

(Tear off and return)

The money which the escrow agent will send me should be sent to this address:

SIGN HERE _____
 PRINT YOUR NAME _____
 PRINT YOUR ADDRESS _____

(5) On or before the thirty-fifth (35th) day after the date this order becomes final, respondents, their agent or the escrow agent shall seek to obtain, for each customer whose letter is returned to respondents undelivered, a current mailing address by the following methods: (1) contacting the holder of the entitled customer's indebtedness; and (2) contacting telephone and utility companies. Respondents, their agent or the escrow agent shall use the address so obtained to comply with subparagraph (3) above, on or before the forty-fifty (45th) day after the date this order becomes final, but not

less than ten (10) days after the date each letter is returned to respondents undelivered.

(6) Respondent shall instruct the escrow agent as follows:

(a) The escrow agent shall receive and keep each signed and returned letter set forth in subparagraph (4) sent to it by each entitled customer.

(b) On the seventieth (70th) day after the date this order becomes final, or on the first business day thereafter if said seventieth (70th) day is not a business day, the escrow agent shall compute the amount to be paid to each entitled customer who has signed and returned the letter set forth in subparagraph (4) to the escrow agent by dividing the sum remaining in the escrow account after payment of the escrow agent's fees and expenses equally among those entitled customers.

(c) By the second business day after computation as provided in subparagraph (6)(b), the escrow agent shall mail a cashier's check for the amount computed in subparagraph (6)(b) to each entitled customer who has signed and returned the letter set forth in subparagraph (4) to the escrow agent of his current address. Said mailing shall be by first-class mail. Enclosed with each check shall be the following letter:

Dear Customer of Capital Builders:

Here is a check for \$ _____, which is your share of the \$35,000 being returned, as we told you in our previous letter. This check does not affect your schedule of payments.

(Escrow Agent for Capital Builders)

(d) Any checks which are returned uncashed shall be redeposited in the escrow account.

(e) Upon the ninetieth (90th) day after the date this order becomes final, the escrow agent shall terminate the escrow account, and disburse any monies left therein to respondents.

Respondents' obligation under Paragraph III shall terminate upon the performance of the escrow agent's obligations as set forth in this subparagraph.

IV

It is further ordered, That respondents deliver a copy of this order to all present and future sales personnel whose services are engaged by respondents, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

V

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, voluntary bankruptcy, assignment, the creation or dissolution of subsidiaries, or any other change in the corporation.

VI

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment. In addition, for a period of ten (10) years from the effective date of this order, the respondents shall promptly notify the Commission of each affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged, as well as a description of their duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VII

It is further ordered, That respondents shall, within sixty (60) days after the effective date of this order, and within thirty (30) days after the termination of the escrow account, file with the Commission a report in writing setting forth the manner in which they have complied with the provisions of this order, and any future compliance reports in the form and manner which the Commission may order.

Complaint

IN THE MATTER OF
UNITED BUILDERS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket 9043. Complaint, July 15, 1975 — Decision, Aug. 8, 1978

This order, among other things, requires a Charleston, W. Va. home improvements firm to cease misrepresenting or failing to make relevant disclosures regarding prices, interest rates, savings, discounts and financing arrangements. Further, the firm must cease failing to furnish consumers, in connection with the extension of credit, those materials and disclosures required by Federal Reserve System regulations. The company is additionally required to establish a \$17,500 escrow account for making restitution to entitled customers, and to effectuate such restitution in a manner prescribed in the order.

Appearances

For the Commission: *Aaron H. Bulloff, Allan M. Huss, Sharon J. Devine and David V. Plottner.*

For the respondent: *Stanley E. Preiser, Preiser & Wilson, Charleston, W. Va.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that United Builders, Inc., a corporation, and Marvin Bloom and Paul Denillo, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and of the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent United Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 418 West Washington St., Charleston, West Virginia.

Respondents Marvin Bloom and Paul Denillo are the principal

officers of said corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of residential aluminum siding and other home improvement products to the public and in the installation thereof.

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, advertising, and promotional material, contracts, and other business papers and documents to be shipped and transmitted from and to their place of business, located as aforesaid in the State of West Virginia, to their prospective purchasers and to purchasers thereof located in various States of the United States other than the State of West Virginia, 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 business as aforesaid, and for the purpose of inducing the purchase and installation of their home improvement products, respondents have made numerous statements and representations in their promotional material, and through oral statements and representations made by their salesmen or representatives to prospective purchasers, respecting the nature of their offer and its price.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set out herein, and through oral statements made by their salesmen or representatives, respondents represent, and have represented, directly or by implication, that:

(1) Respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling price.

(2) After the installation of respondents' aluminum siding is completed, the homes of purchasers will be used for demonstration and advertising purposes by the respondents; and that as a result of

allowing their homes to be used as models, purchasers will be granted reduced prices or will receive allowances or discounts.

(3) Purchasers of respondents' products will pay a specified interest rate.

(4) Purchasers of respondents' products will have no liens placed against their property.

(5) Respondents owned Charleston National Bank and/or Kanawha Valley Bank.

PAR. 6. In truth and in fact:

(1) Respondents' products have not been offered for sale at special or reduced prices, and savings have not thereby been afforded purchasers because of reductions from respondents' regular selling price. In fact, respondents do not have regular selling prices, but the prices at which respondents' products are sold vary from customer to customer, depending on the resistance of the prospective purchaser.

(2) Purchasers have not been granted reduced prices, nor have they received allowances or discounts as a result of respondents' claims that the purchasers' property would be used as a display model. Respondents' claim was a representation designed to break down the prospective purchaser's sales resistance, and not to afford the purchaser a reduction in price.

(3) In many instances, purchasers of respondents' products pay interest rates different from the rates represented to them by respondents' salesmen.

(4) Purchasers of respondents' products have liens placed against their property either in the form of a second mortgage evidenced by a trust deed or in the form of a security interest created by operation of state law and perfectable under state law.

(5) Respondents do not own Charleston National Bank and/or Kanawha Valley Bank.

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

PAR. 7. In the usual course of their business as aforesaid, respondents employ a liquidated damages clause in their contracts, which requires purchasers to pay twenty-five percent (25%) of the contract price if they cancel the contract at any time before work is started. The amount fixed by this liquidated damages clause is not a reasonable forecast of just compensation for the harm that would be caused by a breach of the contract, or the harm that would be caused by a breach of the contract is not one that is incapable of, or is very difficult of, accurate estimation. As such, the liquidated damages clause serves as a penalty to the purchaser or attempts to impose a

penalty on the purchaser, and, accordingly, is an unfair act or practice.

PAR. 8. In the conduct of their aforesaid business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms, and individuals in the sale of aluminum siding and other home improvement products of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts, and practices, has had, and now has, the capacity and tendency to lead 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.

COUNT II

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

PAR. 11. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time in the past have regularly extended, consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 12. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, and in connection with their credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused, and are now causing, customers to execute a document entitled "Contract," a retail installment contract, for the purchase and installation of residential aluminum siding. Subsequently, at the time of or after installation, after the credit transaction for the installation of the siding is consummated, respondents, in certain instances, have their customers execute a document entitled either "Contract and Disclosure" or "Disclosure

Statement for Real Estate Loan." Only the document entitled "Contract and Disclosures" or "Disclosure Statement for Real Estate Loan" contains the consumer credit cost disclosures required by Regulation Z. In certain other instances, respondents themselves fail to secure customers' signatures on disclosure statements in favor of respondents' having banks secure these signatures at the time of or after installation, after the credit transaction is consummated.

Therefore, respondents have failed to make the consumer credit cost disclosures required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of the Regulation.

PAR. 13. By and through the use of respondents' contract to perform home improvements, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the respondents' customers. Respondents' retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind their transactions until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures in the manner and form required by Regulation Z, whichever is later, as required by Section 226.9(a) of Regulation Z.

Having consummated a rescindable consumer credit transaction, respondents or their representatives have, in many instances, initiated installation of the home improvements, and, subsequently, respondents have delivered or caused to be delivered to their customers a written notice of the customers' right to rescind, which notice is ante-dated to the date of consummation of the contract.

By and through their actions as alleged above, respondents have:

(1) Failed to give notice to the customer of his right to rescind the credit transaction by furnishing him with two copies of the "notice to customers required by federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(2) Failed to delay the making of any physical change in the property of the customer until after the rescission period has expired, as required by Section 226.9(c)(2) of Regulation Z.

(3) Failed to delay performance of any work or service for the customer until after the rescission period has expired, as required by Section 226.9(c)(3) of Regulation Z.

(4) Failed to delay the making of deliveries to the residence of the customer until after the rescission period has expired, as required by Section 226.9(c)(4) of Regulation Z.

(5) Failed to provide customers with two copies of the "effect of rescission," set forth in Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

PAR. 14. Having consummated a rescindable consumer credit transaction, as alleged in Paragraph Thirteen above, respondents include following language in the contract:

In event of cancellation, home owners agree to pay 25% of contract price to contractor for damages for breach of contract.

By and through the use of this quoted language, respondents have:

(1) Represented, directly or by implication, that customers will or may be liable for damages, penalties, or any other charges if they exercise the right to rescind provided by Section 226.9 of Regulation Z, contrary to the provisions of Section 226.9(d) of Regulation Z.

(2) Supplied additional information, not required by Regulation Z, which is stated so as to mislead or confuse the customer concerning his right to rescind the credit transaction, in violation of Section 226.6(c) of Regulation Z.

PAR. 15. 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 issued its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulations promulgated thereunder, and the respondents having been served with a copy of that complaint, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint as issued 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 stipulations of fact, and conclusions of law, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period

of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following findings of fact, conclusions of law, and order:

1. Respondent United Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its former office and principal place of business located at 418 West Washington St., in the City of Charleston, State of West Virginia.

Respondents Marvin Bloom and Paul Denillo are officers of said corporation. They formulate, direct, and control the policies, acts, and practices of said corporation, and their addresses are 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.

STIPULATIONS OF FACT

1. United Builders, Inc. (hereinafter, United) by its agents or employees, entered into transactions with various customers for the purchase of home improvements.

2. Stipulations 3 through 29 relate to purchases of respondents' home improvements financed by the Kanawha Valley Bank of Charleston, West Virginia, for the period October 1, 1972, to August 31, 1974, inclusive.

3. In those instances in which the transaction was financed by the Kanawha Valley Bank, during the negotiations between the customer and United for the purchase of home improvements it was agreed by the customer and United that United would attempt to secure financing for the transaction through the Kanawha Valley Bank.

4. Financial information was obtained in many cases by a salesman of United from the customer at the time the customer signed a contract with United Builders, Inc. This financial information included information regarding outstanding debts, employment, income, and ownership of the real property to be improved.

5. Prior to the time the customer signed the contract with United, the salesman in many cases informed the customer of one or more specific finance terms, including the period of repayment, the amount financed, the amount of monthly payment, and the interest rate.

6. At the conclusion of the above negotiations between the customer and the salesman of United, a contract for the purchase of

home improvements was executed by and between the customer and United.

7. This contract did not contain any disclosure of consumer credit information, including the period of repayment, the amount of monthly payment, the annual percentage rate, or the finance charge, nor was a "Notice to the Customer" as set forth in Section 226.9(b) of Regulation Z (hereinafter, "Notice to the Customer"), provided to or left with the customer.

8. In some instances, after execution of the contract, United obtained and paid for building permits and descriptions of property.

9. Respondents' usual practice was to have their salesmen transmit the customer's financial information to United's office personnel, who, in turn, forwarded this finance information, including the amount financed and the number of payments, to an employee of the Installment Loan Department of the Kanawha Valley Bank.

10. In each such transaction, the amount of the finance charge, amount of each monthly payment, deferred payment price, and annual percentage rate were determined by the salesman for United in accordance with instructions and charts provided by the Kanawha Valley Bank.

11. Kanawha Valley Bank approved or disapproved the financing of the transaction, and so notified United's office personnel.

12. After execution of the contract by and between the customer and United, and after approval of financing of the transaction by Kanawha Valley Bank, United contracted for the performance of its obligations with various subcontractors.

13. These subcontractors, in fact, performed the obligations of United under the contract, and they were paid therefor by United.

14. After the subcontractor commenced performance under the contract, United, in some instances, advised the Kanawha Valley Bank to transmit to the customer such other documents as were necessary to complete the financing arrangement, if the Kanawha Valley Bank had not yet done so.

15. Kanawha Valley Bank personnel then mailed to the customer a document entitled Installment Note and Disclosure, together with a form letter instructing the customer to sign the original document, to return it to Kanawha Valley Bank, and to retain the duplicate copy.

16. Upon completion of United's obligations under the contract, the customer executed a "Property Improvement Completion Certificate," (hereinafter, "Completion Certificate") which he gave to United, or its subcontractor or other agent or employee.

17. The Installment Note and Disclosure contained the consumer credit cost disclosures pertaining to the financing of the transaction.
18. The Kanawha Valley Bank did not transmit to the customer the "Notice to the Customer" in conjunction with the furnishing of disclosures.
19. United transmitted the executed "Completion Certificate" to Kanawha Valley Bank.
20. Upon receipt of an executed Installment Note and Disclosure from the customer and receipt of an executed "Completion Certificate" from United, Kanawha Valley Bank deposited the amount financed directly to the account of United.
21. In certain instances, the customer and the salesman from United agreed to consolidate certain existing debts of the customer as part of the transaction.
22. When the customer agreed to a debt consolidation, United caused disbursement of funds to the customer to discharge the customer's obligations which were consolidated with the cost of the home improvement.
23. In some instances, Kanawha Valley Bank required a deed of trust to secure the financing for the home improvement.
24. In such instances, Kanawha Valley Bank personnel notified United of this requirement.
25. In such instances, the Kanawha Valley Bank supplied United with a completed deed of trust, a completed real estate disclosure, a completed installment note, and a "Notice to the Customer."
26. United, its agent or employee, in turn, presented the deed of trust, installment note, real estate disclosure, and "Notice to the Customer" to the customer and obtained the customer's signature on each document.
27. Upon the execution of the deed of trust by the customer, his signature was acknowledged by a notary public, who in many instances was an agent or employee of United.
28. Executed deeds of trust, real estate disclosures, installment notes, and signed copies of the "Notice to the Customer" were delivered to Kanawha Valley Bank by United.
29. In such instances, upon receipt of the executed "Completion Certificate," deed of trust, real estate disclosure, installment note, and signed copy of the "Notice to the Customer," the Kanawha Valley Bank deposited the amount financed directly to the account of United.
30. At all times material hereto, United and the Kanawha Valley Bank were engaged in a regular course of dealing as herein set forth with regard to the financing of home improvement transactions.

31. The Kanawha Valley Bank instructed United with regard to the handling of financing of home improvement transactions, and United followed this instruction.

32. Stipulations 32 through 40 relate to transactions financed by the Kanawha Valley Bank for the period September 1, 1974, to October 1, 1975, inclusive.

33. On or about September 1, 1974, as a result of a change in West Virginia consumer protection laws, United entered into a written agreement with the Kanawha Valley Bank for the financing of home improvement transactions.

34. Pursuant to the written agreement between United and the Kanawha Valley Bank, United included consumer credit disclosure information in its contract.

35. United's salesman or agent or employee left copies of the Contract and Disclosure Statement and "Notice to the Customer" with the customer.

36. United negotiated the note to Kanawha Valley Bank and delivered to Kanawha Valley Bank the Contract and Disclosure Statement, the "Notice to the Customer," and the executed "Completion Certificate."

37. In some instances, Kanawha Valley Bank required a deed of trust to secure financing for the home improvement.

38. In such instances, United obtained a deed of trust from the customer and assigned the deed of trust to the Kanawha Valley Bank.

39. Except for the changes enumerated in Stipulations 32 through 38, the procedure used to finance United home improvements transactions with Kanawha Valley Bank was identical to the facts enumerated in Stipulations 3 through 30.

40. In some instances, United may not have followed this procedure.

41. In certain instances, after United attempted financing sales of home improvements through the Kanawha Valley Bank, but was not able to obtain this financing, United then sought to obtain financing through Charleston National Bank or advised the customer to seek financing elsewhere.

42. Stipulations 43 through 63 relate only to purchases of United's home improvements, financed by the Charleston National Bank of Charleston, West Virginia, as described in Stipulation 41, from July 1, 1973, to October 1, 1975, inclusive.

43. In many instances, financial information was obtained by a salesman of United from the customer at the time the customer signed a contract with United. This financial information included

information regarding outstanding debts, employment, income, and ownership of the real property to be improved.

44. Prior to the time the customer signed the contract with United, the salesman informed the customer of one or more specific finance terms, including the period of repayment, the amount financed, the amount of monthly payment, and the interest rate.

45. A contract for the purchase of home improvements was executed by and between the customer and United.

46. In certain instances, this contract did not contain any disclosure of consumer credit information, including the period of repayment, the amount of monthly payment, the annual percentage rate, or the finance charge, nor was a "Notice to the Customer" as set forth in Section 226.9(b) of Regulation Z (hereinafter "Notice to the Customer") provided to or left with the customer.

47. In some instances, after execution of the contract, United obtained and paid for building permits.

48. United's usual practice was to have its salesmen transmit the customer's financial information to United's office personnel, who, in turn, forwarded this financial information, as well as the amount financed and the number of payments to an employee of the Installment Loan Department of the Charleston National Bank.

49. In each transaction, the amount of finance charge, amount of each monthly payment, deferred payment price and annual percentage rate were determined by an employee of United from instructions and charts provided by the Charleston National Bank.

50. Charleston National Bank approved or disapproved the financing of the transaction, and so notified United's office personnel.

51. After approval of financing of the transaction by Charleston National Bank, and after execution of the contract by and between the customer and United, United contracted for the performance of its obligations with various subcontractors.

52. These subcontractors, in fact, performed the obligations of United under the contract, and were paid therefor by United.

53. Charleston National Bank's financing procedures required United to furnish the bank with a note payable to United, a Contract and Disclosure Statement, and a "Notice to the Customer," each signed by the customer.

54. Charleston National Bank's procedures also required that the aforementioned documents be completed on forms provided or approved by Charleston National Bank.

55. United's agent or employee, who in most instances was not the original salesman, returned to the customer's home to complete

and obtain the customer's signature on the above required documents.

56. In some instances work on the property had already commenced at the time of this second visit.

57. At this second visit, United's agent or employee obtained the customers' signatures on the note, Contract and Disclosure Statement, and the "Notice to the Customer." In some instances, United's agent or employee dated these documents with the date that the customer executed the contract with the salesman for the purpose of home improvements, even though this second visit occurred at a later date.

58. United's agent or employee left copies of these documents with the customer.

59. Upon completion of United's obligation under the contract, the customer executed a "Property-Improvement Completion Certificate" (hereinafter "Completion Certificate") which he gave to United, its subcontractor, agent or employee.

60. Respondents negotiated the note to Charleston National Bank and delivered to Charleston National Bank the Contract and Disclosure Statement, the "Notice to the Customer," and the "Completion Certificate."

61. After the Charleston National Bank received these documents, it deposited the amount financed directly to the account of United.

62. At all times material hereto, Charleston National Bank did not require a deed of trust as security for any aforementioned extension of credit, nor did it take nor file any such deed of trust.

63. At all times material hereto, United and the Charleston National Bank were engaged in a regular course of dealing with regard to the financing of home improvement transactions, as herein set forth.

CONCLUSIONS OF LAW

1. United Builders, Inc. arranged for the extension of credit within the meaning of Section 226.2(h) of Regulation Z, the implementing regulation promulgated under the Truth in Lending Act.

2. The credit extended by Charleston National Bank and the Kanawha Valley Bank in each transaction described in the above Stipulations of Fact is consumer credit as defined by Section 226.2(p) of Regulation Z.

3. Each transaction described in the above Stipulations of Fact

constituted a single consumer credit transaction from the bank to the customer through the instrumentality of United Builders, Inc.

