supra note 47, this respondent has tried to tip-toe on the edge of illegality. However, we are willing to see whether the necessary changes can be made in Statesman's veterans insurance program without the compulsion of an order by this Commission.

Therefore, rather than remanding the case, we shall vacate the examiner's order and strike everything in his initial decision that is inconsistent with this opinion. From time to time, the Commission, through its staff, will seek to review Statesman's promotional material so that a determination might be made as to whether further action is necessary.

An appropriate order will issue.

Commissioner Elman concurs in the result. Chairman Dixon approves the findings and conclusions contained in the foregoing opinion but would have preferred the issuance of an order to cease and desist. Commissioner MacIntyre does not concur.

ORDER TERMINATING PROCEEDING

Upon consideration of the appeal of respondent from the initial decision filed on December 8, 1967, and for the reasons stated in the opinion accompanying this order,

It is ordered, That the order to cease and desist issued by the hearing examiner be, and it hereby is, stricken, and that the proceeding be, and it hereby is, terminated.

Commissioner Elman concurs in the result. Chairman Dixon approves the findings and conclusions contained in the opinion but would have preferred the issuance of an order to cease and desist. Commissioner MacIntyre does not concur.

IN THE MATTER OF

LEON A. TASHOF TRADING AS NEW YORK JEWELRY COMPANY

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

Docket 8714. Complaint, Sept. 29, 1966—Decision, Dec. 2, 1968

Order requiring a Washington, D.C., retailer of eyeglasses, watches, jewelry and other merchandise to cease using bait and switch tactics, falsely advertising its eyeglasses at "bargain" prices, failing to disclose all details of financing and credit charges, and misusing "easy credit" solicitation of customers.

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 Leon A. Tashof, trading as New York Jewelry Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Leon A. Tashof is the sole proprietor of a retail store located at 719 Seventh Street, NW., in the city of Washington, District of Columbia. Respondent does business under the name New York Jewelry Company.

Respondent formulates, directs and controls the acts and practices of the New York Jewelry Company as hereinafter set forth.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of various kinds of goods, including, but not limited to, watches, radios, rings, furniture, cookware, eyeglasses, television sets and other electrical appliances to the public. Respondent's customers are principally of the low income group and the preponderance of respondent's sales to such customers are on credit.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused said merchandise, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his merchandise by the consuming public, the respondent has made numerous statements in advertisements inserted in newspapers and by other means with respect to the sale of eyeglasses, and other merchandise as aforesaid.

Typical and illustrative of the aforesaid statements are the following:

DISCOUNT EYE GLASSES MADE WHILE YOU WAIT
Price includes lenses, frames and case—from $7.50 complete

PAR. 5. By and through the use of the aforesaid advertisement, and others of similar import not specifically set forth herein, the respondent has represented directly or by implication that the offer of eyeglasses for $7.50 is a bona fide offer and that respondent is selling eyeglasses at discount prices substantially below the prices charged by other establishments for similar corrective eyeglasses.

PAR. 6. In truth and in fact respondent's offer of eyeglasses at a price of $7.50 is not a bona fide offer. It is made for the purpose of inducing prospective purchasers of eyeglasses to enter respondent's place of business whereupon the quality of the $7.50 eyeglasses is disparaged and their purchase otherwise discouraged and an attempt is made, frequently with success, to sell eyeglasses costing substantially more. Furthermore, respondent's prices for eyeglasses are not discount prices nor are they substantially below the prices charged by other establishments for similar corrective eyeglasses.

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

PAR. 7. In the further course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his said merchandise, the respondent has engaged in the following acts and practices:

1. He detains passers-by on the street around and about his place of business and after determining that they have a job where a garnishment can be obtained against their wages he presents them with a "Free Gift" card (example attached hereto as Exhibit "A" and made a part hereof), and invites them to enter his store to receive a "free gift" or a "free" eye examination without the need to buy anything and without other obligation. When the recipients of such "free gift" cards enter respondent's store they are given an inexpensive item such as a small pocket comb or a ball point pen. While in respondent's store they are informed that their credit is good and that therefore they can purchase any item in the store including eyeglasses on easy credit terms with no money down. At the urging of respondent or his employees many persons who have entered respondent's store to receive "free" eye examinations or "free" gifts have purchased eyeglasses or other merchandise on the so-called "easy credit terms."

2. Respondent affixes tickets to his merchandise bearing the retail prices thereof, thereby representing, directly or by impli-

cation, that such prices are competitive and reflect the reasonable or fair market value of such merchandise. Without determining his customers' financial ability to pay or their credit rating respondent sells merchandise to them on "easy credit terms" at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash. (For example: transistor radios costing respondent $3.45 bear a retail price of, and are sold by respondent for $59.50.) In making sales on credit respondent fails to adequately and fully inform his customers of the credit charges or financing fees imposed upon them by respondent and in many instances respondent fails to disclose on conditional sales contracts or other credit instruments, the total price to be paid pursuant to the credit contract.

PAR. 8. By and through the use of the aforesaid acts and practices, and others similar thereto not specifically set forth herein, the respondent takes an unfair advantage of the unimformed and low income members of the consuming public:

1. By luring them into his store to receive a "free gift" or a "free" eye examination where they are urged, encouraged and induced to purchase merchandise on credit terms that, contrary to respondent's representations, are not easy because of the fact that the prices charged by respondent for such merchandise are unconscionably high and greatly in excess of the reasonable or fair market value of such merchandise. Respondent extends credit to such customers without determining their credit rating or their financial ability to meet their payments. As a result many of such customers are unable to make their credit payments whereupon respondent seeks, and often with success, to obtain garnishments against their wages.

2. By including in the prices affixed to and charged for his merchandise undisclosed charges for making purchases on credit, therefore such prices are not competitive nor do they reflect the reasonable or fair market value of such merchandise because they are unconscionably high and greatly in excess of the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash.

3. By failing to fully and adequately inform his credit customers of all the credit charges or financing fees imposed upon them by listing them separately, and by failing in many instances to disclose on conditional sales contracts or other credit instruments, the total price to be paid pursuant to the credit contract.

Therefore, the acts and practices of respondent as set forth in

Paragraph Seven hereof are contrary to public policy and are false, misleading, deceptive or unfair.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive representations and unfair and deceptive practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of respondent's merchandise by reason of said erroneous and mistaken belief or lack of knowledge as the result of respondent's failure to disclose pertinent information to said members of the purchasing public, and because of respondent's unfair and deceptive acts and practices.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of that portion of the public respondent normally deals with and constituted, and now constitute, unfair or deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Howard S. Epstein and *Mr. Walter C. Gross* for the Commission.

McKean & Whitehead, Washington, D.C., by *Mr. David J. McKean* for the respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

JUNE 26, 1967

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondent on September 29, 1966, charging the respondent with the use of false, misleading, unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act by the use of false and misleading advertising representations and practices in the sale of merchandise to the consuming public. A copy of the complaint was served upon the respondent on October 1, 1966. Respondent filed an answer to the complaint admitting and denying certain of the allegations contained therein. The respondent denied having engaged in any alleged acts or practices violative of Section 5 of the Federal Trade Commission Act.

Pursuant to order of the examiner prehearing conferences were held on November 7, November 22 and December 12, 1966. On December 14, 1966, counsel for respondent filed a motion with the

examiner requesting that the examiner certify to the Commission a consent agreement and order. The matter was certified to the Commission on December 19, 1966, and on February 6, 1967 [71 F.T.C. 1631], the Commission issued its Order remanding the matter to the examiner ordering "expeditious conclusion of adjudicatory proceedings." The matter was set for hearing on February 16, 1967, but complaint counsel was unable to proceed and the hearing was postponed until March 20, 1967. Hearings were held on March 20, 21, 22, 23 and 24, and proposed findings of fact, conclusions of law and proposed orders were filed by the parties on May 8, 1967.

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, transcript, exhibits and proposed findings of fact and conclusions filed by the parties.

Consideration has been given to the proposed findings of fact, conclusions of law and arguments presented by the parties. All proposed findings of fact and conclusions of law not hereinafter specifically found or concluded are rejected. The hearing examiner having considered the entire record makes the following findings of fact, conclusions drawn therefrom and issues the following order.

FINDINGS OF FACT

1. Respondent Leon A. Tashof is the sole proprietor of a retail store located at 719 Seventh Street, NW., in the city of Washington, District of Columbia. Respondent does business under the name New York Jewelry Company. (Adm. in Ans.)

2. Respondent formulates, directs and controls the acts and practices of the New York Jewelry Company as hereinafter set forth. (Adm. in Ans.)

3. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of various kinds of goods, including, but not limited to, watches, radios, rings, furniture, cookware, eyeglasses, television sets and other electrical appliances to the public. Respondent's customers are principally of the low-income group and the preponderance of respondent's sales to such customers are on credit.

4. In the course and conduct of his business, respondent now causes, and for some time last past has caused said merchandise, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in

commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. Paragraphs 4, 5 and 6 of the complaint *allege* that the respondent in the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his merchandise by the consuming public has made numerous statements in advertisements inserted in newspapers and by other means with respect to the sale of eyeglasses, and other merchandise.

Typical and illustrative of the aforesaid statements is the following:

DISCOUNT EYE GLASSES MADE WHILE YOU WAIT
Price includes lenses, frames and case—from $7.50 complete

Complaint counsel contend that by and through the use of the aforesaid advertisement, and others of similar import not specifically set forth herein, the respondent has represented directly or by implication that the offer of eyeglasses for $7.50 is a bona fide offer and that respondent is selling eyeglasses at discount prices substantially below the prices charged by other establishments for similar corrective eyeglasses.

The complaint alleges that in truth and in fact respondent's offer of eyeglasses at a price of $7.50 is not a bona fide offer. It is made for the purpose of inducing prospective purchasers of eyeglasses to enter respondent's place of business whereupon the quality of the $7.50 eyeglasses is disparaged and their purchase otherwise discouraged and an attempt is made, frequently with success, to sell eyeglasses costing substantially more. Furthermore, respondent's prices for eyeglasses are not discount prices nor are they substantially below the prices charged by other establishments for similar corrective eyeglasses.

Complaint counsel conclude that the representations set forth in Paragraphs 4, 5 and 6 were and are false, misleading and deceptive.

The Commission has placed in evidence one sample advertisement which appeared in the Washington Daily News on January 29, 1965 (CX 114, Tr. 314). Testimony shows that this ad ran approximately once a week for the period of a year and a half. The date on which Commission Exhibit 114 appeared, January 29, 1965, was neither the beginning nor the end of this advertising campaign, but sometime during the middle of the campaign. (Tr. 355.) Therefore, this campaign began sometime during 1964 and was discontinued by the end of 1965. (Tr. 418, 420.)

The advertisement has not been quoted in its entirety in the

complaint. The actual text of the advertisement also contains the following language: "Oculists' prescription filled, or have your eyes examined by our registered optometrist. Moderate Examining Fee." (See CX 114.) Eyeglasses, at a price of $7.50, were thus offered to customers bringing with them a signed prescription from an ophthalmologist.[1] The stipulated evidence shows that less than ten pairs of eyeglasses were sold at the $7.50 price, under such circumstances, in each of the years 1964 and 1965. (Tr. 420.) This advertising campaign had been discontinued prior to the start of 1966, and no sales of eyeglasses were made at the $7.50 price during 1966 or subsequently.

While the number of eyeglasses sold during 1964 and 1965 at this price was only a small fraction of respondent's total sales of eyeglasses, there is no evidence to indicate that respondent did not honor the terms of the advertisement. The purchase of eyeglasses at $7.50 was not discouraged by disparaging their quality. (Tr. 382.) The Commission has offered into the record absolutely no evidence, either from store personnel, from customers, or from any other source, that sales of eyeglasses at $7.50 were discouraged, or that the quality of such eyeglasses was ever disparaged.

Paragraphs 4, 5 and 6 of the complaint have not been sustained by a preponderance of reliable substantial and probative evidence and therefore must be dismissed.

6. Paragraph 7 subparagraph 1 of the complaint alleges that the respondent engaged in the following acts and practices:

> 1. He detains passers-by on the street around and about his place of business and after determining that they have a job where a garnishment can be obtained against their wages he presents them with a "Free Gift" card (example attached hereto as Exhibit "A" and made a part hereof), and invites them to enter his store to receive a "free gift" or a "free" eye examination without the need to buy anything and without other obligation. When the recipients of such "free gift" cards enter respondent's store they are given an inexpensive item such as a small pocket comb or a ball point pen. While in respondent's store they are informed that their credit is good and that therefore they can purchase any item in the store including eyeglasses on easy credit terms with no money down. At the urging of respondent or his employees many persons who have entered respondent's store to receive "free" eye examinations or "free" gifts have purchased eyeglasses or other merchandise on the so-called "easy credit terms."

[1] Oculist and ophthalmologist are synonymous terms. (Tr. 421; see also Webster's New Collegiate Dictionary, 2d ed.) An ophthalmologist is a licensed doctor of medicine who specializes in the care and treatment of the eye and eye diseases, and who can and does prescribe corrective eyeglasses for vision defects caused by refractive errors in a patient's eyes.

As a result of engaging in the above conduct, complaint counsel allege that the respondent's acts and practices are contrary to public policy, and are false, misleading, deceptive or unfair. How the acts and practices set forth above violate Section 5 of the Federal Trade Commission Act has neither been pointed out by complaint counsel nor has any evidence been introduced in the record to sustain the charge that the acts and practices of the respondent violated any law.