4. Each of the consumer credit transactions described in the above Stipulations of Fact is a transaction which gave rise to a right of rescission as set forth in Section 226.9 of Regulation Z.

ORDER

I

It is ordered, That respondents United Builders, Inc., a corporation, its successors and assigns, and its officers, and Marvin Bloom and Paul Denillo, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, distribution, or installation of aluminum siding, storm windows, storm doors, or any other products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, orally or in writing, or by any other means, that any price for respondents' products and/or services is a special or reduced price, unless such price constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such products and/or services were sold or offered for sale to the public on a regular basis by respondents in the recent, regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

(2) Representing, directly or by implication, orally or in writing, or by any other means, that the home of any of respondents' customers or prospective customers has been specially selected as a model home to be used, or will be used, as a model home, or otherwise, for advertising, demonstration, or sales purposes, or that such customers will thereby be granted any allowance, discount, or commission; *provided, however,* that nothing in this order shall prohibit respondents from representing, after a contract has been executed between respondents and a purchaser of respondents' products or services, that purchasers or prospective purchasers can earn future compensation by providing the names of prospective purchasers to respondents' personnel connected with the sale of respondents' products or services.

(3) Representing, directly or by implication, orally or in writing, or by any other means, that the purchaser will pay any interest rate other than that which the purchaser will actually pay; *provided,*

however, that nothing in this order shall prohibit respondents from stating the lending institution's prevailing rate of finance charge expressed as an annual percentage rate, as "annual percentage rate" is defined in Section 226.2(g) of Regulation Z.

(4) Failing to disclose, clearly and conspicuously, that purchasers will have liens placed against their property, when such is the case.

(5) Representing, directly or by implication, orally or in writing, or by any other means, that respondents own, or have any ownership in, any bank, finance company, or any other lending institution.

(6) Using any liquidated damages clause in their contract form.

(7) Failing, for a period of ten years after the effective date of this order, to maintain adequate records:

(a) For a continuing period of three (3) years from the date of transaction which disclose the factual basis for any representations or statements as to special or reduced prices, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraphs Five (1) and (2) of the complaint.

(b) For a continuing period of three (3) years from the date of transaction with regard to each and every contract hereafter entered into between respondents and their customers, which disclose the amount each customer was charged, exclusive of interest or finance charges, for material and labor; and for those contracts involving siding or the installation of siding, or both, the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, and the total amount of money paid to salesmen, agents, or representatives for the solicitation of said contracts.

The information prescribed in subparagraph (7) need not be aggregated onto separate documents. Respondents' retention of records of the type prescribed in subparagraph (7) shall be deemed *prima facie* evidence of compliance with subparagraph (7).

(8) Failing to maintain for a continuing period of three (3) years from the date of transaction, all invoices, notices for payment, and all similar documents which respondents receive in the regular course of their business from suppliers, subcontractors, and other persons, and, for a continuing period of three (3) years from the date of transaction, copies of all contracts entered into between respondents and their customers. This provision notwithstanding, respondents shall continue to preserve evidence of compliance with the

requirements of Truth in Lending, as required by Section 226.6(i) of Regulation Z.

II

It is further ordered. That respondents United Builders, Inc., a corporation, its successors and assigns, and its officers, and Marvin Bloom and Paul Denillo, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement or consumer credit sale of home improvement products or services, or any other products or services, as "credit sale" is defined in Section 226.2(t) of Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

(1) Failing to make the consumer credit cost disclosures prescribed by Section 226.8 of Regulation Z prior to consummation of the transaction as required by Section 226.8(a) of Regulation Z.

(2) Failing to give notice to the customer of his right to rescind the credit transaction by furnishing him with two copies of the "notice to customers required by federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(3) Failing to delay the making of any physical changes in the property of the customer until after the rescission period has expired, as required by Section 226.9(c)(2) of Regulation Z.

(4) Failing to delay performance of any work or service for the customer until after the rescission period has expired, as required by Section 226.9(c)(3) of Regulation Z.

(5) Failing to delay the making of deliveries to the residence of the customer until after the rescission period has expired, if the creditor has retained or will acquire a security interest other than one arising by operation of law, as required by Section 226.9(c)(4) of Regulation Z.

(6) Failing to provide the customer with two copies of the "effect of rescission" set forth in Section 226.9(d) of Regulation Z, in the manner and form required by Section 226.9(b) of Regulation Z.

(7) Representing, directly or by implication, that customers will or may be liable for damages, penalties, or any other charges in the event they cancel a contract that is rescindable pursuant to Section 226.9 of Regulation Z.

(8) Supplying customers with any additional information, explanations, contract clause, or other statements pertaining to a transaction which mislead or confuse the customers or contradict, obscure,

or detract from the disclosures required by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

(9) 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, at the time and in the manner, form, and amount required by Sections 226.6, 226.8, 226.9, and 226.10 of Regulation Z.

III

It is further ordered, That respondents shall, within ninety (90) days after service of this order, pay a pro rata share of the escrow account established in subparagraph (2) below to all of respondents' customers who are entitled to receive a share, as "entitled customer" is defined in subparagraph (1) below, subject to the monetary limitation in subparagraph (2) below. Respondents shall effectuate such restitution in the following manner:

(1) For purposes of this order, an "entitled customer" is a person who purchased a home improvement from respondents on credit, as "credit" is defined in Section 226.2(q) of Regulation Z, during the period July 1, 1973, to October 1, 1975, and who has not, at the time of the signing of this Agreement, instituted any private legal action against respondents alleging violations of Regulation Z. "Entitled customers" shall not include persons who received disclosure statements used and prepared by creditors other than respondents and mailed by the creditor directly to the customer.

(2) On or before the third day after the date this order becomes final, respondents shall deposit the sum of seventeen thousand five hundred dollars (\$17,500) into an escrow account in a lending institution with which respondents have had no prior dealings. The escrow account shall be utilized for the payment of amounts due to such of respondents' customer entitled to restitution. Respondents' liability for restitution pursuant to the terms of this order shall not exceed seventeen thousand five hundred dollars (\$17,500). Printing costs, postage costs, reasonable and ordinary secretarial fees (as incurred up to but not to exceed \$200), and escrow agent fees may be charged against the escrow account, but no other expenses shall be so charged.

(3) On or before the tenth (10th) day after the date this order becomes final, respondents shall compile a list containing the name and last known address of each entitled customer, as defined herein, and shall send or cause the escrow agent to send to that customer a copy of the letter set forth in subparagraph (4), *infra*, together with an envelope addressed to the escrow agent with postage prepaid.

291

Decision and Order

(4) The letter to be sent to each entitled customer shall be as follows:

Dear Customer:

The Federal Trade Commission has ordered United Builders, Inc. to give back approximately \$17,500, to be divided among each of its customers who bought a home improvement from United between July 1, 1973, and October 1, 1975. Each customer gets an equal share.

The amount of the equal shares will be determined by the number of such customers who sign and send this notice to the independent escrow agent.

To get your share, you must sign and return the bottom part of this letter. It must be postmarked before (*month, day, year—fourteen days after mailing*). The escrow agent will send you a check. The money will be yours to keep. You must, however, continue your scheduled payments for your home improvement.

Your acceptance of this refund does not affect any rights or obligations you may have under the Truth in Lending Act, nor does it extend any statute of limitations. United has made no admission of wrongdoing in this matter.

If you wish to receive this payment, please sign below and return the bottom part of the notice in the enclosed pre-addressed, pre-stamped envelope.

UNITED BUILDERS, INC.

(Tear off and return)

The money which the escrow agent will send me should be sent to this address:

SIGN HERE _____

PRINT YOUR NAME _____

PRINT YOUR ADDRESS _____

(5) On or before the thirty-fifth (35th) day after the date this order becomes final, respondents, their agent or the escrow agent shall seek to obtain, for each customer whose letter is returned to respondents undelivered, a current mailing address by the following methods: (1) contacting the holder of the entitled customer's indebtedness; and (2) contacting telephone and utility companies. Respondents, their agent or the escrow agent shall use the address so obtained to comply with subparagraph (3) above, on or before the forty-fifth (45th) day after the date this order becomes final, but not less than ten (10) days after the date each letter is returned to respondents undelivered.

(6) Respondent shall instruct the escrow agent as follows:

(a) The escrow agent shall receive and keep each signed and returned letter set forth in subparagraph (4) sent to it by each entitled customer.

(b) On the seventieth (70th) day after the date this order becomes final, or on the first business day thereafter if said seventieth (70th) day is not a business day, the escrow agent shall compute the amount to be paid to each entitled customer who has signed and returned the letter set forth in subparagraph (4) to the escrow agent

by dividing the sum remaining in the escrow account after payment of the escrow agent's fees and expenses equally among those entitled customers; *provided, however*, that no pro rata share may exceed \$1,250.

(c) By the second business day after computation as provided in subparagraph (6)(b), the escrow agent shall mail a cashier's check for the amount computed in subparagraph (6)(b) to each entitled customer who has signed and returned the letter set forth in subparagraph (4) to the escrow agent with his current address. Said mailing shall be by first-class mail. Enclosed with each check shall be the following letter:

Dear Customer of United Builders:

Here is a check for \$ _____, which is your share of the \$17,500 being returned, as we told you in our previous letter. This check does not affect your schedule of payments.

(Escrow Agent for United Builders)

(d) Any checks which are returned uncashed shall be redeposited in the escrow account.

(e) Upon the ninetieth (90th) day after the date this order becomes final, the escrow agent shall terminate the escrow account, and disburse any monies left therein to respondents.

Respondents' obligation under Paragraph III shall terminate upon the performance of the escrow agent's obligations as set forth in this subparagraph.

IV

It is further ordered, That respondents deliver a copy of this order to all present and future sales personnel whose services are engaged by respondents, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

V

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, voluntary bankruptcy, assignment, the creation or dissolution of subsidiaries, or any other change in the corporation.

VI

It is further ordered, That the individual respondents named

herein promptly notify the Commission of the discontinuance of their present business or employment. In addition, for a period of ten (10) years from the effective date of this order, the respondents shall promptly notify the Commission of each affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged, as well as a description of their duties and responsibilities. The expiration of the notice provision of this paragraph shall not effect any other obligation arising under this order.

VII

It is further ordered. That respondents shall, within sixty (60) days after the effective date of this order, and within thirty (30) days after the termination of the escrow account, file with the Commission a report in writing setting forth the manner in which they have complied with the provisions of this order, and any future compliance reports in the form and manner which the Commission may order.

Complaint

92 F.T.C.

IN THE MATTER OF

COOGA MOOGA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2925. Complaint, Aug. 9, 1978—Decision, Aug. 9, 1978*

This consent order, among other things, requires a Los Angeles, Ca. marketer and promoter of Acne-Staton, a product advertised for the treatment of acne, to cease disseminating advertisements which misrepresent, through endorsements or otherwise, the characteristics, performance, efficacy or superiority of its skin products. Additionally, the firm is required to maintain ad substantiation records for a specified period of time; and to pay a pro rata share of any restitution which might be ordered by the Commission or a court.

*Appearances*For the Commission: *Mark A. Heller* and *Ira R. Nerken*.For the respondents: *James J. Cook*, Los Angeles, California.

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 Cooga Mooga, Inc. (hereinafter "Cooga Mooga"), a corporation, and Charles E. Boone (hereinafter "Boone"), as an individual and corporate officer, hereinafter, at times referred to as respondents, having violated the provisions of the 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. "Cooga Mooga" 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 9255 Sunset Boulevard, Suite 519, Los Angeles, California.

PAR. 2. "Boone" is an individual and corporate president of "Cooga Mooga." He formulates, directs and controls the acts and practices of "Cooga Mooga," including the acts and practices described herein, and he is the principal beneficiary of the corporation's business. "Boone's" business address is 9255 Sunset Boulevard, Suite 519, Los Angeles, California.

PAR. 3. Respondent "Cooga Mooga" is a privately held corporation which was organized and is maintained for the purpose of promoting and conducting the business interests of "Boone." "Cooga Mooga"

and "Boone" in conjunction with Karr Preventative Medical Products, Inc., a California corporation, Dr. Atida H. Karr, The National Media Group, Inc., a Delaware corporation and Robert J. Marsh have been and now are engaged in the business of marketing and advertising health related products, including but not limited to the product Acne-Statin, a product advertised for the treatment of acne. The above-named parties, in connection with the manufacture and marketing of said product, have disseminated, published and distributed, and now disseminate, publish and distribute advertisements and promotional material for the purpose of promoting the sale of Acne-Statin for human use. This product, as advertised, is a "drug" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. "Boone" for his part, aided the promotion of Acne-Statin by providing an endorsement which related directly to the product's efficacy, the medical evaluation of the product and his family's satisfaction with the product. This endorsement appeared in virtually every disseminated advertisement for Acne-Statin. In return for his endorsement "Boone" received a share of the product's sales.

PAR. 5. In the course and conduct of their said business, the respondents have disseminated and caused the dissemination of certain advertisements concerning Acne-Statin through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, the insertion of advertisements in magazines and newspapers with national circulations and the placement of advertisements through television stations with sufficient power to broadcast across statelines and into the District of Columbia and advertisements in the form of a booklet, entitled "Acne: Its Cause and Its Treatment" which was, and is, sent through the United States mail, for the purpose of inducing and which was likely to induce, directly or indirectly, the purchase of the product Acne-Statin; and have disseminated and caused the dissemination of advertisements concerning said products by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said products in commerce.

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

"ACNE? Our girls got lasting help with Acne-Statín"

"With four daughters, we've tried the leading acne medications at our house, and nothing ever seemed to work until our girls met a Beverly Hills doctor and got some real help through a product she developed called 'Acne-Statín'."



Pat Boone and his daughter Debbie.

The doctor explained that a bacteria called "C-Acne" located deep in the pores of the skin breaks the oil in the pores into Fatty Acids. The pores become blocked and irritated, resulting in blemishes, blackheads, whiteheads and pimples.

WHAT MAKES ACNE-STATIN SO DIFFERENT?

The doctor went on to say that many medications only attack acne at the surface level by attempting to dry-up the oil. Usually this is ineffective against Acne, and only irritates, dries and peels the skin. ACNE-STATIN goes right to the root of the problem. It liquefies all body temperature and deposits an antibacterial agent that kills bacteria on contact, and keeps on killing bacteria hours after each washing. The photographs below dramatically demonstrate Acne-Statín's continual effectiveness compared to the ineffectiveness of soap.

WHAT ABOUT SENSITIVE SKIN?

Debbie said that even when she leaves it on overnight it doesn't irritate or dry her skin. Dr. Karr explained that it is hypo-allergenic and that it contains a moisturizer. So it leaves even sensitive skin moist and soft with NO PEELING, REGARDLESS OF AGE or sex. Acne-Statín helps control skin irritations from occasional blemishes to chronic acne. DR. ATIDA KARR's genuine concern for skin care was as impressive to me as her credentials. In addition to being an M.D. she also

has an M.S. in Physiology and a Ph.D. in Cellular Physiology and Biochemistry. For five years she was involved in cancer research at the University of Pennsylvania under a federal grant.

Equally impressive were the letters she had received from youth and adults alike who had received significant help with Acne-Statín. HERE ARE EXCERPTS from two of those letters. The first one is from an editor of one of the nation's leading fashion magazines.

"Thank you for recommending your fabulous product. I have literally tried everything on the market, plus some of my own home remedies and have spent hundreds, in fact probably thousands of dollars on treatments, facials and the like and nothing has ever really cleared up my skin, much less left it in good condition. That's why I can't believe that such a pleasant lotion-like cleanser and treatment like Acne-Statín could work as thoroughly as it did. It really is fantastic. It's the only thing that has ever worked."

"Being 25 and having had occasional acne for the past 10 years, I have tried almost every commercial and prescription product, and the results have varied. Since using your Acne-Statín for the first time I have a clear complexion. As an actress, it is necessary that I have my skin clear. My blemishes are completely gone. Not just on the surface, but all traces of infection have disappeared. My skin has reached a balanced condition."

MONEY BACK IF NOT DELIGHTED

If you are not pleased with the help you get you may return the empty container for a full refund.

ACNE-STATIN IS NOT AVAILABLE IN STORES

But you can order a 30-day four-ounce treatment without a prescription for only \$9.50. Order now and you'll receive FREE the booklet entitled "Acne, Its Cause and Its Treatment" by Atida Karr, M.D.

HERE'S HOW TO ORDER

1. Complete the coupon below. Be sure to mark the number of bottles you wish to order.
2. Make out a check or money order for the appropriate amount, or use Master Charge or BankAmericard. Be sure to add 50¢ for postage for each bottle.
3. Mail the coupon with payment to: ACNE-STATIN; P.O. BOX 100; BEVERLY HILLS, CALIFORNIA 90213.

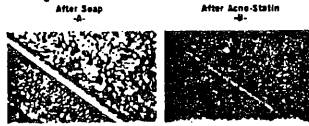
ORDER NOW AND RECEIVE FREE

This booklet, "Acne, Its Cause and Its Treatment" by Atida H. Karr, M.D.



SEE THE DIFFERENCE

In these microscopic photographs, each tiny "bubble" is a COLONY of millions of bacteria. Slide A is part of a facial culture taken eight hours after washing with soap. As you can see there are still countless bacterial colonies. Slide B shows a culture of the same facial area a full eight hours after washing with Acne-Statín. Acne-Statín kills bacteria on contact, and keeps on killing bacteria hours after each washing.



Mademoiselle for May 1977

Mail coupon with payment to: NO-577
ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90213

Please Rush _____ 30 day 4-oz. bottles of Acne-Statín.
 Enclosed is \$10.00 (\$9.50 + 50¢ postage & handling for each)

BankAmericard Check or Money Order Master Charge

PLEASE PRINT
 CREDIT CARD # _____ EXP. DATE _____
 NAME _____
 ADDRESS _____ APT. NO. _____
 CITY _____ STATE _____ ZIP _____
 SIGNATURE _____
 (IF USING CREDIT CARD)

KPMP Products 510 E. Commercial St. Los Angeles, Calif.

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Complaint

Radio TV Reports

41 East 42nd Street New York N.Y. 10017
(212) 697-5100

PRODUCT:
PROGRAM:
PAGE 1

ACNE STATIN -
NEWS
WPJX-TV

2/15/77
(NEW YORK)

771887
120 SEC.
10:19PM



1. PAT BOONE: Acne is painful, both physically and emotionally. I don't care if you're a teenager or an adult.



2. Acne causes embarrassment and anxiety.



3. I'm one of the lucky ones. I never had much of a skin problem.



4. but I do have four daughters. We've tried a lot of skin cleansers and medications around our house.



5. And nothing ever really seemed to work, did it, Deb?



6. DEBBIE BOONE: No, not until my sisters and I met a Beverly



7. Hills doctor and got some real help through a product she developed called Acne Statin.



8. PAT: Right. The doctor explained that a bacteria called C-Acne



9. located deep in the pores of the skin, breaks the oil of the pores into fatty acids.



10. The pores become blocked and irritated.



11. This results in blemishes, whiteheads, blackheads, and pimples.



12. DEBBIE: Many medications only attack acne at the surface level by trying to draw out the oil.



13. Usually this doesn't work against acne.



14. It only irritates, dries and peels the skin.



15. PAT: Let me show you a photograph.



16. Here are thousands of bacteria colonies still left on facial skin after washing with soap.

Complaint

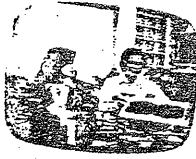
92 F.T.C.

Radio TV Reports

51 East 42nd Street New York N.Y. 10017
(212) 697-5100

PRODUCT: ACNE STATIN
PROGRAM: NEWS
PAGE 2 WPIX-TV
2/15/77
(NEW YORK)

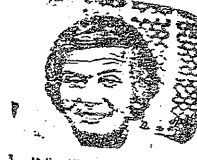
771887
120 SEC.
10:18PM



1. Now, here are the same areas eight hours after using Acne Statin.



2. See, Acne Statin goes right to the root of the problem.



3. It liquifies at body temperature so that it can penetrate deep into the pores.



4. And there it deposits an anti-bacterial agent that kills the bacteria responsible for acne.



5. and keeps on killing the bacteria hours after each application.