7. Subparagraph 2 of Paragraph 7 charges that:

> 2. Respondent affixes tickets to his merchandise bearing the retail prices thereof, thereby representing, directly or by implication, that such prices are competitive and reflect the reasonable or fair market value of such merchandise. Without determining his customers' financial ability to pay or their credit rating respondent sells merchandise to them on "easy credit terms" at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash. (For example: transistor radios costing respondent $3.45 bear a retail price of, and are sold by respondent for $59.50.) In making sales on credit respondent fails to adequately and fully inform his customers of the credit charges or financing fees imposed upon them by respondent and in many instances respondent fails to disclose on conditional sales contracts or other credit instruments, the total price to be paid pursuant to the credit contract.

Before discussing all of the allegations in this paragraph, it should be pointed out that although the complaint charges respondent with selling a transistor radio costing respondent $3.45 at a price of $59.50, there is *no* evidence in this record to substantiate this allegation. The record discloses that respondent purchased 72 transistor radios (Invoice 32793, CX 122) and that they were sold at prices ranging from $2.88 (plus tax) to $8.19 (including tax). The six-transistor radios were sold at $2.88, the eight-transistor radios at $3.88 and the ten-transistor radios at $4.88 with the exception of nine sales at prices from $1.03 up to $8.19.

8. The complaint charges that respondent sells merchandise to his customers "at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise in other retail establishments in the same trade area * * *." (Complaint, Paragraph 7, subparagraph 2.)

9. The complaint also charges that "In making sales on credit respondent fails to adequately and fully inform his customers of the credit charges or financing fees imposed upon them by respondent and in many instances respondent fails to disclose on conditional sales contracts or other credit instruments, the total

price to be paid pursuant to the credit contract." (Complaint, Paragraph 7, subparagraph 2.)

10. These allegations, sales at unconscionably high prices and a failure to disclose credit charges, constitute the main thrust of the complaint. Before going into the question of whether, if proved, these allegations would be violative of Section 5 of the Federal Trade Commission Act, the examiner has reviewed the entire record and finds that the allegations have not been proved by a preponderance of the evidence. Table 4 of respondent's proposed findings, attached hereto and marked Appendix A, reflects the record evidence dealing with transactions resulting in the sale of 17 different items of merchandise by respondent. Column 1 of the table identifies the merchandise and purchaser, column 2 reflects the price obtained by respondent for such merchandise and column 3 shows the comparative price evidence of record.

11. There is nothing unusual about the retail price charged by respondent for any of these items of merchandise. And there is an almost complete lack of evidence in the record bearing on the question of the price charged for similar merchandise by other sellers. The record does contain testimony from Mr. Ullman reflecting the common or usual price range charged by other sellers for reconditioned used TV sets. (Tr. 378.) Aside from that, complaint counsel have seen fit to attempt to offer comparable price evidence in the case of only one item of merchandise. That one item of merchandise is a watch belonging to Mr. Roland Taylor (CX 9, 26A, B, C). Complaint counsel made no effort to check the history of the watch offered in evidence. Respondent's counsel, however, made a complete investigation and it was determined that the watch offered in evidence had not been sold by the respondent but that the watch had been purchased by Mr. Taylor's wife from Weinstein's Pawnbrokers, Washington, D.C.

Credit Charges

Table 2 of respondent's proposed findings (Appendix B) sets out 26 contracts entered into between respondent and certain purchasers of merchandise.

When the contracts are arranged in the order of their dates, the sequence reveals the approximate times at which respondent's policy regarding the method of computing these credit charges was changed. Such a tabulation provides information on the manner in which such carrying charges were disclosed, and also shows respondent's practice with regard to the disclosure of the

total purchase price for merchandise bought in such credit transactions.

In Table 2 the first column shows the date appearing on the contract, the second column shows the exhibit number of the contract, and the third column gives the name of the purchaser. Column 4 shows a code letter for each different form of contract employed, or for each different manner of computation used in connection with a given form of contract. Column 5 shows the cash price of the item or items purchased. (This is the same as the ticketed price at which the merchandise was offered for sale by New York Jewelry.) Column 6 shows the carrying charges, and column 7 the total purchase price, as reflected by each contract in question.

The first four entries and the sixth entry in the table relate to five contracts (CX 17, 19, 21, 37 and 38), all of which employ the same contract form. This form has been designated, in column 4, as contract form A. These five contracts reflect purchases from September through December of 1965, by James E. Freeman (CX 37, 38), Walter Whitfield (CX 19), Roland Taylor (CX 21) and Mary Daughtry (CX 17). A reference to Commission Exhibit 37, the first of these contracts, will show the form employed and the manner in which the information in question is disclosed or displayed. The other four contracts (CX 17, 19, 21, 38) are identical in form, and the comments made about this contract would apply to the transactions reflected by the other four contracts as well.

In contract form A, only the total price charged (including both the cash price and the carrying charges) is specifically revealed. In the case of this first contract (CX 37), that price is $71.50. The cash price of the merchandise does not appear in the body of the contract. In this instance we know from the stipulated testimony of Mr. Freeman that the price for this pair of glasses was $59.50. (CX 7.) We can also tell the cash price of the merchandise from an imprint made on the side of the contract by the cash register in the course of ringing up the transaction. This cash register imprint shows the figures "$59.50," which corresponds with Mr. Freeman's stipulated testimony about the cash price of the eyeglasses covered by this contract. The credit charge or financing fee in this case is obviously the difference between the cash price ($59.50) and the total price appearing on the face of the contract ($71.50). Since disclosure of the exact amount of the total price to be charged for the merchandise is made in dollars and cents on the face of the contract, the

purchaser would be made aware of the credit charge by noting the difference between the cash price at which the merchandise is ticketed, and the total price appearing on the face of the contract.

The contract with Mary Daughtry (CX 17) has been signed in blank and neither the total price, nor by implication the credit charge, appear on this contract.

It is obvious that the use of contract form A was discontinued sometime during late December 1965, and that it was superseded by contract form B which first appears in the transaction of December 23 with Roland Taylor (CX 22).

The four contracts employing form B are dated from December 1965 through mid-January 1966 and reflect purchases by Roland Taylor (CX 22), Synithia G. Washington (CX 42, 43, 44), and Minnie A. Henry (CX 31).

Contract form B differs in format from contract form A. It shows, in the upper right-hand portion of the contract, the total cash price, the unpaid balance after trade-ins or allowances, the carrying charges expressed in an exact dollar amount, and the total price including carrying charges. The total price is described by the phrase "time price." This is followed by blanks for showing any existing balance on the account, the total indebtedness of the account, and the payment terms. Reference to Commission Exhibit 43 will show in the case of a simple transaction how this contract form discloses the information involved.

In contract form B complete disclosure is made, both of the carrying charge expressed as a dollar amount, and of the total price for the article including the carrying charge. This contract form does not disclose the rate of carrying charge, but an inspection of the four contracts involved (CX 22, 31, 42, 43, 44) reveals that the carrying charge percentage is approximately 18 percent. This is roughly equivalent, on an annualized basis, to the 1½ percent per month commonly charged by most retail establishments, since 1½ percent per month x 12 months equals 18 percent.

Mr. Ullman was questioned about two contracts executed on contract form B, and falling into this group. There were the two contracts executed on January 8 by Synithia Washington (CX 42, 43, 44). Mr. Ullman testified that, at that time, New York Jewelry figured a flat carrying charge (Tr. 201), and, after some confusion in the record, it was established that the flat carrying charge at this time was 18 percent (Tr. 201–204).

It is clear that sometime around January 1966, this method of

computation was discontinued. The next four contracts, bearing dates from mid-January to March 1966, reflect purchases by Charles Logan (CX 99), Etta Calloway (CX 105), James Crowder (CX 94) and Elly Freshley (CX 74). These contracts are all made on a form identical with contract form B discussed just previously, but it is apparent that a change in the method of carrying charge computation was made. These contracts are designated in Table 2 as form B–1.

In these contracts only the cash price is disclosed. The contracts do not on their face reveal either the amount or rate of the carrying charges. There is no evidence in the record which would indicate whether there were any carrying charges on these four contracts, or what the amount or method of computation of such carrying charges were, if such charges existed. Mr. Ullman was questioned about the contract with Charles H. Logan, dated January 18, 1966 (CX 99), and was not able to tell from that one contract why no carrying charges were reflected on its face.

At approximately the end of March 1966, New York Jewelry made another change in its method of computing carrying charges, and in the manner of disclosure of such charges and the total credit sales price. We refer now to the next group of nine contracts in chronological order, bearing dates from March 30, 1966, through May 1966. These contracts were entered into by Preston White (CX 1), Barbara Brown (CX 111), Elsie Hall (CX 112), Vernetta Henderson (CX 109), Arthur Pratt (CX 68), Rosa Wesly (CX 89), J. L. Dennard (CX 84), Alfreda Stubbs (CX 62) and John Edmunds (CX 121). These contracts still employed basic contract form B, but now in addition to the cash price, a definite dollar amount is shown as carrying charges, and a total price (being the sum of the cash price and the carrying charges) is also disclosed on the face of the contract. These contracts are designated in Table 2 as form B–2.

According to the testimony of Mr. Ullman, during this time period, New York Jewelry employed a pre-computed chart or table to determine carrying charges. This chart was based on the cash price involved, and the term, or length of the contract. As a result, the amount of carrying charges disclosed on the face of the contract would vary, depending both on the amount of the cash price, and on the time period over which payments were to be made. Obviously, a credit sales contract to be paid up in a short time would bear a smaller carrying charge (and hence the carrying charge would be a smaller percentage of the cash price) than would a contract with a longer term. (Tr.

190–1, 195–9, 202–3.) Mr. Ullman testified that the basic carrying charge rate used in preparing this pre-computed table was approximately 1½ percent per month (Tr. 303–5).

As shown in Table 3, below, a comparison of the cash prices, carrying charges and terms of these nine contracts, reveals a close correlation between the overall carrying charge percentage and the number of weeks the contract was to run.

TABLE 3—Comparison Showing Relation of Carrying Charge Percentage to Length of Contract Form

Exhibit number	Approximate repayment term (in weeks) [1]	Carrying charge as percentage of cash price (approximated)	Carrying charge	Cash price
CX 1	4 [2]	2.26 [3]	$ 1.38	$ 61.30
CX 109	5 [2]	1.98 [3]	1.00	49.50
CX 89	7	2.12	1.00	49.50
CX 111	9	2.25	1.00	44.50
CX 84	11	2.52	1.00	39.95
CX 121	23	3.66	7.30	199.52
CX 112	21	4.00	1.00	25.00
CX 68	32 [2]	7.95 [3]	8.43	106.60
CX 62	32	9.40	18.60	174.90

[1] As computed for contract.
[2] This is the approximate time in weeks, which it would take to pay off the contract cash price at the repayment schedule shown. Since this contract shows an additional account balance, the total account would not be completely paid in so short a time.
[3] These contracts bear interest percentages which are slightly higher than we would expect to find judging from cost of the merchandise purchased in the contracts. In all three instances, however, the contract reflects the pre-existence of an unpaid balance on the account resulting from the previous purchase of other merchandise. These larger balances undoubtedly necessitated a longer term of repayment, and hence, tended to increase the percentage of carrying charge to face amount of the contract.

It should be apparent from the foregoing that New York Jewelry has attempted to make the fullest and most adequate disclosure of both the total price to be paid, and the carrying charges imposed on credit sales. During the first half of 1966, respondent experimented with four different systems of charging and disclosing such carrying charges, and revised its conditional sales contract form twice in an effort to impose carrying charges which could be readily disclosed to, and understood by, its customers.

Turning to the evidence regarding the sale of eyeglasses with special reference to unconscionably high prices, Table 5, marked Appendix C, discloses that complaint counsel has failed to meet the burden of proof required to sustain the allegations of unconscionably high prices.

Dr. Ephriam's testimony cannot be relied upon to support the claim that the prices charged by New York Jewelry Company

are greatly in excess of the prices charged for eyeglasses by other sellers thereof. In fact, as shown by Table 5, when Dr. Ephriam's prices have been adjusted to reflect variations which he testified about, and to include the examination charge which of necessity is paid by purchasers of eyeglasses, it is apparent that the prices charged by New York Jewelry Company are well within normally encountered limits. The prices charged by New York Jewelry Company may be in some cases slightly lower, or in some cases slightly higher than those of other sellers; but in no case are they "greatly in excess" of, or "unconscionably" higher than, the prices which we might expect to find charged by other sellers of eyeglasses.

CONCLUSIONS

This case was founded upon the premise expounded by complaint counsel in one of the prehearing conferences, that the problems involved in the complaint required that new ground needed to be plowed in order to right the wrongs of a part of our economic system particularly as they affect the low-income class of our society. The examiner finds complaint counsel's motives commendable. However, the evidence adduced cannot support the allegations of the complaint that might conceivably fall within Section 5 of the Federal Trade Commission Act. Furthermore, the attempt to impose some type of price control and credit regulations under Section 5 would require more than plowing new ground. Indeed the Congress has been struggling with proposed legislation in this area for a number of years. If Section 5 was intended to cover matters of this type, it seems unlikely the Congress would be seeking special legislation to cover some of the practices alleged in the complaint.