6. DEBBIE: I like it because it's lotion-like, not greasy, and it goes on clear, leaving my skin moist and soft.



7. PAT: Acne Statin is not available in stores.



8. but you can order a full 30-day four ounce treatment without prescription.



9. And if you're not completely satisfied, you just return the empty container for a full refund.



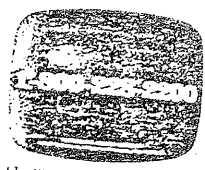
10. Order right away, and you'll also receive a booklet entitled,



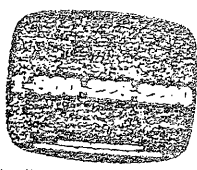
11. "Acne: It's Cause And Treatment", by Tina Carr, M.D. Here's how to order.



12. ANMCR: Call toll free, 1-800-228-2200.



13. When your package arrives, pay just \$9.50 plus C.O.D. Postage



14. That's 1-800-228-2200, 1-800-228-2200. This is a free call.

"ACNE?"
Our girls got
lasting help with
Acne-StatinSM

See why over
700,000
 families have
 switched
 to **ACNE-
 STATIN!**

"With four daughters, we've tried the leading acne medications at our house, and nothing ever seemed to work until our girls met a Beverly Hills doctor and got some real help through a product she developed called 'Acne-Statin.'"

The doctor explained that a bacteria called "C-Acne" located deep in the pores of the skin breaks the oil in the pores into Fatty Acids. The pores become blocked and irritated, resulting in blemishes, blackheads, whiteheads and pimples.

WHAT MAKES ACNE-STATIN SO DIFFERENT?

The doctor went on to say that many medications only attack acne at the surface level by attempting to dry-up the oil. Usually, this is ineffective against Acne, and only irritates, dries and peels the skin. ACNE-STATIN goes right to the root of the problem. It liquefies at body temperature and deposits an anti-bacterial agent that kills bacteria on contact, and keeps on killing bacteria hours after each washing. The photographs below dramatically demonstrate Acne-Statin's continual effectiveness compared to the ineffectiveness of soap.

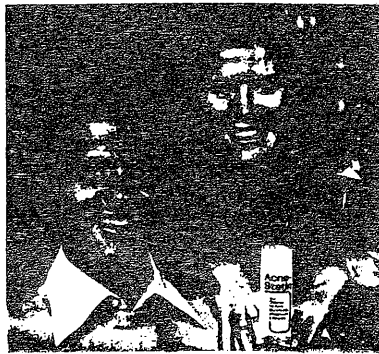
WHAT ABOUT SENSITIVE SKIN?
 Diane said that even when she leaves it on overnight it doesn't irritate or dry her skin. Dr. Karr explained

that it is hypo-allergenic and that it contains a moisturizer. So it leaves even sensitive skin moist and soft with **NO PEELING, REGARDLESS OF AGE or sex.** Acne-Statin helps control skin irritations from occasional blemishes to chronic acne.

DR. ATIDA KARR a genuine concern for skin care was as impressive to me as her credentials. In addition to being an M.D., she also has an M.S. in Physiology and a Ph.D. in Cellular Physiology and Biochemistry. For five years she was involved in cancer research at the University of Pennsylvania under a federal grant.

Equally impressive were the letters she had received from youth and adults alike who had received significant help with Acne-Statin. **HERE ARE EXCERPTS** from two of those letters. The first one is from an editor of one of the nation's leading fashion magazines.

"Thank you for recommending your fabulous product. I have literally tried everything on the market, plus some of my own home remedies and have spent hundreds, in fact probably



Pat Boone and her daughter Deby

thousands of dollars on treatments, facials and the like and nothing has ever really cleared up my skin, much less left it in good condition. That's why I can't believe that such a pleasant lotion-like cleanser and treatment like Acne-Statin could work as thoroughly as it did. It really is fantastic. It's the only thing that has ever worked."

"Being 25 and having had occasional acne for the past 10 years, I have tried almost every commercial and prescription product, and the results have varied. Since using your Acne-Statin, for the first time I have a clear complexion. As an actress, it is necessary that I have my skin clear. My blemishes are completely gone. Not just on the surface, but all traces of infection have disappeared. My skin has reached a balanced condition."

ACNE-STATIN IS NOT AVAILABLE IN STORES

But you can order a 30-day four-ounce treatment without a prescription for only \$9.50. Order now and you'll receive **FREE** the booklet entitled "Acne, Its Cause and Its Treatment" by Atida Karr, M.D.

HERE'S HOW TO ORDER

1. Circle the coupon below. Be sure to mark the number of bottles you wish to order.
2. Make out a check or money order for the appropriate amount, or use Master Charge or BankAmericard. Be sure to add 50¢ for postage for each bottle.
3. Mail the coupon with payment to: **ACNE-STATIN, P.O. BOX 100, BEVERLY HILLS, CALIFORNIA 90212.**

ORDER NOW AND RECEIVE FREE

This booklet, *Acne, Its Cause and Its Treatment* by Atida H. Karr, M.D.

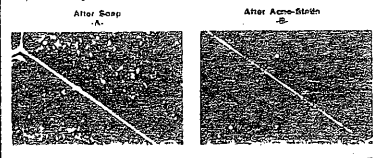


MONEY BACK
IF NOT DELIGHTED

If you are not pleased with the help you get you may return the empty container for a full refund.

SEE THE DIFFERENCE

In these microscopic photographs, each tiny "bubble" is a COLONY of millions of bacteria. Side A is part of a facial culture taken eight hours after washing with soap. As you can see there are still countless bacterial colonies. Side B shows a culture of the same facial area a full eight hours after washing with Acne-Statin. Acne-Statin kills bacteria on contact, and keeps on killing bacteria hours after each washing.



Mail coupon with payment to
ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90212 P-12-77

Please Rush 30 day 4-oz. bottles of Acne-Statin
 Enclosed is \$10.00 (\$9.50 + 50¢ postage & handling for each)

BankAmericard Check or Money Order Master Charge

PLEASE PRINT
 CREDIT CARD # _____ EXP. DATE _____
 NAME _____
 ADDRESS _____ APT. NO. _____
 CITY _____ STATE _____ ZIP _____
 SIGNATURE _____

IF USING CREDIT CARD:
 KPMF Products, 310 E. Commercial St., Los Angeles, Calif.

PAR. 7. Through the use of said advertisements and others referred to in Paragraphs Five and Six, respondents represented, and now represent, directly or by implication that:

- a. Use of Acne-Statin will cure acne regardless of the severity of the condition.
- b. Acne-Statin can penetrate the pores of the skin to eliminate the bacteria responsible for pimples, blackheads, whiteheads and other acne blemishes.
- c. Acne-Statin can penetrate the pores of the skin to eliminate the fatty acids responsible for pimples, blackheads, whiteheads and other acne blemishes.
- d. Acne-Statin is superior to all other acne preparations in the antibacterial treatment of acne.
- e. Acne-Statin is superior to soap in the antibacterial treatment of acne.
- f. Acne-Statin is a medically and scientifically tested acne treatment.
- g. All of "Boone's" daughters used Acne-Statin for the treatment of acne and experienced favorable results.

PAR. 8. In truth and in fact:

- a. Use of Acne-Statin will not cure acne.
- b. Acne-Statin cannot penetrate the pores of the skin to eliminate the bacteria contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.
- c. Acne-Statin cannot penetrate the pores of the skin to eliminate the fatty acids contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.
- d. Acne-Statin is not superior to prescription and over-the-counter drug preparations which are efficacious in the antibacterial treatment of acne.
- e. Neither Acne-Statin nor soap is an effective antibacterial treatment for acne.
- f. At the time of the dissemination of the advertisements referred to in Paragraph Five *supra*, Acne-Statin was neither medically nor scientifically tested as an acne treatment.
- g. Not all of "Boone's" daughters used Acne-Statin for the treatment of acne or for any other skin condition.

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

PAR. 9. Furthermore, through the use of the advertisements

referred to in Paragraphs Five and Six, respondents represented, and now represent, directly or by implication that:

- a. Use of Acne-Statin by persons with acne will result in skin free of pimples, blackheads, whiteheads and other acne blemishes.
- b. Acne-Statin can penetrate the pores of the skin to eliminate the cause of acne.
- c. Acne-Statin is superior to all prescription acne preparations for the treatment of acne.
- d. Acne-Statin is superior to all other over-the-counter acne preparations for the treatment of acne.

PAR. 10. There existed at the time of the first dissemination of the representations contained in Paragraphs Seven a, b, c, and f and Nine no basis for the making of these representations. Therefore, the making and dissemination of said representations as alleged, constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce.

PAR. 11. Through the use of photographs of bacterial colonies, in both the print and television advertisements referred to in Paragraphs Five and Six, respondents represented, and now represent, to consumers that Acne-Statin effectively kills "C-acne," the bacteria responsible for acne.

PAR. 12. In truth and in fact, the slides in the photographs did not contain "C-acne," correctly C-acnes, now generally referred to as P-acnes. They contained staph and other resident bacteria on the facial surface, an environment in which "C-acne" (P-acnes) does not survive. Furthermore, these surface bacteria are neither involved nor in any manner related to the cause of acne.

Therefore, the use of the photographs of bacteria in the advertisements referred to above, constituted, and now constitute, false, misleading or deceptive acts or practices.

PAR. 13. In the course and conduct of its aforesaid business, and at all times mentioned herein, the respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals representing or engaged in the over-the-counter and prescription drug industries.

PAR. 14. The use by respondents of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid false advertise-

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

DECISION AND ORDER

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

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

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

1. Respondent Cooga Mooga, 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 at 9255 Sunset Boulevard, Suite 519, Los Angeles, California.
2. Respondent Charles E. Boone is an individual and corporate officer of Cooga Mooga, Inc., and maintains an office at 9255 Sunset Boulevard, Suite 519, Los Angeles, California.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered. That respondents Cooga Mooga, Inc., a corporation, and Charles E. Boone, individually and as a corporate officer, their successors and assigns, either jointly or individually, and the corporate respondent's 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 all products do forthwith cease and desist from:

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

1. Represents that use of Acne-Statin will cure acne or any skin condition associated with acne.
2. Represents that Acne-Statin will eliminate or reduce the bacteria responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.
3. Represents that Acne-Statin will eliminate the fatty acids responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.
4. Represents that Acne-Statin is superior to prescription or over-the-counter antibacterial acne preparations in the treatment of acne.
5. Represents that Acne-Statin is superior to soap in the antibacterial treatment of acne.
6. Represents that either Charles E. Boone or any member of his family used and/or benefited from a product, unless such representation is true.
7. Misrepresents the extent to which any product has been tested or the results of any such test(s).
8. Misrepresents the efficacy, use or the mode of performance of any product where the use or misuse of the product may affect the health or safety of the user.

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

1. Represents that use of Acne-Statin or any other acne product by persons with acne will result in skin free of pimples, blackheads, whiteheads or any other blemishes associated with acne;
2. Represents that Acne-Statin or any other acne product can

eliminate the cause of acne or any skin condition associated with acne;

3. Represents that Acne-Statin or any other acne product is superior to prescription or over-the-counter acne preparations in the treatment of acne or any skin condition associated with acne, unless, at the time of each dissemination of such representation(s) respondents possess and rely upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). Competent and reliable scientific or medical evidence shall be defined as evidence in the form of at least two double-blind clinical studies which conform to accepted designs and protocols and are conducted by different persons, independently of each other. Such persons shall be dermatologists who are recognized as specialists in acne and its treatment and who are experienced in conducting such studies.

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

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

1. Represents through an endorsement that use of Acne-Statin or any other acne product by persons with acne will result in skin free of pimples, blackheads, whiteheads or any other blemishes associated with acne;

2. Represents through an endorsement that Acne-Statin or any other acne product can eliminate the cause of acne or any skin condition associated with acne;

3. Represents through an endorsement that Acne-Statin or any other acne product is superior to prescription or over-the-counter acne preparations in the treatment of acne or any skin condition associated with acne;

4. Makes representations through an endorsement, referring or relating to the performance or efficacy of any product or referring or

relating to any characteristics, property or result of the use of any product, unless, prior to the time of the first dissemination of such representation(s), respondents make a reasonable inquiry into the truthfulness of a proposed endorsement and possess and rely upon information from reliable sources independent of the advertiser or other parties with an interest in the product or service which is the subject of the endorsement. For purposes of this provision "information" may include tests or studies in the possession of the advertiser; however, such information must be independently evaluated by reliable sources in order to provide a basis for an endorsement. For products or services not related to health or safety, respondents may rely on the personal experience of the endorser where the evaluation of such products or services, for purposes of any endorsement, requires no professional expertise and such products or services can be reasonably evaluated through lay use. Additionally, if a material connection exists between the endorser and the advertiser or its advertising agency, such connection must be disclosed in the advertisement(s) which contain the endorsement. A "material connection" shall mean, for purposes of this section, any financial interest in the sale of the product or service which is the subject of the endorsement or any familial connection between the endorser and the advertiser or its advertising agency.

II

It is further ordered, That if any party involved in the marketing, sale and/or advertising of Acne-Statin is directed, by a final order of the Commission or a final court decree, to make restitution, then respondents Cooga Mooga, Inc. and/or Boone will contribute their pro rata share to such restitution. Such restitution shall not exceed the total amount of monies paid by the Acne-Statin Joint Venture and/or any party to that venture to Cooga Mooga, Inc. and/or Boone. Furthermore, such restitution shall be limited to no more than twenty-five cents (25¢) for each bottle for which a refund is returned. However, if a partial restitution is ordered, respondents' pro rata share of such restitution shall be the fraction, that is twenty-five cents (25¢) per bottle (the numerator) over the actual sales price of the bottle (the denominator), of the restitution ordered.

Respondent's restitution shall be confined to all purchases made during the advertising campaign which contained "Boone's" endorsement and all reorders made by persons who first purchased Acne-Statin during such campaign or for a period of two (2) months

after the last disseminated advertisement bearing "Boone's" endorsement; *provided, however*, if a United States District Court, pursuant to Section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b, imposes different restitution obligations on Cooga Mooga, Inc. and/or Boone, such obligations shall supersede this order provision. However, if the District Court does not address the respondents as parties, their obligation for restitution shall be defined by this provision.

III

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

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

It is further ordered, That each respondent shall, within sixty (60) days after this order becomes final, and annually thereafter for one (1) year, file with the Commission a report, in writing, signed by respondent, setting forth in detail the matter and form of its compliance with this order.

It is further ordered, That each respondent shall maintain files and records of all substantiation related to the requirements of Parts IB, IC and ID of this order for a period of five (5) years after the first dissemination of any advertisement which relates to that portion of the order. Additionally, such materials shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a demand for such material.

Interlocutory Order

IN THE MATTER OF

COCA-COLA BOTTLING COMPANY OF NEW YORK, INC.

Docket 8992. Interlocutory Order, August 11, 1978

This order grants complaint counsel's motion for reconsideration of a previous Commission denial of their request for an extension of time to file a brief.

ORDER GRANTING MOTION FOR RECONSIDERATION

On August 9, 1978, Complaint Counsel filed a Motion for Reconsideration of Order Denying Request for Eleven Day Extension of Time in Which to File Appeal Brief. Their initial request was denied on the ground that general allegations of burden are not sufficient for an extension of time.

Since complaint counsel's Motion for Reconsideration now cites with specificity their obligations in *Beltone Electronics*, Dkt. 8928 and *Amway Corp.*, Dkt. 9023, that defect is cured. The Commission is aware of the time and work burdens associated with both cases and finds that those obligations are sufficient to justify this limited extension.

It is the Commission's intention that the time limitations set forth in Rule 3.52 are to be maintained. General allegations of burden, without more, will not suffice for an extension of time. Furthermore, specificity alone will not always carry the day. The Commission must be convinced that the burdens which counsel plead are genuine and not brought on by counsel's own lack of diligence. Accordingly,

It is ordered, That complaint counsel's Motion for Reconsideration of Order Denying Request for Eleven Day Extension of Time in Which to File Appeal Brief be, and the same hereby is, granted, and complaint counsel are given to and including August 22, 1978, within which to file an appeal brief.

Modifying Order

92 F.T.C.

IN THE MATTER OF

RUBBERMAID INCORPORATED

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8939. Complaint, Sept. 5, 1973 — Modifying Order, Aug. 17, 1978*

This order reopens proceedings and modifies the cease and desist order issued on April 13, 1976, 41 FR 20161, 87 F.T.C. 676, by replacing Sections III and IV of the original order. The modification eliminates the requirement to send copies of the order to resellers of firm's products; provides a description of the required notice to be sent to resellers; and places the responsibility of sending such notice to indirect resellers on company's distributors.

ORDER MODIFYING ORDER TO CEASE AND DESIST

On August 7, 1978, respondent and complaint counsel jointly petitioned the Commission to reopen this proceeding to modify Sections III and IV of the order to cease and desist which issued on April 13, 1976, and became final on August 7, 1978.¹

Section III of the order requires that respondent provide its direct and indirect resellers a copy of the order and a notice describing generally respondent's policy relating to resale prices. Section III further provides that those customers terminated because they failed to comply with any refusal-to-deal provision, will be extended an offer to be reinstated. Finally, Section III provides for the treatment of complaints relating to the provisions of the notice.

Section IV requires respondents, for a period of five years, to send a copy of the order to new resellers to whom it directly sells.

By the proposed modification the order would describe the content of the notice to be sent to resellers and would relieve respondent of the requirement that it send a copy of the order to resellers. The proposed modification would further provide that respondent's distributors, rather than respondent, send notices to indirect resellers.

Because of the repeal of the McGuire Act and the consequent end of state-sanctioned resale price maintenance, several of the provisions in the order and the notice to be sent resellers are no longer relevant and would likely be misunderstood by resellers of respondent's products. As a further result of the abandonment of state-sanctioned resale price maintenance, respondent no longer is required to, nor does it, retain the names of indirect purchasers.

¹ Petitioners also filed on August 8, 1978, a Joint Motion for Suspension of Compliance. This order obviates the necessity for the requested suspension of compliance and therefore the motion is rejected.

These changed conditions of fact and law warrant the modifications requested by respondent and complaint counsel.

Accordingly,

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

It is further ordered, That the order to cease and desist be, and it hereby is, modified by substituting for Sections III and IV of the order, the following:

III

It is further ordered, That respondent shall:

1. Within sixty (60) days from the date upon which this order becomes final:

(a) mail or deliver to all resellers which purchase directly from respondent a copy of the notice attached as Exhibit A, and execute an affidavit so stating; and

(b) mail or deliver to each of respondent's wholesalers sufficient additional copies of the notice attached hereto as Exhibit A and request such wholesalers

(i) to mail or deliver these notices to each reseller of respondent's goods with whom they deal; and

(ii) to affirm to respondent in writing that they have made the distribution of these notices as requested.

2. Within sixty (60) days from the date upon which this order becomes final, mail or deliver, and obtain a signed receipt for, a copy of the notice attached as Exhibit A and a written offer of reinstatement, to every reseller who has been terminated by, at the request of, or with the participation of respondent since January 1, 1966, for failure to comply with any refusal to deal provision of his contract, and reinstate forthwith any such reseller who within thirty (30) days thereafter requests reinstatement.

3. Immediately upon receipt, take such action as may be proper to insure correction of any complaints concerning the unavailability of Rubbermaid products to any reseller as a result of such reseller's pricing or customer selection policies or practices and retain such complaints and records of corrective action taken thereon for a period of five (5) years from the date on which each complaint is received. Reports of said complaints and of corrective action taken shall be included in reports to the Commission required by Paragraph V. 1. of this order.

IV

It is further ordered, That respondent shall:

Modifying Order

92 F.T.C.

1. Fully acquaint all appropriate present and future personnel with the provisions and the requirements of this order.
 2. For a period of five (5) years from the date of this order, mail or deliver a copy of the notice attached as Exhibit B to all new resellers to whom respondent directly sells.
- Commissioner Pitofsky did not participate.