Complaint counsel recognize the problem by stating in their proposed findings:

> Counsel Supporting the Complaint recognize that many of the issues raised and litigated in this proceeding have not previously been adjudicated by the Federal Trade Commission. Although some of the issues in this case represent somewhat of a departure from traditional deceptive practice cases brought pursuant to Section 5 of the Federal Trade Commission Act, it must be realized that new problems and newly recognized practices require new approaches and new applications of existing laws.
>
> The mere fact that the Commission's authority may not have been used in a given situation in the past, and the fact that it may be a difficult task to frame an order that is both effective and legally precise and enforceable within traditional concepts must not stand in our way.

For all of the reasons set forth above the examiner is of the

opinion that this complaint must be dismissed not only because of the failure to prove the allegations of the complaint but that the Federal Trade Commission under Section 5 of the Federal Trade Commission Act does not have jurisdiction to regulate price controls or credit practices in the marketplace.

ORDER

It is hereby ordered, That the complaint in this proceeding be, and the same is, hereby dismissed.

APPENDIX A

TABLE 4

Exhibit number	Article purchased	Identity of purchaser	Price charged by respondent	Comparative price evidence
	(Col. 1)		(Col. 2)	(Col. 3)
CX 1	Man's watch	P. White	$ 59.50	None
CX 17	Mixer with bowls, juice squeezer, and grinder	M. Daughtry	79.95	None
CX 9	Watch	W. Whitfield	89.95	None
CX 47	Wedding band set	J. B. Johnson	125.00	None
CX 38	Ring	J. S. Freeman	79.95	None
CX 22	Heater	R. Taylor	22.50	None
CX 22	Lighter	do	24.75	None
CX 42	Wedding band set	S. Washington	150.00	None
CX 62	Used TV	A. Stubbs	69.50	$19.95-$99.95 [1]
CX 62	Antenna	do	10.50	None
CX 68	Used TV	A. Pratt	69.50	$15.00-$99.95 [1]
CX 69	Lady's watch	do	49.50	None
CX 69	Man's watch	do	49.50	None
CX 121	Used TV	J. Edmunds	59.50	$15.00-$99.95 [1]
CX 121	Antenna	do	10.00	None
CX 6	Watch	J. B. Johnson	50.00	None
CX 22	do	R. Taylor	295.00	None [2]

[1] Tr. 378.
[2] An attempt was made to obtain such testimony, but comparison was made with the wrong watch.

APPENDIX B

TABLE 2

Date of contract (1)	Exhibit number (2)	Name (3)	Contract form (4)	Cash price shown on contract (5)	Carrying charge shown on contract (6)	Total price shown on contract (7)
Sept. 11, 1965	CX 37	James E. Freeman	A	[1]	[2]	$ 71.50
do	CX 38	do	A	[1]	[2]	87.90
Oct. 12, 1965	CX 19	Walter Whitfield	A	[1]	[2]	101,63
Oct. 29, 1965	CX 21	Roland Taylor	A	[1]	[2]	196.50
Dec. 23, 1965	CX 22	do	B	$352.52	$63.54	416.06
Dec. 26, 1965	CX 17	Mary Daughtry	A	[1]	[2]	
Jan. 8, 1966	CX 42	Synithia G. Washington	B	154.50	27.00	181.50
do	CX 43, 44	do	B	59.50	10.65	70.15
Jan. 15, 1966	CX 31	Minnie A. Henry	B	119.00	21.42	[3]135.42
Jan. 18, 1966	CX 99	C. H. Logan	B-1	79.00	[1]	[1]
Jan. 19, 1966	CX 105	Etta Calloway	B-1	42.95	[1]	[1]
Jan. 27, 1966	CX 94	James L. Crowder	B-1	119.00	[1]	[1]
Mar. 26, 1966	CX 74	Elly Freshley	B-1	159.00	[1]	[1]
Mar. 30, 1966	CX 1	Preston W. White	B-2	61.30	1.38	62.68
Apr. 5, 1966	CX111	Barbara Brown	B-2	44.50	1.00	45.50
Apr. 6, 1966	CX 112	Elsie Hall	B-2	25.00	1.00	26.00
Apr. 11, 1966	CX 109	Vernetta Henderson	B-2	49.50	1.00	50.50
Apr. 16, 1966	CX 68	Arthur Pratt	B-2	106.60	8.43	115.03
Apr. 23, 1966	CX 89	Rosa Wesly	B-2	49.50	1.00	[4]44.50
Apr. 25, 1966 [5]	CX 84	J. L. Dennard	B-2	39.95	1.00	[6]38.45
May 6, 1966	CX 62	Alfreda Stubbs	B-2	174.90	18.60	193.50
May 10, 1966	CX 121	John Edmunds	B-2	199.52	7.30	[7]175.82

APPENDIX B—Continued

TABLE 2—Continued

Date of contract (1)	Exhibit number (2)	Name (3)	Contract form (4)	Cash price shown on contract (5)	Carrying charge shown on contract (6)	Total price shown on contract (7)
July 9, 1966	CX 69	Arthur Pratt	C	116.00	[8]	[1]
July 21, 1966	CX 47	J. B. Johnson	C	125.00	[8]	[1]
do	CX 48	do	C	47.00	[8]	[1]
Sept. 17, 1966	CX 66	Arthur Pratt	C	17.00	[8]	[1]

[1] Not shown.
[2] Not as such.
[3] Contract shows $5 down payment subtracted from $119 to give unpaid balance of $114 + carrying charge = contract price of $135.42.
[4] Contract shows $6 down payment subtracted from $49.50 to give unpaid balance of $43.50 + carrying charge = contract price of $44.50.
[5] Contract undated. Dal Tex invoice covering same merchandise dated Apr. 25, 1966.
[6] Contract shows $2.50 down payment subtracted from $39.95 to give unpaid balance of $37.45 + carrying charge = contract price of $38.45.
[7] Contract shows $31 down payment plus trade-in allowance subtracted from $199.52 to give unpaid balance of $168.52 + carrying charge = contract price of $175.82.
[8] At the rate of 1½ percent per month.

—Cont'd.
—Cont'd.
—Cont'd.