EXHIBIT A

TO: All Rubbermaid Wholesalers and Retailers

SUBJECT: Discontinuance of Fair Trade Program

On June 10, 1975, we notified you that the Rubbermaid fair trade program was discontinued effective July 1, 1975. Pursuant to an order of the Federal Trade Commission, this is to remind you that since that time you have been free to sell all Rubbermaid products to such customers and at such prices as you see fit. Any contrary suggestions from any source are unauthorized and should be promptly reported to the company. It is Rubbermaid's policy to distribute its goods through its wholesalers and retailers without regard either to the resale prices charged by such wholesalers and retailers or to the customers to whom they resell.

We look forward to serving you in the future as we have in the past. We feel certain that Rubbermaid will continue to represent an excellent source of sales volume to you and will continue to represent good value and a brand name to be depended upon by consumers.

Cordially yours,

E.C. Donaldson
Vice President
Marketing

EXHIBIT B

TO: All New Rubbermaid Wholesalers and Direct Purchasing Retailers

SUBJECT: Sales of Rubbermaid Products

We look forward to serving you and welcome you as a Rubbermaid customer. We wish to emphasize that all Rubbermaid wholesalers and retailers are free to sell all Rubbermaid products to such customers and at such prices as they see fit. Any contrary suggestions from any source are unauthorized and should promptly be reported to the company.

We feel certain that Rubbermaid will represent an excellent source of sales volume to you and will represent good value and a brand name to be depended upon by your customers.

Yours truly,

E.C. Donaldson
Vice President
Marketing

Interlocutory Order

IN THE MATTER OF

JAMES B. LANSING SOUND, INC.

Docket C-1785. Interlocutory Order, Aug. 29, 1978

ORDER DENYING PETITION TO REOPEN

By petition of April 14, 1978, supplemented by reply memorandum of June 23, 1978,¹ respondent James B. Lansing Sound, Inc. (JBL) requests that a consent order issued against JBL on August 24, 1970 be modified to prohibit certain non-price vertical restrictions only when these restrictions are engaged in for the purpose of or with the effect of controlling retail prices.² JBL contends that changed conditions of law as well as the public interest warrant such a change. In particular, respondent relies upon the decision in *Continental T.V., Inc. v. GTE Sylvania*, 433 U.S. 36 (1977), and the presence of "vibrant intra-brand [sic] competition in the relevant product market" to support the requested modification. After due consideration of JBL's contentions, the Commission has determined to deny the petition.

As the Commission recently stated, *Sylvania* did not legalize territorial, customer, or other non-price vertical restrictions.³ Rather, the court simply directed that non-price vertical restrictions which are not part of a larger price-fixing scheme be scrutinized under the rule of reason when challenged under the Sherman Act.⁴ A respondent seeking relief from order prohibitions against vertical

¹ Respondent's motion for leave to file a reply memorandum is granted.

² The Commission's order [77 F.T.C. at 1168] currently requires JBL to cease and desist from:

1. Entering into, maintaining or enforcing any contract, agreement, combination, understanding or course of conduct which has as its purpose or effect the fixing, establishing or setting of the prices at which its independent dealers or distributors may resell their products; *provided, however*, that nothing contained herein shall be construed to prevent respondent from engaging in a legitimate fair trade program in those states having fair trade laws.

2. Preventing or prohibiting any independent dealer or distributor from reselling his products to any person or group of persons, business or class of businesses, except as may be expressly provided herein.

3. Preventing or prohibiting any independent dealer or distributor from soliciting sales outside of his market area.

4. Requiring its independent dealers or distributors to make their sales records available to respondent for inspection.

Respondent requests that the following language be inserted in lieu of Paragraphs 2, 3, and 4:

2. Engaging in any of the following activities for the purpose of or which have the effect of controlling the retail prices at which its products are sold or advertised:

(a) Preventing or prohibiting any independent dealer or distributor from reselling his products to any person or group of persons, business or class of businesses.

(b) Preventing or prohibiting any independent dealer or distributor from soliciting sales outside of his market area.

(c) Requiring its independent dealers or distributors to make their sales records available to respondent for inspection.

³ See Commission letter of May 19, 1978 to David J. Cynamon, Esq., regarding Performance Sailcraft, Inc., File No. 771 0027 at 2 ("Cynamon letter").

⁴ The *Sylvania* Court noted that the jury had rejected the allegation that *Sylvania's* location restriction was part of a larger scheme to fix prices and characterized this finding as "[m]ost important." 433 U.S. at 41 n.9.

restrictions premised upon allegations that Section 5 has been violated⁵ must therefore do more than assert that some of the practices covered by those prohibitions are no longer *per se* violations of the antitrust laws:

[O]ne asking to be relieved of order provisions concerning such territorial restrictions should be prepared to show that its restraints would not be part of a price-setting mechanism; that the restraints would be reasonable; and that the prohibitions against territorial restraints required by the order have harmed or would harm substantially the respondent's competitive position. Insofar as such a claim of competitive harm rests upon the premise that the respondent's competitors are using such restraints, a respondent should also be prepared to show that such competitors' restraints are reasonable.⁶

From this perspective, it is clear that respondent has not demonstrated that it deserves relief from the strictures of the order. JBL maintains that competition is "extremely intense," that JBL "can under no circumstances be considered as dominating the U.S. loudspeaker market," that it would be unfair and contrary to the public interest "to burden respondent with prohibitions which are more restrictive than those which are applicable to its competitors * * *," and that JBL would suffer "severe competitive disadvantage" if the order is not modified. Yet, in support of these contentions JBL offers only two pieces of information: (1) JBL's estimated market share of 7 percent in the U.S. market; and (2) the presence of 165 different brands of loudspeakers for sale in the U.S. market.

Such a showing is on its face inadequate since it does not address the Commission's outstanding orders involving JBL's competitors.⁷ With respect to other competitors who are not subject to similar cease and desist order, it is not clear to what extent these competitors are utilizing vertical restraints which are unavailable to JBL and which are "reasonable" under the antitrust laws, much less that JBL is under a "severe competitive disadvantage" as a result. Finally, it is impossible to endorse respondent's proffered modification absent a more comprehensive analysis of the intensity of interbrand competition in the market for loudspeakers. Respondent's share of the market viewed in conjunction with a listing of other available brands simply does not provide enough of an insight

⁵ Of course, it is well-settled that conduct which falls short of violating the Sherman Act may nevertheless run afoul of Section 5. *E.g.*, *F.T.C. v. Brown Shoe Co.*, 384 U.S. 316 (1966); *F.T.C. v. Sperry & Hutchinson Co.*, 405 U.S. 233, 242-46 (1972).

⁶ Cynamon letter at 5 n.4.

⁷ *TEAC Corp. of America*, Dkt. C-2752 (October 24, 1975) [86 F.T.C. 981]; *Sherwood Electronic Laboratories, Inc.*, Dkt. C-2753 (October 24, 1975) [86 F.T.C. 988]; *Sansui Electronics Corporation*, Dkt. C-2754 (October 24, 1975) [86 F.T.C. 955]; *U.S. Pioneer Electronics Corporation*, Dkt. C-2755 (October 24, 1975) [86 F.T.C. 1002]; *Nikko Electronic Corporation of America*, Dkt. C-2829 (July 12, 1976) [88 F.T.C. 31]; *United Audio Products, Inc.*, Dkt. C-2828 (July 12, 1976) [88 F.T.C. 24].

into the prevailing market structure and performance to facilitate an informed decision on the reasonableness of JBL's proposal.

Respondent attaches great significance to the Commission's acceptance of a consent order in *Levi Strauss & Co.*, Dkt. 9018, [92 F.T.C. —] since that case also involved allegations of resale price maintenance. The Commission's decision to accept a more limited order in *Levi Strauss* than the order against JBL cannot be construed as representing any definitive policy statement regarding cases which encompass both price and non-price vertical restraints. Each case must and will be judged on its own merits. Accordingly, *It is ordered*, That the respondent's petition is denied.

Complaint

92 F.T.C.

IN THE MATTER OF
AMERICAN SERVICE BUREAU, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FAIR CREDIT REPORTING ACT

Docket C-2926. Complaint, Sept. 7, 1978 — Decision, Sept. 7, 1978

This consent order, among other things, requires a Chicago, Ill. insurance investigations firm to cease soliciting or collecting impermissible information as a means of identifying consumers seeking required disclosure of file contents; and unfairly or deceptively attempting to obtain from consumers authorization to elicit excessive information. Additionally, the firm is required to provide those persons requesting or disputing file information a prescribed statement regarding their rights under the Fair Credit Reporting Act.

Appearances

For the Commission: *Dennis D. McFeely.*

For the respondent: *Richard V. Henry, Chicago, Ill.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fair Credit Reporting Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that American Service Bureau, Inc., a corporation, hereinafter sometimes referred to as respondent, has 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 as follows (all allegations hereinafter made in the present tense shall include the past tense):

PARAGRAPH 1. American Service Bureau, Inc. (hereinafter referred to as "ASB") is a corporation organized 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 211 East Chicago Ave., Chicago, Illinois.

PAR. 2. Respondent disseminates written, oral or other communications of information bearing on consumers' credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing consumers' eligibility for credit or insurance to be used primarily for personal, family, or household

purposes, or employment purposes, or other purposes listed in Section 604 of the Fair Credit Reporting Act (hereafter sometimes "FCRA").

Therefore, the respondent disseminates "consumer reports" as defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 3. Respondent, for monetary fees, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and uses means or facilities of interstate commerce for the purpose of preparing or furnishing consumer reports.

Therefore, respondent is a "consumer reporting agency" as defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 4. Respondent operates numerous branch offices throughout the United States. Respondent causes consumer reports and claims reports to be distributed through the mail from their branch offices located in many states to its customers located in other States of the United States, and in the ordinary course and conduct of its business regularly sends and receives substantial numbers of communications across state lines. "Claims reports" as used in this complaint is defined to mean all those reports prepared in connection with insurance claims.

Therefore, respondent maintains a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. When consumers request telephone disclosure of the nature and substance of information in their files, respondent, in the ordinary course and conduct of its business as aforesaid, sends to the requesting consumers a form transmittal letter, hereafter referred to as "transmittal letter," together with a questionnaire entitled "Identification and File Comparison" hereafter referred to as "identification form." The transmittal letter states, among other things:

The law requires that we exercise extreme care to insure that information in our files is not divulged to unauthorized persons. By completing the enclosed Identification Form, #134, you will be providing the necessary verification information as required.

* * * * *

Upon receipt of the Identification and File Comparison Form, #134, signed as necessary, and payment if required, we will phone you collect, person to person, and disclose all the information we have in our file in accordance with the Fair Credit Reporting Act.

The identification form states, among other things:

Complaint

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This form when completed will provide proper identification as required by Public Law 91-508 (Fair Credit Reporting Act). It will also assist in our desire to keep your costs (Telephone Toll Charge) to a minimum when disclosure is made. Thank you.

The said identification form requests certain items of information, among others, through inclusion thereon of the following inquiries:

- a. "Divorced _____";
- b. "I have _____ dependents";
- c. "I have been so employed for _____ years";
- d. "Nature of my business is _____";
- e. "My occupation for the past five years has been _____";
- f. "My appr. worth is _____";
- g. "My appr. income is _____";
- h. "I own the following real estate _____";
- i. "I have the following banking connections _____";
- j. "Checking # _____";
- k. "Savings # _____";
- l. "Court records, if any, (Including Driving) in my name are as follows _____";
- m. "References:
 1. (Name) _____ (Address) _____ (Phone) _____
 2. (Name) _____ (Address) _____ (Phone) _____
 3. (Name) _____ (Address) _____ (Phone) _____
 4. (Name) _____ (Address) _____ (Phone) _____"

PAR. 6. By and through its use of the transmittal letter and the identification form described in Paragraph Five, respondent represents that FCRA requires the completion of the identification form as a prerequisite to the providing of the telephone disclosures to consumers required by Section 610 of FCRA of the information required to be disclosed by Section 609 of FCRA. In truth and in fact, FCRA does not require the completion of the identification form as a prerequisite to the providing of the telephone disclosures to consumers required by Section 610 of FCRA of the information required to be disclosed by Section 609 of FCRA.

Therefore, the acts and practices alleged in Paragraph Five are unfair, misleading and deceptive.

PAR. 7. In a substantial number of instances respondent has failed to provide the disclosures required by Sections 609 and 610 of FCRA because some or all of the information sought to be elicited by requests "a" through "m" contained in the identification form described in Paragraph Five was not provided by the consumer. Inasmuch as the supplying by the consumer of such information is not a condition permitted by the Fair Credit Reporting Act to respondent's obligations under Sections 609 and 610 of that Act, the

stated failure of respondent to provide the disclosures is a violation of Sections 609 and 610 of FCRA.

PAR. 8. In addition to the identification form described in Paragraph Five, respondent, in the ordinary course and conduct of its business as aforesaid, encloses with the transmittal letter described in Paragraph Five an agreement form, hereafter referred to as "agreement," which is captioned as follows:

AGREEMENT

(To be signed and returned to the American Service Bureau)

The said agreement includes the following provision:

To assist me and the American Service Bureau, Inc. to resolve any items in question or in dispute in accordance with Public Law 91-508 (Fair Credit Reporting Act) I authorize the American Service Bureau, Inc. to conduct an investigation at its own expense and hereby authorize any business, any organization, any professional man, or anyone else, to disclose full information about me and to give to the American Service Bureau, Inc. copies of any records about me.

At the bottom of the agreement there is a place for the signature of the consumer.

PAR. 9. By and through their use of the transmittal letter and agreement described in Paragraph Eight, respondent represents that consumers seeking telephone disclosure of the information required to be disclosed by Section 609 of FCRA are required by respondent's internal procedures and/or FCRA to sign the agreement to obtain the disclosures.

In truth and in fact, it is not required by either respondent's internal procedures or FCRA that consumers seeking telephone disclosure of the information required to be disclosed by Section 609 of FCRA sign the said agreement to obtain the disclosures.

Therefore, the acts or practices alleged in Paragraph Eight are unfair, misleading, and deceptive.

PAR. 10. In the ordinary course and conduct of its business as aforesaid, when consumers appear in person to obtain disclosure of the information required to be disclosed by Section 609 of FCRA, respondent presents to the consumers a document captioned "STATEMENT CONCERNING CONTENTS OF FILE," hereafter sometimes referred to as "statement form." This document provides consumers with the option of accepting by signature the information in the file as disclosed or, alternatively, provides a space for consumers to

dispute statements in the file by providing a written statement of their own.

The statement form includes the following provision (hereafter referred to as the "dispute investigation authorization").

To assist me and the American Service Bureau, Inc. to resolve any items in question or in dispute in accordance with Public Law 91-508 (Fair Credit Reporting Act) I authorize the American Service Bureau, Inc. to conduct an investigation at its own expense and hereby authorize any business, any organization, any professional man, or anyone else, to disclose full information about me and give to the American Service Bureau, Inc. copies of any records about me.

At the bottom of the statement form there is a place for the signature of the consumer.

PAR. 11. By and through its use of the statement form described in Paragraph Ten, respondent represents that the Fair Credit Reporting Act requires the signing of the statement form and assent to the dispute investigation authorization contained therein as a prerequisite to consumers' rights to dispute the completeness or accuracy of any item of information on themselves contained in respondents' files.

In truth and in fact, the signing of the statement form and assent to the dispute investigation authorization is not a prerequisite to consumers' rights to dispute the completeness or accuracy of any item of information on themselves contained in respondent's files.

Therefore, the acts and practices alleged in Paragraph Ten are unfair, misleading and deceptive.

PAR. 12. In a substantial number of instances respondent has failed to permit consumers to dispute items of information in its files pursuant to Section 611(a) of FCRA unless they sign their name to the statement form described in Paragraph Ten. Inasmuch as the signing of the statement form requires assent to the dispute investigation authorization and such assent is not a permitted condition to the right of the consumer to dispute information or obtain a reinvestigation pursuant to Section 611(a) of FCRA, the above-stated failure of respondent is a violation of Section 611(a) of the Fair Credit Reporting Act.

Therefore, the acts or practices alleged herein are unfair, misleading and deceptive.

PAR. 13. The acts and practices set forth in Paragraphs Five, Six, Eight, Nine, Ten, and Eleven are in violation of Section 5 of the Federal Trade Commission Act. The acts and practices set forth in Paragraphs Five, Seven, Ten and Twelve are in violation of the Fair Credit Reporting Act, and pursuant to Section 621(a) thereof such acts and practices constitute unfair or deceptive acts or practices in

commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

A. Proposed respondent American Service Bureau, Inc. is a corporation organized and doing business under the laws of the State of Illinois, with its principal office located at 211 East Chicago Ave., Chicago, Illinois.

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

ORDER

I

IT IS ORDERED, That respondent American Service Bureau, Inc., a corporation, its successors and assigns, and its officers, respondent's agents, representatives and employees, directly or through any

corporation, subsidiary, division or other device, in connection with the operation of a consumer reporting agency as such is defined in the Fair Credit Reporting Act (hereafter sometimes "FCRA"), Pub. Law 91-508, (15 U.S.C. 1681, *et seq.*), do forthwith cease and desist from:

A. Obtaining or attempting to obtain from consumers seeking disclosure of the information required to be disclosed by Section 609 and 610 of the Fair Credit Reporting Act, any of the following items of information:

1. number of dependents,
2. past employment history,
3. approximate or actual worth,
4. approximate or actual income,
5. banking connections,
6. real estate owned by the consumer,
7. court records pertaining to the consumer,
8. names and addresses of references,
9. length of employment, or
10. nature of consumer's business.

B. Obtaining or attempting to obtain from consumers seeking disclosure of the information required to be disclosed by Section 609 and 610 of the Fair Credit Reporting Act, any information in excess of that which is necessary to establish the identity of the consumer who is seeking disclosure. *Provided, however,* that with respect to the requirements of this paragraph and Paragraph I.A., respondents may, as necessary only to comply with provisions of the Fair Credit Reporting Act, and after disclosure pursuant to Sections 609 and 610 of FCRA, inquire about the above items of information.

C. Obtaining or attempting to obtain from consumers who dispute the completeness or accuracy of any item of information contained in their files, or who seek disclosure of information which is required to be provided by Sections 609 and 610 of FCRA, an agreement or writing signed by the consumer which authorizes an investigation concerning the consumer or which authorizes anyone to give information or records about a consumer to respondents; *provided, however,* that if respondents are denied information in connection with a re-investigation under Section 611 of the Fair Credit Reporting Act after contacting a specific source, respondent may seek from the consumer a separate authorization to obtain from a specific source named in the authorization, specific items of information (other than medical information) which are relevant to the subject matter of the re-investigation; *provided further,* that the authorization permitted by this provision shall clearly and conspicu-

ously disclose to the consumer in writing: (1) that executing the authorization is not a condition to the re-investigation of the disputed item; and (2) that the consumer's failure to execute the authorization does not affect his or her right to have information deleted which is found to be inaccurate or which can no longer be verified.

D. Failing to provide each consumer who either requests disclosure of information in his or her file or who disputes the completeness or accuracy of information in his or her file, an exact facsimile of Exhibit A attached hereto without utilizing language additional to that which is contained in Exhibit A.

II

IT IS FURTHER ORDERED, That respondent American Service Bureau, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with complying with the requirements of the Fair Credit Reporting Act, the preparation of consumer reports, investigative consumer reports, claims reports, or other reports containing information about consumers, in or affecting commerce, do forthwith cease and desist from:

Representing that consumers are required by the Fair Credit Reporting Act to provide information, fulfill conditions, execute documents, authorize actions or assent to provisions, when such are not required by the Fair Credit Reporting Act; or otherwise misrepresenting directly or indirectly the requirements of the Fair Credit Reporting Act.