APPENDIX C

TABLE 5—Eyeglass prices

Identity of purchaser (1)	Price charged by New York Jewelry (2)	Dr. Ephriam's testimony of his own price (3)	Dr. Ephriam's testimony of prevailing prices (4)	Dr. Witten's testimony of his own price (5)	Dr. Ephriam's price plus $10 examination charge (6)	Dr. Ephriam's price plus $15 examination charge (7)	Price shown in column 6 plus $15 variation (8)	Price shown in column 7 plus $15 variation (9)	
Synithia Washington	$59.50	None	None	None					CX 44.
James Freeman	59.50	None	$22	$40	$32	$37	$47	$52	CX 37, 40, Tr. 243.
Minnie Henry	59.50	None	22	None	32	37	47	52	CX 31, 34, Tr. 242.
Minnie Henry (clear)	59.50	None	24	None	34	39	49	54	CX 31, 35, Tr. 242.
Roland Taylor	59.50	None	28	None	38	43	53	58	CX 21, 27, Tr. 244.
do	59.50	None	22	None	32	37	47	52	CX 21, 28, Tr. 244.
do	59.50	None	22	None	32	37	47	52	CX 21, 29, Tr. 244.
Johnnie B. Johnson	29.50	None	None	None					CX 48.
do	17.50	None	None	None					CX 48.
A. Stubbs	42.50	None	None	None					CX 62.
Arthur Pratt	17.00	None	None	None					CX 69.
do	17.00	None	None	None					CX 66.
John Edmunds	17.00	None	None	None					CX 121.
do	42.50	None	None	None					CX 121.
do	42.50	None	None	None					CX 121.
Elly Freshley	79.50	None	None	None					CX 74.
do	79.50	None	None	None					CX 74.
Elsie Hall	25.00	$ 9	9	None	19	24	34	39	CX 112, Tr. 235.
J. L. Dennard	39.95	24	24	None	34	39	49	54	CX 84, Tr. 236.
R. Cavanaugh	44.50	28	28	None	38	43	53	58	CX 86, Tr. 237.
Rosa Wesly	49.50	30	32	None	40	45	55	60	CX 89, Tr. 237–8.
James L. Crowder	59.50	None	None	None					

APPENDIX C—Continued

TABLE 5—Eyeglass prices—Continued

Identity of purchaser (1)	Price charged by New York Jewelry (2)	Dr. Ephriam's testimony of his own price (3)	Dr. Ephriam's testimony of prevailing prices (4)	Dr. Witten's testimony of his own price (5)	Dr. Ephriam's price plus $10 examination charge (6)	Dr. Ephriam's price plus $15 examination charge (7)	Price shown in column 6 plus $15 variation (8)	Price shown in column 7 plus $15 variation (9)	
do	59.50	24	24	None	34	39	49	54	CX 91, 92, 94, Tr. 238.
C. H. Logan (bifocals)	59.50	28	28	None	38	43	53	58	CX 99, Tr. 239.
C. H. Logan (reading)	19.50	None	None	None	---	---	---	---	
Gus Ashton	32.50	None	None	None	---	---	---	---	CX 101, Tr. 239.
Etta Calloway	42.95	None	26	None	36	41	51	56	CX 105, Tr. 239.
Vernetta Henderson	49.50	None	None	None	---	---	---	---	CX 109.
Barbara Brown	44.50	None	None	None	---	---	---	---	CX 111.

OPINION OF THE COMMISSION

DECEMBER 2, 1968

BY JONES, *Commissioner*:

Complaint in this matter was filed on September 29, 1966, charging the respondent Leon A. Tashof, trading as New York Jewelry Company, with violations of Section 5 of the Federal Trade Commission Act.

The complaint charges that respondent has violated Section 5 because it has engaged in bait and switch advertising with respect to its sale of eyeglasses and misrepresented its eyeglass prices as discount (Complaint, Par. Four, Five and Six), and because it has engaged in unfair and deceptive practices in its failure to disclose finance charges and in some instances cash prices of its merchandise (Complaint, Par. Seven, Eight). Its representations of easy credit are also challenged as deceptive and unfair because its cash prices are in excess of those prevailing in the marketplace and are at unconscionably high levels. The complaint also alleges that respondent fails to determine the financial ability of its customers to pay before extending them credit and thereafter seeks garnishment or other legal action against those who fail to make their credit payments (Complaint, Par. Seven, Eight).

The hearing examiner dismissed the complaint because in his view counsel supporting the complaint failed to carry the burden of proof on any of the complaint allegations and for the further reason that the Commission lacks jurisdiction "to regulate price controls or credit practices in the marketplace" (I.D., p. 1375–76).[1]

Counsel supporting the complaint has appealed. For reasons which will be discussed in detail later in this opinion, we believe that the hearing examiner was in error both as respects his findings of the facts and as respects his view of the law applicable in this case. Accordingly, we are vacating his decision in its entirety and will enter our own findings and conclusions which will be developed more fully below.

I

The Respondent

The respondent New York Jewelry is a retail store located at

[1] As used herein, I.D. refers to pages in the initial decision filed June 26, 1967; A.B. to pages in the appeal brief of counsel supporting the complaint; R.B. to pages in respondent's brief in answer to the appeal brief; Tr. to pages in the transcript of the hearing before the hearing examiner; CX to exhibits introduced by counsel supporting the complaint; and RX to exhibits introduced by respondent.

719 7th Street in Washington, D.C. Watches, jewelry and eyeglasses account for 90% of its sales with the remaining 10% accounted for by such items as cookware, transistor radios, furniture, and used TV's (Tr. 136–7).

Respondent's store is located in one of the low-income market areas in the District of Columbia (Tr. 432, 440).[2] Many of respondent's customers hold extremely low-paying jobs, have no bank accounts or charge accounts, and do not own their own home. Many of its customers are Negro.[3] Respondent's advertising specifically appeals to those people who cannot obtain credit elsewhere or who have lost their credit (*e.g.*, CX 52–56 and 123).

New York Jewelry makes about 85% of its sales on credit (Tr. 152) and has, during at least one recent year, filed lawsuits for collection against nearly one out of every three of its customers.[4] Its general manager for the past 25 years, Mr. Ullman, estimated that in the calendar year 1965 New York Jewelry's sales were $355,000 (Tr. 151, 359, 365). The gross profit for that year was $310,529 (CX 124 admitted *in camera*; Tr. 489–495).

The store maintains an optical department and maintains a contractual arrangement with an optometrist who is paid $5 per customer to examine eyes and prescribe eyeglasses on the premises (Tr. 155–6). However, its eyeglasses are assembled by Mr. Ullman who has not had any formal training as an optician (Tr. 155).

All of the merchandise for sale at New York Jewelry bears price tickets which also reflect in a letter code, the cost of the item to New York Jewelry (Tr. 161–2, 331). In the case of its watches, the general manager testified that respondent removes the manufacturer's suggested retail price tickets and replaces them with its own price tickets, charging higher prices than those suggested by the manufacturer (Tr. 332–5). The general manager also testified that respondent departs from this policy in a few isolated instances with respect to some items and affixes

[2] See the testimony of Mr. Joseph Bellenghi, Assistant Director of Examination and Accounting for the Federal Credit Unions, called as an expert witness by complaint counsel. Although some of Mr. Bellenghi's testimony was not admitted by the hearing examiner after objection by respondent's counsel, the testimony cited here was admitted without objection. Mr. Bellenghi described the customers who typically trade in these low-income market areas as those who do not usually qualify for credit in stores outside these areas; who often have just recently emigrated to the city from rural areas or from the South; who are from a low status of life, immobile economically, educationally and socially; and who require some kind of personalized service or treatment in their relationship with the merchants with whom they deal (Tr. 433).