III

IT IS FURTHER ORDERED, That respondent shall, at all times subsequent to the effective date of this order, maintain complete business records relative to the manner and form of its compliance with this order for a two-year period. Such records shall include all policy directives, complaints from consumers, and other pertinent documents. Such records shall be kept in chronological order separate from the consumer reporting files and shall be made available for inspection and photocopying by any authorized representative of the Federal Trade Commission upon reasonable notice at respondent's place of business or other properly designated location.

IV

IT IS FURTHER ORDERED, That respondent deliver a copy of this order to each present and future officer of the corporation and all present and future management personnel to and including the level of branch manager. Further, respondent shall deliver to all personnel now or hereafter engaged in the disclosure of contents of consumer reports to consumers a copy of Section I and II of this order. Further, respondent shall secure from each of these persons a signed statement acknowledging receipt of the order or the relevant portion thereof.

V

IT IS FURTHER ORDERED, That respondent notify the Commission at least thirty days prior to the effective date of any proposed change in respondent, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, the creation or dissolution of subsidiaries, or any other change in said corporations which may affect compliance obligations arising out of the order.

VI

IT IS FURTHER ORDERED, That the respondent herein shall, within sixty 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.

EXHIBIT A

This information explains your rights under the Fair Credit Reporting Act. The American Service Bureau is a consumer reporting agency. We provide "Investigative Consumer Reports," a special type of a "Consumer Report." This pamphlet describes your rights and our responsibility for all types of consumer reports.

FAIR CREDIT REPORTING ACT

If you have a charge account, a mortgage on your home, life insurance, or have applied for a personal loan or job it is almost certain there is a "file" existing somewhere that shows how you pay your bills, if you have been sued, arrested, or filed for bankruptcy, etc.

And some of these files include your neighbors' and friends' views of your character, general reputation, or manner of living.

The companies that gather and sell such information to creditors, insurers, employers, and other businesses are called "Consumer Reporting Agencies," and the legal term for the report is a "Consumer Report."

If, in addition to credit information, the report involves interviews with a third person about your character, reputation, or manner of living, it is referred to as an "Investigative Consumer Report."

THE FAIR CREDIT REPORTING ACT became law on April 25, 1971. It was passed by Congress to protect consumers against the circulation of inaccurate or obsolete information, and to insure that consumer reporting agencies exercise their responsibilities in a manner that is fair and equitable to consumers.

Under this new law you can now take steps to protect yourself if you have been denied credit, insurance, or employment, or if you believe you have had difficulties because of a consumer report on you.

Here are the steps you can take.

YOU HAVE THE RIGHT:

1. To be told the name and address of the consumer reporting agency responsible for preparing a consumer report that was used to deny you credit, insurance, or employment or to increase the cost of credit or insurance.
2. To be told by a consumer reporting agency the nature, substance and sources (except investigative-type sources) of the information (except medical) collected about you.
3. To take anyone of your choice with you when you visit the consumer reporting agency to check on your file.
4. To obtain all information to which you are entitled, free of charge, when you have been denied credit, insurance, or employment within 30 days of your interview. Otherwise, the reporting agency is permitted to charge a reasonable fee for giving you the information.
5. To be told who has received a consumer report on you within the preceding six months (two years if the report was furnished for employment purposes).
6. To have incomplete or incorrect information re-investigated, unless the request is frivolous, and, if the information is found to be inaccurate or cannot be verified, to have such information removed from your file.
7. To have the agency notify those you name (at no cost to you) who have previously received the incorrect or incomplete information that this information has been deleted from your file.
8. When a dispute between you and the reporting agency about information in your file cannot be resolved, you have the right to have your version of such dispute placed in the file and included in future consumer reports.
9. To request the reporting agency to send your version of the dispute to certain businesses if requested within 30 days of the adverse action.
10. To have a consumer report withheld from anyone who under the law does not have a legitimate business need for the information.

11. To sue a reporting agency for damages if it willfully or negligently violates the law and, if you are successful, you can collect attorney's fees and court costs.

12. Not to have adverse information reported after seven years. The major exceptions are (a) bankruptcies, which may be reported for 14 years; (b) and no limitation (1) if an application for life insurance is involved in which the face value of the policy equals \$50,000 or more, or (2) if the report concerns employment at an annual salary equaling \$20,000 or more.

13. To be notified by a business that it is seeking information about you which would constitute an "Investigative Consumer Report."

14. To request from the business that ordered an investigative report, more information about the nature and scope of the investigation.

15. To discover the nature and substance (but not the sources) of the information that was collected for an "Investigative Consumer Report."

THE FAIR CREDIT REPORTING ACT DOES NOT:

1. Give you the right to request a report on yourself from the consumer reporting agency.
2. Give you the right, when you visit the agency, to receive a copy of or to physically handle your file.
3. Compel anyone to do business with an individual consumer.
4. Apply when you request commercial (as distinguished from consumer) credit or business insurance.
5. Authorize any Federal agency to intervene on behalf of an individual consumer.

HOW TO DEAL WITH CONSUMER REPORTING AGENCIES

If you want to know what information a consumer reporting agency has collected about you, either arrange for a personal interview at the agency's office during normal business hours or call in advance for an interview by telephone.

The consumer reporting agencies in your community can be located by consulting the "Yellow Pages" of your telephone book under such headings as "Credit" or "Credit Rating or Reporting Agencies."

If you decide to visit a consumer reporting agency to check on your file the following check list may be of help.

For instance, DID YOU:

1. Learn the nature and substance of all the information in your file?
2. Learn the names of everyone who received reports on you within the past six months (or the last two years if the reports were for employment purposes)?
3. Request the agency to re-investigate and correct or delete information that was found to be inaccurate, incomplete, or obsolete?

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4. Follow-up to determine the results of the re-investigation?
5. Ask the agency, at no cost to you, to notify those you name who received reports within the past six months (two years if for employment purposes) that certain information was deleted?
6. Follow-up to make sure that those named by you did in fact receive notices from the consumer reporting agency?
7. Demand that your version of the facts be placed in your file if the re-investigation did not settle the dispute?
8. Request the agency to send your statement of the dispute to those you name who received reports containing the disputed information within the past six months (two years if received for employment purposes)?

For more detailed information on the Fair Credit Reporting Act or to report a violation of the Act contact the FTC in Washington or the nearest regional office. The FTC offices are located in the following cities:

ATLANTA, Ga.; BOSTON, Mass.; CHICAGO, Ill.; CLEVELAND, Ohio; DALLAS, Texas; DENVER, Colo.; HONOLULU, Hawaii; LOS ANGELES, Calif.; NEW YORK, N.Y.; SAN FRANCISCO, Calif.; SEATTLE, Wash.; WASHINGTON, D.C.

Look under "Federal Trade Commission" in the telephone directories of these cities for the addresses and telephone numbers of the field offices.

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

JAY NORRIS CORPORATION, ET AL.

Docket 9054. Interlocutory Order, Sept. 11, 1978

Order denying respondents' petition for ruling on thirty (30) day advance notice to FTC of any proposed change in corporate respondent.

ORDER ON PETITION FOR RULING

Respondents have filed a Petition for Ruling requesting that the Commission address the argument made in their appeal brief challenging the requirement contained in Part III of the administrative law judge's ("ALJ") order of a thirty-day advance notice to the Commission of any proposed change in the corporate respondents. The ALJ concluded that there was nothing "improper or burdensome" about this requirement. (ID p. 73) While the Commission did not specifically address respondents' argument on this point, it expressly adopted the ALJ's initial decision as the Findings of Fact and Conclusions of Law of the Commission, except to the extent modified or otherwise indicated in the Commission's opinion. (Order at 2) Accordingly,

IT IS ORDERED, That respondents' Petition for Ruling is denied.

IN THE MATTER OF
PUBLIC SERVICE CO. OF COLORADO

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

Docket C-2927. Complaint, Sept. 12, 1978 — Decision, Sept. 12, 1978

This consent order, among other things, requires a Denver, Colo. utility company to cease, in connection with the advertising and sale of non-utility products and services, failing to properly provide consumers with credit disclosures required by Federal Reserve System regulations.

Appearances

For the Commission: *John H. Evans and Kenneth R. Bennington.*
For the respondent: *James R. McCotter, Denver, Colo.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Public Service Co. of Colorado, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and the implementing 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 as follows:

PARAGRAPH 1. Respondent Public Service Co. of Colorado is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado with its principal office and place of business located at 550 Fifteenth St., Denver, Colorado.

PAR. 2. Respondent is now and for many years has been, engaged in the generation, purchase, transmission, distribution, and sale of electricity, and in the purchase, transmission, distribution, and sale of natural gas. Respondent also advertises for sale and sells to consumers a variety of products and services not provided through pipe, wire, or other connected facilities. Such products and services include insulation for, and the installation of insulation in, residential premises.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends or arranges for the extension of consumer credit, and is a creditor, as "consumer credit" and

"creditor" are defined in Section 226.2 of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*, *as amended*), duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent has entered into credit transactions with consumer customers for the installation of insulation in residential premises, in which transactions, under the provisions of COLO. REV. STAT. §§38-22-101, *et seq.*, a security interest, as "security interest" is defined in Section 226.2 of Regulation Z, is or will be retained or acquired in real property which is used or is expected to be used as the principal residence of the customer.

PAR. 5. There have not been waivers of lien rights by all potential security interest claimants in connection with the credit transactions referred to in Paragraph 4.

PAR. 6. Respondent's entry into the transactions described in Paragraph 4, in which a security interest is or will be retained by respondent or other potential lien claimants, entitles respondent's consumer customers to proper notification of their right to rescind such transactions, without penalty, through midnight of the third business day following consummation of the transaction or delivery of all material disclosures, whichever is later, pursuant to Section 226.9 of Regulation Z.

PAR. 7. In connection with the credit transactions referred to in Paragraph 4, respondent has failed to give consumer customers proper notice of their right to rescind, as well as notice of the effect of rescission, as required by Section 226.9 of Regulation Z in the manner and form set forth therein.

PAR. 8. Subsequent to July 1, 1969, in the ordinary course and conduct of its business as aforesaid, respondent has caused to be published advertisements for goods and services, which advertisements aid, promote, or assist, directly or indirectly, credit sales and other extensions of other than open end credit, as "advertisement" and "credit sale" are defined in Section 226.2 of Regulation Z.

PAR. 9. In certain of the advertisements referred to in Paragraph 8, respondent has stated the rate of the finance charge as other than an "annual percentage rate," contrary to the provisions of Section 226.10(d)(1) of Regulation Z.

PAR. 10. In certain of the advertisements referred to in Paragraph 8, respondent has stated the amount of the downpayment (as a percentage of the sales price) without also stating, as required by Section 226.10(d)(2) of Regulation Z, all of the following terms:

- (a) the cash price;

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

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

(d) the deferred payment price.

PAR. 11. By and through the acts and practices set forth above, respondent has failed to comply with the requirements of Regulation Z, the implementing Regulation of the Truth in Lending Act. Pursuant to Section 103(s) of the Truth in Lending Act, such failure to comply with Regulation Z constitutes a violation of that Act, and pursuant to Section 108(c) thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of the findings of facts attached as Appendix A to the aforesaid agreement, 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 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 sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following findings of fact, and enters the following order:

FINDINGS

1. Respondent Public Service Co. of Colorado is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its offices and principal place of business located at 550 Fifteenth St., in the city of Denver, State of Colorado.

2. Respondent is now and for many years has been, engaged in the generation, purchase, transmission, distribution, and sale of electricity, and in the purchase, transmission, distribution, and sale of natural gas. Respondent also advertises for sale and/or sells to consumers products and services not provided through pipe, wire, or other connected facilities. In order to promote the conservation of energy, respondent has initiated an insulation program in connection with which it advertises for sale and sells to consumers insulation for, and the installation of insulation in, residential premises.

3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends or arranges for the extension of consumer credit, and is a creditor, as "consumer credit" and "creditor" are defined in Section 226.2 of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*, *as amended*), duly promulgated by the Board of Governors of the Federal Reserve System.

4. Subsequent to September 1, 1975, respondent has entered into credit transactions with consumer customers for the installation of insulation in residential premises, in which transactions, under the provisions of COLO. REV. STAT. §§38-22-101, *et seq.*, a security interest, as "security interest" is defined in Section 226.2 of Regulation Z, is or will be retained or acquired in real property which is used or is expected to be used as the principal residence of the customer.

5. There have not been waivers of lien rights by all potential security interest claimants in connection with the credit transactions referred to in Paragraph 3; however, respondent has never attempted to enforce such lien rights.

6. Respondent's entry into the transactions described in Paragraph 3, in which a security interest is or will be retained by respondent or other potential lien claimants, entitles respondent's consumer customers to proper notification of their right to rescind such transactions, without penalty, through midnight of the third business day following consummation of the transaction or delivery

of all material disclosures, whichever is later, pursuant to Section 226.9 of Regulation Z.

7. In connection with the credit transactions referred to in Paragraph 3, respondent notified its customers of their right to rescind the transactions within three days; however, such notice did not completely comply with the requirements of Section 226.9 of Regulation Z in that it failed to include substantive information and follow the form set forth therein. Once the matter was brought to respondent's attention, its forms were revised to comply with Section 226.9 of Regulation Z.

8. Subsequent to September 1, 1975, in the ordinary course and conduct of its business as aforesaid, respondent has caused to be published advertisements for goods and services, which advertisements aid, promote, or assist, directly or indirectly, credit sales and other extensions of other than open end credit, as "advertisement" and "credit sale" are defined in Section 226.2 of Regulation Z.

9. In one of the advertisements referred to in Paragraph 7, respondent stated the rate of the finance charge as "annual interest rate," rather than as an "annual percentage rate," as required by the provisions of Section 226.10(d)(1) of Regulation Z.

10. In the same advertisement referred to in Paragraph 7, respondent stated the amount of the downpayment (as a percentage of the sales price) without also stating, as required by Section 226.10(d)(2) of Regulation Z, the deferred payment price.

11. Respondent has cooperated fully in the Commission's investigation and has made available all records and documents requested by the Commission during the course of such investigation.

12. 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 Public Service Co. of Colorado, a corporation, its successors and assigns and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any extension or arrangement for the extension of consumer credit, or in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*, as amended) do forthwith cease and desist from:

- 1) Entering into any credit transaction, including, but not limited

to, transactions for the installation of insulation, in which a security interest, as "credit" and "security interest" are defined in Section 226.2 of Regulation Z, is or will be retained or acquired in real property which is used or is expected to be used as the principal residence of a consumer customer, without giving the customer notice of his or her right to rescind said transaction, without penalty, until midnight of the third business day following the date of consummation of the transaction or delivery of all material disclosures, whichever is later, as required by Section 226.9 of Regulation Z and in the manner and form set forth therein.

2) Stating in any credit advertisement the rate of finance charge unless said rate is expressed as an annual percentage rate (using the term "annual percentage rate"), as "finance charge" and "annual percentage rate" are defined in Section 226.2 of Regulation Z, as required by Section 226.10(d)(1) of Regulation Z.

3) Stating in any credit advertisement that no downpayment is required, or stating the amount of the downpayment or of any installment payment required (either in dollars or as a percentage), the dollar amount of any finance charge, the number of installments or the period of repayment, or stating that there is no charge for credit, unless all of the following items are also clearly and conspicuously set forth in terminology prescribed by 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, the amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (d) the amount of the finance charge expressed as an annual percentage rate; and
- (e) the deferred payment price.

4) Failing in any consumer credit transaction or advertisement, to make all disclosures that are required by Section 226.6, Section 226.7, Section 226.8, Section 226.9, and Section 226.10 of Regulation Z in the manner, form, and amount specified therein.

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, to

each person responsible for or connected with preparation of its advertisements, and to each person responsible for or connected with solicitation and sale of residential insulation for respondent, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

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

APPENDIX A

FINDINGS OF FACT

FINDINGS

1. Proposed respondent is now and for many years has been, engaged in the generation, purchase, transmission, distribution, and sale of electricity, and in the purchase, transmission, distribution, and sale of natural gas. Respondent also advertises for sale and/or sells to consumers products and services not provided through pipe, wire, or other connected facilities. In order to promote the conservation of energy, proposed respondent has initiated an insulation program in connection with which it advertises for sale and sells to consumers insulation for, and the installation of insulation in, residential premises.

2. In the ordinary course and conduct of its business as aforesaid, proposed respondent regularly extends or arranges for the extension of consumer credit, and is a creditor, as "consumer credit" and "creditor" are defined in Section 226.2 of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*, as amended), duly promulgated by the Board of Governors of the Federal Reserve System.

3. Subsequent to September 1, 1975, proposed respondent has entered into credit transactions with consumer customers for the installation of insulation in residential premises, in which transactions, under the provisions of COLO. REV. STAT. §§38-22-101, *et seq.*, a security interest, as "security interest" is defined in Section 226.2 of Regulation Z, is or will be retained or acquired in real property which is used or is expected to be used as the principal residence of the customer.

4. There have not been waivers of lien rights by all potential security interest claimants in connection with the credit transactions referred to in Paragraph 3; however, proposed respondent has never attempted to enforce such lien rights.

5. Proposed respondent's entry into the transactions described in Paragraph 3, in which a security interest is or will be retained by proposed respondent or other potential lien claimants, entitles proposed respondent's consumer customers to proper notification of their right to rescind such transactions, without penalty, through midnight of the third business day following consummation of the transaction or delivery of all material disclosures, whichever is later, pursuant to Section 226.9 of Regulation Z.

6. In connection with the credit transactions referred to in Paragraph 3, proposed respondent notified its customers of their right to rescind the transactions within three days; however, such notice did not completely comply with the requirements of Section 226.9 of Regulation Z in that it failed to include substantive information and follow the form set forth herein. Once the matter was brought to proposed

respondent's attention, its forms were revised to comply with Section 226.9 of Regulation Z.

7. Subsequent to September 1, 1975, in the ordinary course and conduct of its business as aforesaid, proposed respondent has caused to be published advertisements for goods and services, which advertisements aid, promote, or assist, directly or indirectly, credit sales and other extensions of other than open end credit, as "advertisement" and "credit sale" are defined in Section 226.2 of Regulation Z.

8. In one of the advertisements referred to in Paragraph 7, proposed respondent stated the rate of the finance charge as "annual interest rate," rather than as an "annual percentage rate," as required by the provisions of Section 226.10(d)(1) of Regulation Z.

9. In the same advertisement referred to in Paragraph 7, proposed respondent stated the amount of the downpayment (as a percentage of the sales price) without also stating, as required by Section 226.10(d)(2) of Regulation Z, the deferred payment price.

10. Proposed respondent has cooperated fully in the Commission's investigation and has made available all records and documents requested by the Commission during the course of such investigation.

Interlocutory Order

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, Sept. 13, 1978

Affirmance of ALJ's order denying intervention and allowing filing of amicus curiae brief.

ORDER AFFIRMING ORDERS OF THE ADMINISTRATIVE LAW
JUDGE

On July 10, 1978, having been granted an extension of time, the American Federation of Grain Millers (AFL-CIO) ("International Union") filed an Application for Review from the Administrative Law Judge's denial of their Motion to Intervene. The Application was filed pursuant to Rule 3.23(a) of the Commission's Rules of Practice.

The complaint in this matter was filed over six years ago on April 26, 1972. As part of the relief, should a violation be found, it has been proposed that five corporate entities be divested or "spun-off" from the various respondents. Because the newly created entities would not be legally bound to hire the employees currently working for the respondents, nor be bound to adopt, preserve or maintain the level of benefits in the collective bargaining agreements, the International Union requests intervention.

Section 5(b) of the Federal Trade Commission Act and Rule 3.14 of the Commission's Rules of Practice provide for the intervention by any person, partnership, or corporation "upon good cause shown." Both provisions "clearly reflect the fact that intervention in Commission adjudications is a matter of privilege, and that its grant or denial is a discretionary matter, to be decided on the basis of the particular facts and circumstances involved in each case in which intervention is sought." *Firestone Tire & Rubber Co.*, 77 F.T.C. 1666, 1668 (1970).

As was noted by Judge Hinkes, the issue before us is similar to that in *Heublein, Inc.*, 82 F.T.C. 1826 (1973), in which the Allied Grape Growers sought to intervene for purposes of protecting their interests in a joint venture agreement with Heublein. Though we noted that Allied's contractual relations might be adversely affected by the outcome of the Commission's proceeding, we held there that Allied's concerns dealt primarily with the issue of relief rather than the issue of liability, and so limited their participation. Insofar as Allied's interests related to the competitive questions at stake in the

proceeding, we concluded that its interests would be adequately represented.

We see no reason for different treatment here. Indeed, depending on the outcome of the litigation, the International Union's concerns may prove to be premature. Rather than delay a proceeding which has been in progress for six years, Judge Hinkes has correctly provided for the filing of an amicus brief. In this way he and the Commission can have the benefit of the International Union's views, if the need arises, without complicating or delaying the proceedings.

The International Union also argues that under Rule 24 of the Federal Rules of Civil Procedure and *PepsiCo v. Federal Trade Commission*, 472 F.2d 179 (2d Cir. 1972), there is an absolute right to intervene. However, even assuming the applicability of the principle underlying Rule 24 to our proceedings, we see no basis for reaching a result different from that which obtains under the Commission's rules.

While the Commission recognizes the importance of the matters raised by the International Union, the interest which the International Union seeks to assert, *i.e.*, that of employment rights and benefits under the collective bargaining agreement, is in no way related to the alleged antitrust liability of respondents and is therefore not the proper subject for intervention. Accordingly,

It is ordered, That the Administrative Law Judge's Order Denying Motion to Intervene and Allowing the Filing of an Amicus Curiae Brief be, and the same hereby is, affirmed.

Commissioner Pitofsky did not participate.

IN THE MATTER OF
USLIFE CREDIT CORP., ET AL.

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

Docket 9057. Decision, May 23, 1978 — Modifying Order, Sept. 14, 1978

This order, granting and denying in part respondents' petition for reconsideration, modifies the cease and desist order issued on May 23, 1978, 43 FR 34124, 91 F.T.C. 985, by deleting from the first line of paragraph 2 the word "Failing," and inserting the word "Failing" as the first word of subparagraph (a) of paragraph 2.

ORDER GRANTING IN PART, AND DENYING IN PART,
RESPONDENTS' PETITION FOR RECONSIDERATION

An opinion and final order in this matter having been issued on May 23, 1978; respondents having been served by mail with the said opinion and order on July 19, 1978; respondents having petitioned for reconsideration of said opinion and order on August 10, 1978; and the Commission, for the reasons stated in the accompanying opinion, having determined to grant in part, and deny in part, respondents' petition for reconsideration;

It is ordered, That the final order to cease and desist be, and hereby is, modified as follows:

From the first line of paragraph 2 of the Order, delete the word "Failing."

In subparagraph (a) of paragraph 2 of the Order, insert as the first word thereof the word "Failing."

Commissioner Pitofsky did not participate.

OPINION OF THE COMMISSION

BY CLANTON, *Commissioner*:

Respondents have petitioned for reconsideration of our recent opinion and order in which we held that certain of their practices in connection with the sale of credit life and credit disability insurance violated the Truth in Lending Act ("TILA") (15 U.S.C. 1601, *et seq.*), Regulation Z (12 C.F.R. 226) and the Federal Trade Commission Act ("FTC Act") (15 U.S.C. 41, *et seq.*),

Respondents urge (1) that our interpretation of the pertinent provisions of the TILA and Regulation Z is novel and unsupportable, and that our decision rests upon supposed practices neither alleged

in the complaint, nor made a part of the record before the administrative law judge ("ALJ"); (2) that the Commission's opinion is undercut by two Court of Appeals decisions and a Federal Reserve Board ("FRB") staff interpretation, all of which were rendered after the Commission took the case under advisement; (3) that the cease and desist order is overbroad and that it unfairly penalizes respondents' employees; and (4) that they have been denied due process, because the Commission acted as "investigator, complainant, prosecutor, judge and legislature."

Section 3.55 of the Commission's Rules of Practice limits the scope of a petition for reconsideration to "new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission." We find that while certain of respondents' objections are inappropriate for disposition by reconsideration, other contentions are permissible in this context, and they warrant a brief opinion.

I.

First, respondents object to our holding that their routine and automatic inclusion of insurance premiums in loan agreement papers prior to obtaining the customer's written approval for insurance, when considered in the context of this record as a whole, constituted a violation of the TILA and Regulation Z. In essence, respondents simply disagree with our holding; in the absence of a new issue, therefore, reconsideration of this question is inappropriate. Nonetheless, in our discretion, we think it useful to note that the Commission has examined the additional authorities cited by respondents, and finds that respondents have misapprehended their application to this case.

Respondents assert that our opinion conflicts with Section 129(b) of the TILA and Section 226.8(a)(1) of Regulation Z. They contend that these provisions require no more than that the necessary written disclosures be made to the consumer by the time of the closing, rather than prior to completion of the loan agreement form. But these provisions are inapplicable here. Section 129(b) addresses only the timing of disclosures specified in Section 129(a), all of which are found in Chapter 2 of TILA; the insurance authorization disclosure requirements are located in Chapter 1, and are not addressed by Section 129(a) in any event. Similarly, Section 226.8(a)(1) of Regulation Z governs only disclosures required by Section 226.8; the credit insurance authorization is required by Section 226.4(a)(5). Respondents' further reliance upon FRB Letter No. 408 as allegedly undermining FRB Letter No. 398 is also

misplaced. Nothing in Letter No. 408 retracts the FRB's condemnation, expressed in Letter No. 398, of the practice of automatically preparing loan documents with the cost of insurance included in the completed calculations. Finally, respondents' reliance upon the model form which appears as Exhibit C, 1 *Cons. Cred. Guide* (CCH) ¶2853, is without avail. Exhibit C is exemplary only of a proper disclosure format. But the sufficiency of respondents' forms is not at issue; rather, we are concerned with respondents' other practices designed to encourage selection of credit insurance, notwithstanding the apparent propriety of the form utilized.

Respondents' next assertion is that the Commission's decision is based upon a charge not made in the complaint and upon which the ALJ took no evidence. We find this allegation to be without merit. The complaint adequately alleged the violations which the Commission has found, *e.g.*, that insurance was automatically included in many loan documents prior to closing without the consumer's knowledge. *See, e.g.*, complaint ¶4(2) and Opinion at 15. And the record is replete with testimony which establishes that automatic inclusion of insurance charges in the loan documents operates, directly or indirectly, to defeat the elective language of the insurance authorization and to prevent consumers from exercising a free choice of whether to obtain credit insurance.

Respondents maintain that the charges reflected in the complaint involved only the issue of whether or not consumers orally authorized insurance prior to signing the written disclosure at the closing. Yet, however, the issues are framed, both the complaint and the trial clearly focused on the adequacy as well as the existence of respondents' oral disclosures before insurance was included in the loan papers. Indeed, we found on the basis of record evidence that even to the extent oral disclosures may have been made in some instances, they were inadequate to alert many consumers to the optional nature of credit insurance. Review of the applicable legal standards manifests the adequacy of the complaint in this respect.

The propriety of a pleading is judged by its effectiveness as a mechanism for giving an adverse party notice of the claim upon which relief is sought. *Curtiss-Wright Corp., Wright Aero. Div. v. NLRB*, 347 F.2d 61, 72 (3d Cir. 1965); *Intercontinental Indus., Inc. v. American Stock Exchange*, 452 F.2d 935, 941 (5th Cir. 1971), *cert. den.*, 409 U.S. 842 (1972). A complaint in an administrative proceeding need not enumerate precisely every event to which an agency may finally attach significance. *L. G. Balfour v. FTC*, 442 F.2d 1, 19 (7th Cir. 1971); *see also ITT Continental Baking Co., Inc. v. FTC*, 532 F.2d 207, 215-18 (2d Cir. 1976). Thus, the complaint is sufficient if "the

one proceeded against be reasonably apprised of the issues in controversy, and any such notice is adequate in the absence of a showing that a party was misled." *L. G. Balfour, supra* at 19, citing *Cella v. United States*, 208 F.2d 789 (7th Cir. 1953), *cert. den.*, 347 U.S. 1016 (1954). Measured against this standard, individually and collectively, the allegations of the complaint sufficiently apprised respondents of the alleged violations for which they were ultimately held. See *Golden Grain Macaroni Co. v. FTC*, 472 F.2d 882, 886 (9th Cir. 1972), *cert. den.*, 412 U.S. 918 (1973); *A. E. Staley Mfg. Co. v. FTC*, 135 F.2d 453, 454 (7th Cir. 1943).

Furthermore, we are convinced that the fundamental requirements of due process were met when, as the case unfolded, respondents were afforded a reasonable opportunity to meet and rebut these allegations. See, e.g., *Curtiss-Wright Corp., supra*; *Golden Grain Macaroni, supra*; *Swift & Co. v. United States*, 393 F.2d 247, 252 (7th Cir. 1968); *J. B. Williams Co. v. FTC*, 381 F.2d 884, 888 (6th Cir. 1967).

Accordingly, we cannot credit respondents' contention that "the Commission has found a violation on the basis of a charge that was never made."

II.

Second, respondents rely upon new authorities to support their contentions (a) that their compliance with the TILA may be measured only by the adequacy of the written disclosure form, and (b) that the Commission erred in holding that respondents violated Regulation Z because their insurance authorization form was not separately dated. We reject the first of these contentions, but accept the second, and withdraw our finding that respondents' failure to obtain a separate date on the insurance authorization constituted an independent violation of Regulation Z. We note, however, that this finding does not compel any change in the provisions of the cease and desist order.

Respondents cite *Anthony v. Community Loan & Investment Corp.*, 559 F.2d 1363 (5th Cir. 1977), and a recent FRB Official Staff Interpretation, FC-0119, 42 F.R. 55881 (Oct. 20, 1977) [1974-1977 Transfer Binder] *Cons. Cred. Guide* (CCH) ¶31,705 in support of the first contention. Neither of these authorities, however, compels us to alter our decision.

In the *Anthony* case, a private suit for damages under TILA, the Fifth Circuit held that a credit customer's assertion that she had neither requested nor desired insurance, but had simply signed the loan documents which included an insurance election, was insuffi-

cient to vary the terms of her contract or to negate the executed insurance authorization. In reaching this result, the court applied the Georgia parol evidence rule to exclude plaintiff's proffered oral evidence that defendant had given her the impression that insurance was required. 559 F.2d at 1369.

Notwithstanding that the findings of fact in the instant case are bottomed, in part, upon the type of consumer testimony which was excluded by the Fifth Circuit in *Anthony*, we do not view that decision as necessarily inconsistent with our own. Sound reasons of judicial administration may argue for not entertaining such oral testimony in the context of private damage litigation, where doing so might weaken the principles underlying the parol evidence doctrine or open the gates of the courthouse to frivolous litigation. But these factors are not present here.

It is clear that the Commission, as a law enforcement agency, empowered by Congress with a mandate to prevent unfair and deceptive practices and to enforce the TILA and Regulation Z, may hear all such evidence as is necessary to establish whether violations of law have occurred. Frequently, the existence of a pattern of deception can be proved only by resort to oral testimony, including so-called "parol evidence." The evidentiary standard on which the *Anthony* decision is based is simply not applicable to an FTC administrative enforcement proceeding.¹ A recent case regarding the admissibility of parol evidence in administrative proceedings is on point. In *Western Union Telegraph Co. v. FCC*, 541 F.2d 346, 353 (3d Cir. 1976), *cert. den.*, 429 U.S. 1092 (1977), the Third Circuit held that "as a matter of administrative law, . . . the Commission was not bound to apply the parol evidence rule." The court continued that:

the basic precept of administrative law [on the standards of admissibility of evidence is] set forth in §556(d) of the Administrative Procedure Act: "Any oral evidence or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence . . ." We recognize that the parol evidence rule is frequently said to be a rule of substantive law and not a rule of evidence. No reason is apparent why the FCC could not apply the rule as a matter of substantive law or policy, if it chose to do so, but we hardly imagine that it is required to do so in view of the plain language of §556(d) that "[any] oral or documentary evidence may be received." 541 F.2d at 353 and n. 14.

Accordingly, we do not believe that *Anthony* is inconsistent with

¹ In general, evidentiary and exclusionary rules applicable to judicial trials have little bearing in administrative proceedings. See, e.g., *Opp Cotton Mills, Inc. v. Administrator*, 312 U.S. 126, 155 (1941); 2 Davis, *Administrative Law Treatise*, §14.08 at 284 (1958), citing Rep. Atty. Gen. Comm. Ad. Proc. 70 (1941) ("An administrative agency must serve a dual purpose in each case: It must decide the case correctly as between the litigants before it, and it must also decide the case correctly so as to serve the public interest which it is charged with protecting. This second important factor makes it necessary to keep open the channels for the reception of all relevant evidence which will contribute to an informed result.").

our earlier determination in this matter, to which we adhere. Nothing in the Commission's Rules of Practice, including Section 3.43(b), requires or suggests a different result.

Next, review of FRB Official Staff Interpretation FC-0119 demonstrates that respondents have misunderstood the thrust of that letter. FRB staff there address only the sufficiency of the wording of the disclosure in the correspondent's form. No intimation that an inquiry may not properly be carried beyond the form itself may be drawn from that letter. Indeed, two subsequent FRB Staff Opinion Letters reveal that the FRB staff interprets Regulation Z in a manner squarely in accordance with our recent decision in this case.

In FRB Letter No. 1270 (December 20, 1977), 5 *Cons. Cred. Guide* (CCH) ¶31,756, the author of FC-0119 wrote:

FC-0119 was intended by staff to deal only with the method by which a customer might indicate, in writing, his or her desire for credit life, accident, health, or loss of income insurance in order to comply with §226.4(a)(5)(ii) of Regulation Z. Staff did not and does not mean to suggest that, because a customer gives a proper 'specifically dated and separately signed affirmative written indication' of his or her desire for such insurance, there may be no further inquiry as to whether the customer's election to obtain the insurance was truly voluntary and not required by the creditor. Whether a customer desired such insurance is a question of fact, which can only be answered by reference to all the circumstances of a particular transaction. Inquiry into these circumstances is, of course, not foreclosed by the presence of a customer's signature on an insurance authorization.

And in FRB Letter No. 1286 (March 21, 1978), 5 *Cons. Cred. Guide* (CCH) ¶31,777, FRB staff noted:

While the customer's signature on a document would be some evidence of voluntariness, of course, it would not conclusively establish that the insurance was not required. Any number of collateral acts or practices by a creditor could negate the apparently affirmative nature of the customer's election to purchase insurance.

* * * * *

Routine inclusion of the insurance premium in the preparation of the credit documents . . . might be evidence that the creditor had created the impression that the insurance was a condition of the extension of credit.

Since we are in accord with these FRB Staff Opinions and since, as respondents acknowledge, such opinion letters are entitled to great weight with respect to the proper interpretation of Regulation Z, *Philbeck v. Timmers Chevrolet*, 499 F.2d 971, *reh'g den.*, 502 F.2d 1167 (5th Cir. 1974), we decline to modify our decision.

Finally, respondents call to our attention the Fifth Circuit's recent decision in *Hayslip v. Dunlop Chevrolet Co.*, 560 F.2d 192 (5th Cir.

1977), which holds that the absence of a date in the insurance authorization section of a disclosure statement signed by a borrower is not a TILA violation, so long as the correct date is inserted at the top of the loan agreement. We had held that USLIFE's practice of not always separately dating the insurance authorization did constitute an independent violation of TILA. Opinion at 21. Examination of the *Hayslip* opinion and a most unusual set of circumstances convince us to alter our decision.

The key provision is Section 226.4(a)(5)(ii) of Regulation Z, which describes the nature of the indication that a consumer must give if he or she desires insurance coverage. This case was briefed and argued by both complaint counsel and respondents on the assumption that subparagraph read:

Any customer desiring such insurance coverage gives *specifically* dated and separately signed affirmative written indication of such desire after receiving written disclosure . . . [emphasis added]

The administrative law judge tried the case on this understanding as well. And the official printing of Regulation Z by the Board of Governors of the Federal Reserve System (as amended to March 23, 1977) also uses this language.

On closer examination, however, and after consideration of the *Hayslip* opinion, we have determined that the correct and authentic version of Section 226.4(a)(5)(ii) employs the word "specific" in lieu of the word "specifically." The initial Federal Register printing of this section, 34 FR 2002 (February 11, 1969) uses "specific," as does the current compilation of the Register in the Code of Federal Regulations, 12 C.F.R. 226.4(a)(5)(ii) (as amended to January 1, 1977). Research discloses that no published amendment has changed the language to read "specifically."

This seemingly uneventful semantic distinction necessitates a change in our determination, notwithstanding that we believe that public policy considerations suggest the wisdom of adherence to our original position. The Fifth Circuit's opinion in *Hayslip* places great weight on the fact that the word "specific" must modify "indication", rather than "dated," so that the proper reading of Section 226.4(a)(5)(ii) is that there must be a "specific . . . indication," the nature of which is that it shall be "dated and separately signed."² The draftsmen of Section 226.4(a)(5)(ii) could have placed the word

² In our earlier opinion, we had placed considerable weight on the fact that the subparagraph used the word "specifically" (which could only have modified "dated," not "indication"). Indeed, FRB staff had stressed the identical point in several opinion letters. See, e.g., FRB Letter No. 398 (August 26, 1970) [1969-1974 Transfer Binder] *Cons. Cred. Guide* (CCH) §30,576, and FRB Letter No. 1163 (March 16, 1977) [1974-1977 Transfer Binder] *Cons. Cred. Guide* (CCH) ¶31,556. We had also noted that separate dating has the virtue of providing a means to ascertain whether insurance was authorized before being included in the credit contracts. The latter factor alone,

(Continued)

"separately" in front of the word "dated," suggesting thereby that both the date and the signature must distinctly appear on the authorization form, but they did not. Application of a variety of maxims of construction, including *expressio unius est exclusio alterius*, compels us, under the circumstances, to hold that Regulation Z does not require that a separate date appear on the insurance authorization, so long as the correct date otherwise appears on the same form.

Our disposition of this issue, however, does not necessitate any change in the order to cease and desist. As a remedial measure addressed to respondents' other violations of TILA, Regulation Z, and the FTC Act, we have ordered that respondents utilize a separate form of Voluntary Insurance Election, see Attachment A to the cease and desist order, upon which consumers may indicate their desire or lack thereof to purchase insurance. Since this form is distinct from the loan agreement itself, the date on the loan papers cannot be assumed to carry over to the insurance form. This case is thus distinguishable from *Hayslip, supra*, and from *Porter v. Household Finance Corp. of Columbus*, 385 F. Supp. 336 (S.D. Ohio 1974) and *In re Warren*, 387 F. Supp. 1395 (S.D. Ohio 1975), which were discussed in our earlier opinion. Opinion at 22. Accordingly, no change in the order is required.³

III.

Respondents' final contentions can be dealt with quickly. First, they object that paragraphs 4, 5, and 6 of the order are overbroad. These provisions enjoin respondents from failing to disclose accurately the finance charge and annual percentage rate on consumer loans (§§4,5) and from failing to otherwise make the disclosures required by related Sections 226.6, 226.8, 226.9 and 226.10 of Regulation Z (§6). These issues are not new and respondents had ample opportunity to address them during the course of the trial and on appeal to the Commission. Suffice it to say, as we have previously noted, Opinion at 34, these fencing-in provisions are justified given their integral relationship to the requirements of Regulation Z which were found to have been violated in this case. *See also Security Industrial Loan Association*, 90 F.T.C. 186, 219 (1977).

Next, respondents contend that the cease and desist order imposes liability upon respondents' employees, who were not named as party

however, while a salient policy consideration, cannot sustain our original holding, in light of the actual language of Section 226.4(a)(5)(ii).