[3] This evidence is contained in the credit applications for a number of respondent's customers introduced into the record and stipulated testimony of others of respondent's customers which is summarized and attached hereto as Appendix A.

[4] See *infra* pp. 1407, 1408.

a low selling price which it thereupon advertises to "stimulate traffic" (Tr. 334, 546, 573–4, RX 42).

New York Jewelry promotes its products through advertising on radio, and in the press, by personal solicitations outside its store and by direct mailings (Tr. 158, 355, 364, 401). It runs about 10 spot commercials each week on each of the stations WOOK and WUST (Tr. 354, 158). These radio commercials emphasize that the prices at New York Jewelry are "bargain" prices, that customers will receive " * * * outstanding values and easy credit," and that respondent's products are "Bargain priced on easy credit" (CX 52–56). Several of these commercials announce:

> Mr. Tash gives credit to everybody. Even if you have never had credit, have lost your credit, or if others have turned you down.

The commercials also represent that because of New York Jewelry's easy credit terms, people will be able to buy and enjoy "the good things of life" which they would not otherwise be able to do. "I'll help you to enjoy the good things of life. I'll give you easy credit terms" (CX 52, 54, 55). Respondent's advertising represents not only that credit is always available at New York Jewelry but also that the *terms* of such credit are easy. The radio commercials repeatedly emphasize that the terms of credit are "easy" and several represent "no money down" and "budget terms to suit," or "the manager will arrange terms," and "take a long time to pay" (See esp. CX 52 and 54). Respondent's advertisements in the *Washington Daily News* newspaper emphasize the same general themes of discount prices and easy credit (*e.g.*, Tr. 355, CX 114, RX 42). Respondent also stations an employee at the sidewalk in front of the store to attract people into its store by telling passers-by that they can get a free gift inside (Tr. 364) and handing them a card which reads as follows:

> Because We Appreciate Your Business
>
> Mr. Tash, the Mgr., Says:
>
> I'll give credit to everybody even if you never had credit, Lost your credit, or others have turned you down.
>
> CREDIT CARD
> New York Jewelry Co.
> 719 7th St., NW., Washington, D.C.
>
> Certifies that BEARER is an AAA–1 Preferred Customer
> Instant Credit—No Money Down
> Make Your Own Terms

This card certifies that you have a preferred credit rating and attests to your character excellence.

[CX 123]

FREE GIFT FOR YOU:

No obligation
Don't buy a Thing
Don't Spend a Minute
Just Present This Card and
Get Your FREE GIFT
Your Credit is Good!
NO MONEY DOWN
Pay as little as 50¢ Per Week
New York Jewelry Co.
719 7th St., NW.,
Washington, D.C.

The same card or handbill is also used as a direct mailing piece (Tr. 401).

II

The Complaint Allegations

1. RESPONDENT'S ADVERTISING OF ITS EYEGLASSES

The complaint alleges that respondent advertised eyeglasses at a price which was not a bona fide offer ($7.50) and further that the prices at which it sold eyeglasses were not discount prices, as represented, but were substantially in excess of prices charged by other establishments for comparable merchandise (Complaint, Par. Four, Five and Six).

The hearing examiner concluded that the bait and switch allegation was not sustained because counsel supporting the complaint failed to prove that respondent had ever refused to honor the terms of its alleged "bait" advertisement or that respondent had ever disparaged the quality of these advertised eyeglasses or discouraged a customer from purchasing a pair, which practices were included in the complaint as part of the bait and switch allegation. The hearing examiner failed to state any specific conclusion on the allegation that respondent deceptively represented its prices for eyeglasses to be discount prices.

We believe that the record in this case contains clear and convincing factual evidence in support of both these complaint allegations and that the hearing examiner applied an erroneous standard of law to the record facts bearing on the bait and switch charge. We will deal separately with these two basic charges of

bait and switch and discount misrepresentations.

(A) *The bait and switch charge*

Respondent advertised both in the newspaper and on radio that it was offering discount eyeglasses at $7.50 and up (CX 114). One of its newspaper advertisements for discount eyeglasses which ran once a week for a year and a half is reproduced in its entirety in Appendix B attached hereto.[5] This advertisement contains a headline "CREDIT in a FLASH says MR. TASH, The Manager," which is then followed by bold faced legends "DISCOUNT EYE-GLASSES," "Made While You Wait," "Price Includes lenses, frame and case," "From $7.50 complete." These are followed by the words in somewhat less prominent type:

> Glasses attractively Styled
> Made Individually to Your
> Prescription.

Immediately following this legend is an additional statement in smaller type which is the least prominent of any in the advertisement:

> Oculists' prescription filled—or
> have your eyes examined by our
> registered optometrist.
> Moderate Examining Fee.

Respondent's radio advertising for its eyeglasses was as follows:

> I'll protect your eyes and protect your pocketbook * * * eyeglass service at economy prices * * * complete eyeglasses, including lenses and frame, for as low as $7.50 * * * economy eyeglass service—get broken lenses duplicated as low as $2.00, frames as low as $1.00 * * * other modern glamorous, luxurious and good-looking frames, at low discount prices * * * a liberal trade-in allowance for your old frames, even if broken. Oculists' prescriptions filled at low economy prices * * * be thrifty * * * protect your eyes and protect your pocketbook at the thrifty economical discount department of the New York Jewelry Company. (CX 56.)

Respondent regularly maintained a sign in its store, and apparently also in the window for a period of time, which states "Free eye examination, our doctor is in the store" (CX 5, Tr. 314, 315). Respondent also had mailed out cards offering "Free eye examinations" (CX 8) and one of its employees stationed in front of the store offered "free eye examinations" to attract

[5] Exhibit CX 114, a duplication of this newspaper advertisement, is not sufficiently clear to use for further duplication. Thus Appendix B is an enlarged reproduction from a microfilm copy of the original advertisement as it appeared in the newspaper.

people into the store (CX 7).

Respondent urges that the $7.50 discount price was not false or deceptive and that the advertising only represented the price of respondent's eyeglasses if its customers brought an optical prescription already made out for New York Jewelry to fill (Tr. 419, R.B. 4–5). Moreover, respondent's counsel argues that respondent honored the terms of these advertisements, according to its interpretation of them, that there is no direct evidence that it disparaged the quality of such glasses or otherwise discouraged their sale, and that, therefore, the bait and switch allegation must fail as a matter of fact and of law.