³ Respondents have, however, called to our attention a typographical error in paragraph 2 of the order to cease and desist. The word "Failing," which begins paragraph 2 of the order, should be deleted from that line and inserted as the first word in subparagraph (a) of paragraph 2. An appropriate order is annexed.

respondents and whose work may be unrelated to the sale of insurance. It does not. While the order addresses respondents' employees and representatives, and directs that they cease and desist from certain unlawful practices conducted on behalf of and for the benefit of the named respondents, liability for violations of the order (even by employees) is limited to the named corporate respondents, their successors and assigns.

Lastly, respondents urge upon us a due process objection, the essence of which seems to be an expression of their dissatisfaction with the administrative law process. In response, it will suffice to note that no allegations of actual or apparent impropriety have been made by respondents, and a review of the record reveals none. Each of the participants in an administrative law proceeding has well defined roles, none of which were transgressed here. For example, neither the Commission, nor any member thereof, investigated this case, acted as complaint counsel, or conferred with those who did after issuance of the complaint. The procedures undertaken in this matter were those established by the Administrative Procedure Act, 5 U.S.C. 500, *et seq.* See *FTC v. Cinderella Career and Finishing Schools, Inc.*, 404 F.2d 1308, 1315 (D.C. Cir. 1968). Accordingly, respondents' objection is without basis in law.

Complaint

92 F.T.C.

IN THE MATTER OF
AUSTRALIAN LAND TITLE, LTD., ET AL.

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

Docket C-2928. Complaint, Sept. 14, 1978 — Decision, Sept. 14, 1978

This consent order, among other things, would require a Los Angeles, Calif. seller of undivided interests in Australian land to cease advertising, selling, transferring, or collecting payments on such land. Additionally, the firm is required to return all payments received on or after July 1, 1977; pay property taxes and other charges levied against the tracts as they become due; and provide consumer redress to eligible parties.

Appearances

For the Commission: *Edward D. Steinman.*

For the respondents: *Foster G. Mori, Roush, Mori, Welch & Steiner*, Phoenix, Arizona for Australian Land Title, Ltd., *Miles W. Kirkpatrick, Caswell O. Hobbs, Morgan, Lewis & Bockius*, Washington, D.C. for Safeguard Industries, Inc. and *Daniel C. Smith, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C. for Morlan International, Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Australian Land Title, Ltd., Safeguard Industries, Inc., and Morlan International, Inc., corporations, (hereinafter referred to as respondents) have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its Complaint stating its charges in that respect.

PARAGRAPH 1. Respondent Australian Land Title, Ltd. (hereinafter sometimes referred to as "ALT") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, as of 1970, with its principal office and place of business located at 9060 Santa Monica Boulevard, Los Angeles, California. Prior to 1970 there was a predecessor California corporation which did business under the same name.

ALT or its predecessor until 1973 was engaged in the business of acquiring undeveloped land in Western Australia and contracting with representatives to advertise, offer for sale, and sell undivided

interests as tenancies in common in such land to purchasers in the States and Territories of the United States, and in foreign nations.

ALT, through representatives, sold such undivided interests in land by use of standard form contracts, whereby purchasers agreed to pay monthly installments over a term of years. ALT retains legal title to each such undivided interest until final payment is made on the contract of purchase. Purchasers do not have any rights or incidents of ownership, other than equitable interests, in the property until fulfillment of the obligations imposed by the installment contract.

Purchasers pay ALT substantial sums of money in consideration for such undivided interests. In most cases, purchasers also pay interest during the contract term on the unpaid balance owing on the contract. ALT continues to collect and receive monies paid on many such contracts.

In the course of its business, ALT directly or indirectly has communicated and is communicating with purchasers both orally or in writing.

PAR. 2. Respondent Safeguard Industries, Inc. (hereinafter sometimes referred to as "Safeguard"), is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 630 Park Ave., King of Prussia, Pennsylvania.

In February 1970 Safeguard acquired ALT's predecessor and formed ALT, a wholly-owned subsidiary, as a successor corporation. Effective December 27, 1972, Safeguard sold ALT to Morlan International, Inc. (hereinafter sometimes referred to as "Morlan") in return for shares of stock in Morlan and other valuable consideration.

PAR. 3. Respondent Morlan International, Inc. 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 Philmont Ave. and Byberry Road, Philadelphia, Pennsylvania.

PAR. 4. ALT's volume of business in the sale of land in Western Australia is substantial and its acts and practices, as set forth herein, are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of its business as aforesaid, ALT sold or caused to be sold, 30 parcels of land in Western Australia by creating 77 or more undivided interests in each such parcel and, until 1973, selling such interests as tenancies in common to purchasers, whose identities for the most part were unknown to each

other, and who were located throughout the States and Territories of the United States, and in foreign nations.

PAR. 6. Under applicable Australian law, which is determinative of the rights of cotenants of this land, all incidents of ownership in land held as tenancies in common are shared communally by all cotenants. No individual or group of cotenants has the power to bind or prejudicially affect the rights of other cotenants by contracting with third persons concerning the common property, to encumber the estate, or to take any other action with regard to the subject parcel, including sale, without the unanimous agreement of the cotenants or judicial order.

PAR. 7. By creating so many tenancies in common in each parcel, and by selling the tenancies to purchasers, whose identities were often unknown to each other, in different states, territories and countries without providing a means of managing, developing or disposing of the land, ALT made it virtually impossible for the land to be sold, or beneficially used, regardless of its value or the existence of an interested buyer. Nevertheless, ALT has collected and is continuing to collect and receive payments from such purchasers.

Therefore, the creation and sale of, and the collection and receipt of payments for such undivided interests, as alleged in Paragraphs Five through Seven, were and are unfair acts or practices.

PAR. 8. In the further course and conduct of the aforesaid business, purchasers of undivided interests in land in Western Australia have been induced to pay substantial sums of money without disclosure having been made to such purchasers of the aforesaid detrimental legal and practical effects of purchasing undivided interests in real property. Such undisclosed material facts, if known, would have affected, in many instances, the purchasers' decisions to enter into or continue to perform under their contracts for purchase.

The failure to disclose such material facts as alleged above is unfair or deceptive.

PAR. 9. In the further course and conduct of its aforesaid business, ALT has used contractual provisions which provided that (1) defaulting purchasers forfeit all payments previously paid to ALT under the contract and (2) upon default ALT is released from all obligations.

Upon default, ALT has received payments in excess of its actual damages and has in most instances refused to refund such excess payments. Therefore, ALT's collection and retention of payments in excess of its actual damages imposes a penalty upon defaulting purchasers and such acts or practices as alleged were and are unfair.

PAR. 10. The aforementioned failure to disclose material facts, and

the unfair practices have had the tendency and capacity to induce a substantial portion of the purchasing public into purchasing a substantial number of undivided interests in land in Western Australia and into continuing to make payments for such undivided interests.

PAR. 11. The aforementioned acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

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

1. Respondent Australian Land Title, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 9060 Santa Monica Boulevard, Los Angeles, California.

Respondent Safeguard Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, and with its office and principal place of business located at 630 Park Ave., King of Prussia, Pennsylvania.

Respondent Morlan International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Philmont Ave. and Byberry Road, Philadelphia, Pennsylvania.

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

For the purpose of this order, the following definitions apply, unless otherwise specified herein:

A. "Respondents" mean Australian Land Title, Ltd. ("ALT"), Morlan International, Inc., ("Morlan") and Safeguard Industries, Inc., ("Safeguard") and include their successors and assigns.

B. "Tract" means each parcel of land located in Western Australia identified in Appendix A.

C. "Sales Agreement" means any agreement entered into by ALT or any agent, representative or subsidiary of ALT for the sale of any undivided interest (tenancy in common) in any Tract.

D. "Purchaser" means any person or entity that entered into any Sales Agreement, or the person or entity that received the purchaser's interest in any Sales Agreement by transfer, assignment, inheritance, or otherwise, or the person or entity, that purchased an interest in a Tract other than from any respondent or its representatives or agents, but shall not include any person or entity, other than one has made all Purchase Payments, whose last Purchase Payment pursuant to any Sales Agreement was received by ALT prior to January 1, 1977, or who has arbitrated, settled, released or litigated to final judgment all claims and rights relating to the purchase of an interest in a Tract.

E. "Defaulter" means any person or entity that entered into any Sales Agreement, or the person or entity that received the purchaser's interest in any Sales Agreement by transfer, assignment, inheritance, or otherwise, or the person or entity that purchased an interest in a Tract other than from any respondent or its representatives or agents, whose last Purchase Payment pursuant to any Sales Agreement was received by ALT on or after

January 1, 1974, but before January 1, 1977, but does not include any person or entity who has made all purchase payments or any Defaulter who has arbitrated, settled, released or litigated to final judgment all claims and rights relating to purchase of an interest in a Tract.

F. "Net Sales Price" means the gross sales price of any Tract less the seller's customary share of state or local sales or transfer taxes, transfer of title fees, and brokerage fees (provided that a broker has in fact been used and that his fees are not more than the prevailing rate for comparable services in Western Australia); no deduction from gross sales price shall be made for attorneys' fees, sellers' pro rata share of property taxes, payoff of mortgages or other liens or charges against the land, cost of appraisal, advertising costs or court costs associated with a judicial proceeding, or other costs of sale.

G. "Purchase Payments" means all sums including downpayments, and periodic payments of principal and interest paid pursuant to any Sales Agreement and dated and received by ALT prior to July 1, 1977.

H. "Purchase Price" means the total purchase price (including interest or finance charges if any) stated in any Sales Agreement.

The acts and practices, prohibitions, affirmative undertakings, requirements and activities subject to this order are those in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

I. *It is ordered*, That ALT, Morlan and Safeguard, directly or indirectly, through any corporation, subsidiary, division, or other device, do forthwith cease and desist from advertising, offering for sale, selling, or transferring any undivided interest in land in Australia to any consumer in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, except as permitted by this order or as otherwise may be permitted by written approval of the Commission. For the purposes of this part, "consumer" shall mean a natural person to whom respondents offer to sell any undivided interest in land or other real property; *provided, however*, that the term "consumer" shall not include a natural person who purchases an interest in land in a single transaction for a sum in excess of \$50,000.

II. *It is further ordered*, That ALT:

A. Cease and desist from collecting, directly or indirectly, payments, including principal and interest, due from any Purchaser pursuant to any Sales Agreement and return to any Purchaser, within five (5) days of receipt, any payment received from such Purchaser on or after the date this order becomes final.

B. Return to each Purchaser all payments, including principal and interest, made by such Purchaser pursuant to any Sales Agreement, that were dated and received by ALT, or its representatives or agents, on or after July 1, 1977, but before the date this order becomes final.

C. Cease and desist from cancelling any Sales Agreement of any Purchaser except where permitted or required by Part III of this order.

D. Cease and desist from failing to pay all property taxes, mortgages, liens or charges against any Tract on a timely basis as each becomes due.

III. *It is further ordered*, That ALT, consistent with the procedures set forth below and the laws of Western Australia, sell each Tract and distribute the proceeds. For the purposes of this part, the definition of Purchaser shall not include any person or entity who has sold, devised, assigned, or otherwise transferred his interest in a Tract.

A. Each Tract may be sold by consent of the Purchasers of that Tract or partition and judicial sale pursuant to the laws of Western Australia; *provided, however*, that any sale other than by partition and judicial sale shall be made only with the express consent of the Purchasers whose Sales Agreements account for a majority of the undivided interests in that Tract.

B. On or before two years from the date this order becomes final ALT shall initiate proceedings in the appropriate courts of Western Australia for partition and judicial sale with respect to ten (10) Tracts less the number of Tracts which have been previously sold, or which are already the subjects of partition actions, or which have been excluded pursuant to Paragraph L of this part.

C. On or before three years from the date this order becomes final ALT shall initiate proceedings in the appropriate courts of Western Australia for partition and judicial sale with respect to twenty (20) Tracts less the number of Tracts which have been previously sold, or which are already the subjects of partition actions under Paragraph B of this part as of that date, or which have been excluded under Paragraph L of this part.

D. On or before four years from the date this order becomes final ALT shall initiate proceedings in the appropriate courts of Western Australia for the partition and judicial sale of all Tracts which remain unsold and which are not already the subjects of partition actions under Paragraphs B and C of this part as of that date, or which have not been excluded under Paragraph L of this part.

E. ALT shall pursue all such actions for partition and judicial

sale pursuant to Paragraphs B-D of this Part as expeditiously as possible consistent with the laws and judicial procedures of Western Australia. ALT shall inform the court of the provisions of Part III of this order at the time any proceeding for partition and judicial sale of a Tract is commenced, and shall provide a copy of Part III of this order if the court agrees to accept the order *in camera*.

F. All Tracts shall be sold and the proceeds distributed within five (5) years from the date this order becomes final. *Provided, however,* the Commission shall extend the period as to any particular Tract where ALT can establish to the satisfaction of the Commission that a partition action with respect to such Tract was brought and pursued as provided by this part, but that sale and distribution of proceeds cannot reasonably be expected to occur within the period. Upon the granting of such an extension, ALT shall file reports with the Commission every six months until sale and distribution of proceeds have been completed, describing the status of such pending proceeding and any measures taken by ALT to conclude such proceeding. ALT shall bear the costs of the sale of any Tract except such costs as may be deducted from the gross sales price as provided in the definition of Net Sales Price.

G. Except as otherwise provided herein, a share of the Net Sales Price of each Tract shall be distributed to each Purchaser of such Tract in proportion to the percentage interest in the Tract set forth in such Purchaser's Sales Agreement. Each Defaulter who, prior to January 1, 1977, paid one-third or more of the Purchase Price set forth in such Defaulter's Sales Agreement shall receive a cash payment, to be distributed from the remaining proceeds of the Net Sales Price, such payment to be based on the proportion of the Net Sales Price allocable to the percentage interest in the Tract set forth in such Defaulter's Sales Agreement multiplied by the percentage of the Purchase Price actually paid by such Defaulter. *Provided, however,* that any distribution to a Purchaser who is not a citizen or resident of the United States, its territories, or the District of Columbia shall be paid to such Purchaser in an amount equal to the total of his Purchase Payments, and any remainder shall be paid to ALT in an amount equal to the unpaid balance of the Purchase Price, and thereafter any remainder shall be paid to such Purchaser. Provided further that no Defaulter shall receive from the distribution provided for herein an amount in excess of the total of his Purchase Payments less the distribution provided for in Paragraph B of Part IV of this order. ALT shall be entitled to the balance of the Net Sales Price remaining after distribution of proceeds to Purchasers and Defaulters under this part.

H. Distributions from the Net Sales Price resulting from the sale of each Tract shall be made to the Purchasers and Defaulters of that Tract within sixty (60) days after the receipt of such proceeds by ALT, except at such other time as the Purchasers may consent to in accordance with Paragraph I(ii) of this part or as may be ordered by a court in a proceeding for partition and judicial sale of any Tract.

I. Any Tract may be sold on terms which provide that the buyer will pay the purchase price in installments, or that any payment by the buyer will be deferred for a period in excess of 120 days after the date the sale is consummated, provided that (i) ALT shall nevertheless distribute to the Purchasers and Defaulters of the Tract, as provided in Paragraph G of this part, an amount equal to the Net Sales Price (not including interest) within sixty (60) days after the sales transaction is consummated, or (ii) ALT shall have first obtained the express consent of the Purchasers whose Sales Agreements account for a majority of the undivided interests in the Tract to the terms of the sale and to distribution of the proceeds of the sale within a specified period exceeding 120 days after the date the sale is consummated; *provided, however*, ALT shall distribute proceeds received from the installment sale of any Tract in accordance with Paragraph G of this part within sixty (60) days of the receipt of each installment, and *provided further* that in the event of any default by any buyer, ALT will notify the Commission and promptly initiate proceedings for partition and judicial sale of such Tract.

J. ALT shall not solicit the consent of any Purchaser to any sale of a Tract or any terms of sale without first having obtained, within six (6) months prior to the solicitation, an appraisal from an appraiser licensed in Western Australia who, prior to December 31, 1977, shall not have been employed, retained or otherwise associated with any Respondent, and without having adequately and accurately disclosed to all Purchasers of the Tract whose current addresses have been identified pursuant to the procedures set forth in Part V of this order (i) the name, address and business of a proposed buyer or buyers; (ii) the nature and extent of any prior or existing relationship—including overlapping ownership interests or business dealings—between the buyers and any of the Respondents; (iii) what efforts, if any, have been made to sell the Tract on cash terms or more favorable terms of sale (including efforts to obtain a higher price or shorter pay-out) than that offered by the buyers; (iv) what other offers have been made for the Tract; (v) any appraised value of the Tract made within the six month period, and the date of each such appraisal; (vi) the minimum price and conditions upon which

the Tract would be sold to any buyer; (vii) that if the Purchasers whose Sales Agreements account for a majority of the undivided interests in the Tract do not consent to such sale, ALT remains obligated to sell the Tract, by partition and judicial sale or otherwise, within five (5) years of the date this order becomes final.

K. Respondents shall not, directly or indirectly, purchase or acquire any Tract, from any Purchaser, except as follows:

1. In disposing of any Tract through partition and judicial sale, any Respondent may purchase such Tract only if (i) both the Court administering such sale and the Commission are notified at least thirty (30) days in advance of sale of such Respondent's intention to purchase and the terms of the purchase and (ii) such Respondent reports to the Commission, within sixty (60) days after any such purchase, the amount paid by the Respondent and provides the Commission with such other relevant information concerning the sale as the Commission may request.

2. In disposing of any Tract by consent of the Purchasers of the Tract, any Respondent may purchase such Tract only if (i) within six (6) months prior to such purchase an appraisal shall have been obtained from an appraiser licensed in Western Australia who, prior to December 31, 1977, shall not have been employed, retained or otherwise associated with any Respondent, (ii) the purchase price paid by the Respondent is not less than the appraised value of the Tract, (iii) the Respondent shall have disclosed to the Purchasers the information set forth in Paragraph J of this part, (iv) the Respondent, at least thirty (30) days in advance notifies the Commission of its intention to purchase and provides to the Commission a copy of the appraisal, (v) the Respondent reports to the Commission within sixty (60) days after sale the amount paid by the Respondent and furnishes such other relevant information regarding the sale as the Commission may request.

3. Except as otherwise may be permitted by written approval of the Commission, no Respondent may purchase the individual interest of a Purchaser in a Tract unless such Purchaser

(a) has executed a written document acknowledging receipt of the letter required by Paragraph A of Part IV of this order and declining to dispose of his interest in the manner provided therein, or

(b) is represented by legal counsel, either individually or as a member of a class in a class action which has been filed in state or federal court.

L. Notwithstanding Paragraphs A-K of this part, if the Purchasers whose Sales Agreements account for a majority of the undivided interests in a Tract expressly consent to retain their interests in the

Tract and to forego permanent disposition of the Tract pursuant to Part III of this order, the Commission shall entertain a petition to that end. Such a petition shall set forth sufficient information to demonstrate:

1. The procedure used to ascertain that Purchasers whose Sales Agreements account for a majority of the undivided interests in the Tract have expressly consented to forego disposition of the Tract pursuant to Part III of this order, and the results of such procedure.

2. The risks, benefits, and burdens of such continued ownership in the Tract and the procedures used to ensure that Purchasers were adequately and accurately informed of such information prior to expressing their consent.

3. That prior to any Purchaser's expression of consent, an appraisal of the Tract was obtained from an appraiser (licensed in Western Australia and who, prior to December 31, 1977, had not been employed, retained or otherwise associated with any Respondent) and such appraisal was provided to the Purchasers in the Tract;

4. That adequate provision has been made for Purchasers to dispose of the Tract in the future;

5. That any Purchaser who does not concur in the majority decision was informed of such Purchaser's right to institute, and the required procedure for instituting, an action for judicial partition or sale;

6. That, for the purposes of Parts 4 and 5 of this paragraph, adequate provision has been made to enable Purchasers who hold only equitable rights in the Tract to exercise full rights of ownership in the Tract.

If the Commission is satisfied that the prerequisites of this paragraph have been met, and that there is no countervailing public interest to be served by rejection of the petition, the Commission shall grant the petition.

M. The provisions of this Part regarding sale of the Tracts and distribution of the proceeds are subject to the laws of Western Australia, and to any judicial decrees or orders thereunder; *provided, however*, that to the extent that any Respondent might otherwise have rights in connection with the sale of any Tract, or to the proceeds thereof, different from those provided herein, it has waived such rights and shall proceed according to the terms of this order.

IV. *It is further ordered*, That ALT make cash payments to Purchasers and Defaulters who are citizens or residents of the

United States, its territories, or the District of Columbia, in accordance with the following procedures:

A. Within sixty (60) days after this order becomes final, ALT shall mail, in accordance with the procedures set forth in Part V of this order, two (2) copies of the letter set forth in Appendix B to all such Purchasers and two (2) copies of the letter set forth in Appendix C to all such Defaulters. *Provided, however*, with prior approval of the Commission, appropriate modifications or deletions may be made in letters to be sent to Purchasers or Defaulters whose rights under this order are different from those delineated in the letters set forth in Appendices B and C. Enclosed with each pair of letters shall be a postage-prepaid return envelope for the return of the release form.

B. The amount to be offered to each eligible Purchaser and Defaulter, as indicated in the letter to such Purchaser or Defaulter, shall be the percentage of \$2,000,000 equal to the percentage that the total Purchase Payments made by that Purchaser or Defaulter is of the total Purchase Payments made by all eligible Purchasers and Defaulters. Moreover, any Purchaser who purchased an interest in a Tract other than from ALT or its representatives or agents (transferee Purchaser), shall participate in the foregoing payment provided, in calculating the amount of the payment to be made, any consideration paid by a transferee Purchaser to a transferor Purchaser shall, if the transferee Purchaser has first furnished to ALT adequate documentation of such Purchaser's purchase of the interest and the amount paid therefor, be treated as a deduction from the Purchase Payments of the transferor Purchaser and treated as an addition to the Purchase Payments of the transferee Purchaser (in no event, however shall a transferee Purchaser be credited with total Purchase Payments in excess of the total Purchase Payments paid to ALT for such interest.)

C. In calculating Purchase Payments, ALT shall attempt to reconcile with its records any response to the letters required by Paragraph A of this part that contest the accuracy of those records.

D. ALT shall make payments to each such Purchaser and Defaulter who shall have elected to participate by tendering the release set forth in Appendices B and C in a total amount equal to the amount calculated pursuant to Paragraphs B and C of this Part. The first payment shall be made no later than two-hundred and forty (240) days after the date this order becomes final, with subsequent payments to be made at least annually over a period not to exceed forty-eight (48) months from the date of the first payment. The payments will be made to each such Purchaser or Defaulter in equal installments, except that the first payment may be larger than

the succeeding payments and the last payment will include any additional amounts due by reason of the recalculation provided for in Paragraph C of this Part.

E. Seven years after the date on which the letters required by Paragraph A of this part shall have been mailed, ALT shall distribute an additional payment in the following circumstance. If, as of such date, less than \$1,500,000 shall have been distributed pursuant to this part, and if as of such date no class action litigation against any of the Respondents shall be pending on behalf of any eligible Purchaser or Defaulter, ALT shall distribute to all Purchasers and Defaulters who shall have tendered the release provided in Appendices B and C the balance of \$1,500,000 less such amounts as, subsequent to the date this order becomes final, shall have been paid pursuant to any arbitration, settlement, release, litigation, or judgment relating to the purchase of any interest in a Tract. In the event that any class action litigation is pending on such date, this distribution shall be deferred until ninety (90) days after such action is dismissed or settled, or any judgment thereon is satisfied, and the amount of such distribution shall be reduced by such amounts as may have been paid pursuant to such settlement, litigation or judgment. Payment of the amounts to be paid under this paragraph shall be made to each Purchaser and Defaulter in the same proportion as payments under Paragraph B of this part; *provided, however,* that no Purchaser or Defaulter shall receive from this distribution an amount in excess of the total of his Purchase Payments less the distributions provided for in this part.

V. *It is further ordered, That:*

A. Any mailings or communications required by Parts III and IV of this order shall be by first-class mail, postage-prepaid and address correction requested, directed to each Purchaser and Defaulter at the most recent address for such Purchaser or Defaulter contained in ALT's files.

B. Sixty (60) days after the mailing required by Paragraph A of Part IV of this order, ALT shall make a second mailing of such letters by certified first-class mail, postage-prepaid, address correction requested, return-receipt requested with delivery to addressee only, to all Purchasers and Defaulters, directed to their most recent addresses contained in the ALT files, except those Purchasers and Defaulters whose first mailing was returned undelivered or who have tendered either the release or the election not to participate.

C. Within twenty (20) days after return to ALT of any undelivered letter mailed pursuant to Paragraphs A or B or within thirty (30) days after mailing any letter mailed pursuant to Paragraph B of

this part for which no return receipt has been received, ALT shall attempt to obtain a current or more recent address for the Purchaser or Defaulter to whom such letter was addressed by requesting the Purchaser's or Defaulter's current mailing address from any relative or representative of the Purchaser or Defaulter whose address appears in ALT's files by sending a communication by first-class mail, postage-prepaid and address correction requested, directed to the most recent address for such relative or representative appearing in ALT's files, and by requesting a current address for the Purchaser or Defaulter from a credit reporting agency located nearby the most recent address for the Purchaser or Defaulter appearing in ALT's files, the current or more recent address to be provided by the credit reporting agency within a reasonable time after the request. If a current or more recent address is received through these procedures, a copy of the appropriate letter required by Paragraph A of Part IV of this order shall be sent within ten (10) days after receipt of the new address to the Purchaser or Defaulter at the new address by certified first-class mail, postage-prepaid, address correction requested, return-receipt requested and delivery to addressee only.

D. After completion of the procedures set forth in Paragraphs A-C of this part, ALT shall maintain such records as will disclose as to each Purchaser and Defaulter, whether such Purchaser or Defaulter (i) signed a release, (ii) elected not to participate, (iii) did not respond to the letter, but received it as evidenced by a signed certified mail return-receipt, (iv) was not reached by any mailing; and the most recent address in ALT's files or obtained through the procedures set forth in Paragraph C of this part.

E. If at any time prior to the fulfillment of the obligations imposed by this order, ALT learns of the current address of any Purchaser or Defaulter whose letters were returned undelivered or from whom a record of receipt was not obtained, ALT shall send such Purchaser or Defaulter the letters required by certified first class mail, postage-prepaid, address correction requested, return-receipt requested and delivery to addressee only, and such Purchaser or Defaulter shall be entitled to the benefits provided under Parts III and IV of this order under the terms and conditions provided therein. Except as provided in Paragraph F of this part, ALT shall not thereafter bear any affirmative duty to seek out Purchasers or Defaulters.

F. All payments or distributions to Purchasers or Defaulters pursuant to Parts III or IV of this order shall be sent by first-class mail, postage-prepaid, address correction requested to the most

recent address for each Purchaser or Defaulter appearing in ALT's files. If any such payment is returned undelivered, ALT shall employ the procedures set forth in Paragraph C of this part in an effort to obtain a current address for such Purchaser or Defaulter.

G. If, at the time of the last payment to eligible Purchasers and Defaulters pursuant to paragraph D of Part IV of this order, less than \$1,500,000 shall have been distributed pursuant to Part IV of this order, ALT shall inform such Purchasers and Defaulters that they may receive an additional payment pursuant to paragraph E of Part IV of this order and request such Purchasers and Defaulters to advise ALT of any change of address.

VI. *It is further ordered*, That Respondents shall, subsequent to the date this order becomes final, for a period of six (6) years or until one year after Respondents have complied fully with all parts of this order, whichever is later, or such shorter period as the Commission may approve in writing:

A. Grant any duly authorized representative of the Federal Trade Commission access to and the right to copy any records required to be maintained by this order.

B. Maintain records which show the efforts taken to insure continuing compliance with the terms and provisions of this order, including but not limited to the following:

1. All records used by any Respondent in determining whether any person or entity is a Purchaser or Defaulter, as each term is defined in this order.

2. All records used by any Respondent in determining the amount of money due any Purchaser or Defaulter pursuant to Parts II, III, and IV of this order.

3. All records evidencing that any Purchaser or Defaulter has arbitrated, settled, released or litigated to final judgment all claims and rights relating to the purchase of an interest in a Tract and that such Purchaser or Defaulter has received payment pursuant to such arbitration, settlement, release or litigation.

4. All records relating to the purchase or transfer of any Purchaser's undivided interest in a Tract, including all documents filed with or issued by any Australian court pursuant to Part III of this order.

5. Copies of all written communications between any Respondent and any Purchaser or Defaulter, including any communication which is returned to any Respondent as nondeliverable by the U.S. Postal Service, except those between counsel for a Respondent and counsel for such Purchaser or Defaulter.

C. Obtain prior approval by the Commission of any written

communication to any Purchaser or Defaulter which is initiated by any Respondent pursuant to Paragraphs I or K of Part III of this order, except for any communication written pursuant to Paragraph K(3)(b). Such Respondent shall provide to the Commission such relevant information within its possession, custody or control as the Commission may request to evaluate any such communication. If, within 20 days after mailing such communication to the Commission, the Respondent has received no written notice that the Commission has determined that the communication fails to conform with the provisions of this order or that the Commission needs additional time to evaluate the communication, the Respondent may send the communication. Otherwise the Commission shall approve the communication or indicate the changes necessary for such approval within 30 days after the submission of such correspondence or as soon thereafter as possible.

D. Send, within 3 days after mailing, copies to the Commission of any written communication, the substance of which has not previously been approved or authorized by the Commission, to any Purchaser or Defaulter which (a) interprets or defines the obligations imposed by this order, or (b) is written in response to any inquiry from any Purchaser or Defaulter relating to a written communication from any Respondent initiated pursuant to Paragraphs I, K or L of Part III of this order.

VII. *It is further ordered, That:*

A. Morlan shall be responsible for ALT's compliance with the provisions of this order and shall be liable for any final judgment against ALT for violating any provision of this order.

B. Safeguard shall provide such funds on a timely basis as are required for compliance with the provisions of this order.

C. In the event that ALT is sold, assigned or otherwise disposed of, the agreement for such disposition shall contain a provision requiring the purchaser or assignee to assume the obligations imposed on ALT under this order.

D. In the event that the Commission determines that ALT has failed to comply, or has become incapable of complying, with any provision of this order, and if the required action is not taken within 30 days after written notice to ALT and Safeguard of such determination, or in the event that the Commission is enjoined, stayed or otherwise prohibited from enforcing any provision of this order against ALT or Morlan by a bankruptcy court, Safeguard shall assume all obligations (including obligations that have become due, but have not been fulfilled by ALT) remaining to be fulfilled by ALT under this order; *provided, however,* that Safeguard shall not be

liable for civil penalties by reason of ALT's failure to fulfill such obligations prior to the date of such written notice; and provided further that, in any event, Safeguard shall fulfill the obligations remaining unfulfilled under Part III of this order either on the dates set forth in such part or twelve (12) months from the date of such written notice, whichever time period is longer. After Safeguard assumes the unfulfilled obligations under this order by operation of this paragraph, and upon submission of a petition by Safeguard, the Commission will review each deadline for any unfulfilled obligation and will extend, where appropriate, any deadline which has been established by Safeguard as imposing, under the prevailing circumstances, an unreasonable hardship or burden in its application to Safeguard; *provided, however*, the Commission need not extend any deadline when extension of the deadline would be contrary to the public interest. The Commission will respond to such petition within 45 days of its submission by Safeguard or as soon thereafter as is possible. Nothing contained in this paragraph shall be construed as otherwise limiting the Commission's authority to pursue against any noncomplying Respondent any action for such noncompliance with this order.

E. ALT shall immediately transfer to Safeguard ownership of one undivided interest in each Tract.

F. Each Respondent herein shall, within ninety (90) 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 it has complied with the applicable provisions of this order and, commencing 180 days after filing the initial report, shall file semiannual reports thereafter until it has complied fully with all parts of this order.

G. For the purposes of this order, the "Commission" shall include, and all notices, reports, and requests for approval shall be directed to, the Director of the Bureau of Consumer Protection, or his designee, or successor.

H. Should any duty required to be performed on a day certain under this order fall upon a non-business day, such duty may be performed on the next following business day.

I. The Commission may extend any deadline contained in this order for good cause shown, and such extension shall not be unreasonably withheld.

J. Each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary

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

APPENDIX A

Listing of parcels of land in Western Australia owned by ALT in which consumers currently hold undivided interests.

Tract Number	Consisting of Victoria Location or Portions of Victoria Locations			Also Identified as Lot No.
I	10293			
II	10295			
III	10144			
IV	10609			
V	10574			
VI	10148			
VII	9907			
VIII	10006			
IX	4484			
X	4485			
XI	4584			
XII	3511			
XIII	10001			
XIV	2718			
XV	2545,	2709		9
XVI	9790			13
XVII	1924,	952,	1458	14
XVIII	2798,	1924,	1458	
	2317,	9721		15
XIX	2798,	9791,	2737	16
XX	755,	9791,	2737,	
	8348,	2798		17
XXI	755,	695,	2798	18
XXII	956,	476,	1258,	
	2170			19
XXIII	1258,	2169		20
XXIV	1258,	2169,	907	21
XXV	907,	2169		22
XXVI	2169,	2718		23
XXVII	2169,	2170,	2718	
	476			24
XXVIII	476,	2170,	2718	25
XXIX	2718,	2170		26
XXX	2718			27

APPENDIX B

[ALT Letterhead]

(Name) (Address) (City and State)

Re: Sale of Land in Western Australia and Cash Payments

Dear (Name):

Australian Land Title, Ltd., ("ALT") has entered into an Agreement with the

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Federal Trade Commission which provides certain benefits for which you are eligible. The Agreement basically provides (a) for the sale of the tract of land in which you hold an interest within five years, (b) that no further payments need be made by you, (c) that those payments dated and received by the company on or after July 1, 1977, will be returned to you, (d) that your sales agreement will be treated as paid in full—you will receive a full share in the proceeds of the sale of the land in accord with your sales agreement, and (e) a cash payment will be made to you each year for the next five years upon your signing the Release set forth below agreeing to release any claims that you may have arising out of your acquisition of the undivided interest in land located in Western Australia.

Our records show that you hold a _____ % interest in [*description of land*], and that as of June 30, 1977, \$ _____ was paid to ALT on your contract. If your records conflict with any of this information please notify us at once, and provide copies of whatever documents you may have which will help in resolving any conflicts. As mentioned above, all payments you made to ALT after July 1, 1977, are being returned to you.

Sale of Land. ALT will, within the next five years, arrange for the sale of the land in Australia in which you hold an interest. You will receive a share of the net sales price of the land based upon the percentage interest set forth in your sales agreement. It is not possible at this time to estimate the price for which the land will be sold. Before this happens, however, you will be sent complete details concerning how the land will be sold.

Discontinue Payments. ALT is not collecting any further payments due under your contract for the purchase of an undivided interest in land in Western Australia. Accordingly, do not send any additional payments to ALT. ALT will send back to you any payments you made which were dated and received by ALT on or after July 1, 1977. This will not affect your right to participate in the proceeds from the sale of the land in which you hold an undivided interest. You will receive the full share set forth in your sales agreement.

Eligibility for Cash Payment. You are eligible to receive a cash payment from ALT. Cash payments will be made only to purchasers who agree in writing to release any claims they may have arising out of the sale of undivided interests in land in Western Australia. A copy of this letter containing the Release is being provided for your signature. If you sign the Release, you will receive \$ _____ which will be paid in five installments. The first payment will be made by [*date*], and will be in the amount of \$ _____. The four subsequent payments will be made annually. In order to receive the cash payment you must sign the Release and return it in the enclosed postage-paid envelope. You may wish to consult an attorney to determine your rights before signing the Release, and you should be aware that the Federal Trade Commission has expressed no opinion as to whether you should sign the Release.

Even if you do not wish to sign the Release and receive the cash payment, you will still receive your share of the proceeds of the sale of the land in which you have purchased an interest. You should not make any additional payments to ALT and ALT will return any payments you have made since July 1, 1977. If you do not wish to release all claims and participate in the cash payment, sign the statement "I DO NOT WISH TO PARTICIPATE IN THE CASH PAYMENT" and return the copy in the enclosed postage-paid envelope.

Please sign and return the copy of this letter as soon as possible and in no event later than 60 days. Please note your current address and keep us advised of any future change of address, so that we may send you further information, as well as future payments. If you have any questions about this letter, please write to us at once.

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Decision and Order

Sincerely,

[Title]

Australian Land Title, Ltd.

RELEASE

In consideration of the cash payments described above, totaling \$ _____, I hereby release Australian Land Title, Ltd., Safeguard Industries, Inc., and Morlan International, Inc., their subsidiaries, predecessors, and affiliates, and their officers, directors, employees, and agents from any and all claims, known or unknown, that I may have against any of them in connection with my purchase of an interest in land as described above.

[Date]

[Signature]

Remember, you must sign and date the above Release and return this letter to receive the Cash Payments.

I DO NOT WISH TO PARTICIPATE IN THE CASH PAYMENT.

[Date]

[Signature]

APPENDIX C

[ALT Letterhead]

(Name)

(Address)

(City and State)

Re: Eligibility for Cash Payments

Dear (Name):

Australian Land Title, Ltd., ("ALT") has entered into an Agreement with the Federal Trade Commission which provides certain benefits for which you are eligible.

Cash Payments. Cash payments will be made to persons whose last payment on their contracts was received by ALT on or after January 1, 1974, but not later than December 31, 1976. According to our records, your last payment to ALT was made on [date]. At this time you had paid \$ _____ on your contract for a _____ % interest in the following land: [description of land]. If your records conflict with any of this information, please notify us at once, and provide copies of whatever documents you may have which will help in resolving any conflicts.

Based on the foregoing, you are eligible for a cash payment of \$ _____ from ALT. You can receive this amount only if you agree to release any claims you may have arising out of the sale of undivided interests in land in Western Australia. A copy of this letter containing the Release is being provided for your signature.

The payment will be made in five installments. The first payment will be made by [date], and will be in the amount of \$ _____. The four subsequent payments will be made annually. In order to receive the cash payment you must sign the RELEASE and return it in the enclosed postage-paid envelope. You may wish to

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consult an attorney to determine your rights before signing the Release, and you should be aware that the Federal Trade Commission has expressed no opinion as to whether you should sign the Release.

If you do not wish to release all claims and participate in the cash payment, sign the statement "I DO NOT WISH TO PARTICIPATE IN THE CASH PAYMENT" and return the copy in the enclosed postage-paid envelope.

Sale of Land. Even if you do not agree to release all claims and participate in the cash payment described above, you will still be eligible to receive a payment from the proceeds of the sale of the land in which you contracted to purchase an interest. The amount of this payment cannot now be estimated, since it will be based on the sales price of the land, as well as the amount you paid on your contract.

Whether or not you choose to participate in the cash payments, the amount you will receive is limited to the amount that you have paid to ALT. In no event will you receive more than the amount you paid.

Please sign and return the copy of this letter as soon as possible and in no event later than 60 days. Please note your current address, and advise us of any future change of address, so that we may send you further information, as well as future payments.

If you have any questions about this letter, please write us at once.

Sincerely,
Australian Land Title, Ltd.

By

RELEASE

In consideration of the cash payments described above, totaling \$ _____, I hereby release Australian Land Title, Ltd., Safeguard Industries, Inc., and Morlan International, Inc., their subsidiaries, predecessors, and affiliates, and their officers, directors, employees, and agents from any and all claims, known or unknown, that I may have against any of them in connection with my purchase of an interest in land as described above.

[Date]

[Signature]

Remember, you must sign and date the above Release and return this letter to receive the Cash Payments.

I DO NOT WISH TO PARTICIPATE IN THE CASH PAYMENT.

[Cash]

[Signature]