There is no doubt that respondent's newspaper advertisement highlighted the availability of DISCOUNT eyeglasses complete from $7.50 while at the same time—albeit in less prominent type—referring to a "moderate examining fee." But reference to moderate examining fee was in direct conflict with respondent's direct mail solicitations, its signs in its store and the oral representations of its salesmen that eye examinations would be given free. Moreover, its radio commercial was consistent with its mail solicitations and point of sale representations. This commercial (CX 56) made no mention of examination fees and indeed represented that respondent was offering "eyeglass service" at economy prices and later on spoke of "complete" eyeglasses for as low as $7.50. We do not believe that any listener would be aware from this commercial that eyeglass service did not include an examination or that they would be charged an extra examination fee in addition to the quoted price of $7.50.

Respondent's in-store sign stating "free eye examinations" and the absence of any reference to an examination fee in its radio commercial are entirely consistent with respondent's description of eyeglass sales on its conditional sale contracts. Typically, the contracts describe the transaction as involving merely "glasses" (CX 21, 37, 48, 66, 69, 74, 84, 99, 105, 111, 121) or "optical service" (CX 31, 43/44, 89, 94, 109, 112). None of these contracts disclose any separate charge for the eye examination, moderate or otherwise. Moreover, where customers purchased more than one pair of eyeglasses at the same time, obviously involving only one eye examination, the price for each pair is often the same (CX 9 and 21; CX 74, 75 and 76; CX 91, 92 and 94).[6]

[6] Respondent's argument that the cost of the eye examinations was built into the price of the eyeglasses is wholly irrelevant to the way in which consumers will interpret its representations of eyeglasses "from $7.50 complete."

Consequently, we hold that the fair interpretation of respondent's advertisements, when viewed in their entirety in the context of respondent's overall promotion and its sales practices involving eyeglasses, is that customers would expect to get new eyeglasses at respondent's store for as low as $7.50 whether they brought an oculist's prescription or had their eyes examined on the premises.

The evidence in the record demonstrates clearly that respondent did not sell eyeglasses for $7.50 with or without an eye examination. Respondent stipulated that "fewer than 10 pairs of eyeglasses were sold at $7.50" during which the newspaper ad ran on a weekly basis (Tr. 420). Respondent's stipulation is conclusive evidence that, if there were any sales at $7.50, the number was insignificant. However, the stipulation does not tell us whether there were in fact *any* sales made at the $7.50 price.[7] Indeed, there is no affirmative evidence in the record that a single sale was made by respondent at the advertised price of $7.50. Moreover, a tabulation prepared by complaint counsel of respondent's eyeglass prices for a six month period in 1966, projectible for that year as well as 1964 and 1965, shows no eyeglasses sold by respondent even at $12.50, respondent's advertised price plus its cost for an eye examination.[8] Quite to the contrary, the tabulation shows that 90% of respondent's eyeglasses were sold for more than $23 and only 1 pair was sold for less than $17 (CX 115).[9] This tabulation shows 17% of respondent's eyeglass sales were at $79.50 and 72% at prices in excess of $39. It is obvious that respondent's eyeglass prices are drastically higher than $7.50. Thus not only did respondent itself admit that over 99% of its 1,400 eyeglass sales were made at prices in excess of $7.50, with or without an optical prescription, but respondent further failed to demonstrate that a single $7.50 sale was made *at any time regardless* of any extra charge for an eye examination.[10]

[7] The reason for the stipulation's wording on this point was respondent's assertion that it would have been extremely burdensome to produce evidence of such sales (Tr. 419–20).

[8] Respondent paid his hired optometrist $5 per eye examination (Tr. 156), and respondent's counsel argued that this cost was built into the price of the eyeglasses (R.B. 24–25). Thus one would expect to find some eyeglass sales for about $7.50 plus $5 or about $12.50.

[9] There is no evidence in the record as to when the newspaper and radio advertising for the $7.50 eyeglasses was stopped, although counsel for respondent alleged that the program was over by the beginning of 1966 (Tr. 420). On the other hand, he agreed that CX 115 represented "reasonably accurate computations" for the 1964 and 1965 years, during which the ad was admitted to have run regularly (Tr. 316). Even if the $7.50 advertising had in fact ceased by 1966, we can reasonably conclude that respondent's eyeglass sales during 1964 and 1965 were at substantially similar prices as reflected in CX 115.

[10] The absolute maximum number of sales which respondent could have made at $7.50 according to its own stipulation is 9, which is 64/100ths of 1% of 1,400.

Respondent argued that the evidence fails to support the complaint allegations that it engaged in bait and switch advertising because no evidence was offered that respondent had disparaged the bait product. We disagree.

The essence of the deception involved in an alleged bait and switch practice is that an offer is made which is not bona fide in that the seller has no intention to sell the advertised product at the advertised price but is using the advertisement as a "come-on" in order to sell a higher priced or different product. Disparagement is frequently the technique used by sellers to "switch" the customer. A failure to prove affirmatively that this technique was used in no sense constitutes a failure of proof of the basic illegal practice. Such factors as whether it would have been economically feasible for respondents to make many sales at the advertised price [11] whether there were in fact a substantial number of sales of the advertised product,[12] or whether the salesman received commissions on the advertised product [13] have been relied upon by the Commission in finding illegal bait and switch practices in addition to evidence of disparagement.

The record in the instant case is clear that respondent's advertisements offered eyeglasses at $7.50 up. The record is also clear that at least 99% of respondent's eyeglass sales were made at prices greatly in excess of $7.50 and indeed there is no direct evidence that *any* eyeglasses were sold at the advertised price. Respondents' customers are low-income consumers, many of whom, we can infer, would be anxious to make the cheapest purchases possible. Respondent's challenged advertisement ran every week for at least a year and a half and its eyeglass sales constituted a major segment of its business. We think these facts by themselves raise a strong presumption that either respondent had no eyeglasses available at the advertised price, or that they were so unsuitable to their purpose as to be unpurchasable, or that customers were "switched" to higher priced glasses by some other means.

It is inconceivable to us that a retailer would expend the monies necessary to advertise $7.50 eyeglasses over a year and a half period and make virtually no sales of the advertised

[11] *Bond Sewing Stores*, 51 F.T.C. 470, 477 (1954); *Household Sewing Machine Company*, 52 F.T.C. 250, 269 (1955).

[12] *Lifetime, Inc.*, 59 F.T.C. 1231, 1253; *Midwest Sewing Center*, Docket No. 8602 (December 3, 1964) [66 F.T.C. 1234].

[13] *In the Matter of Consumers Products of America*, D. 8679, Final Order and Opinion issued September 7, 1967, 72 F.T.C. 533, *aff'd., Consumers Products of America* v. *Federal Trade Commission*, 400 F. 2d 930 (3rd Cir., decided September 12, 1968). See esp. fn. 1 and p. 7, 72 F.T.C., at 553, 554, of the slip opinion.

product if he had any bona fide intention at all to sell glasses at this price. Under such circumstances, the seller must come forward with some evidence to show at a minimum that the advertised product was in its store, freely available to consumers and that they purchased the substantially higher priced goods on the basis of having knowingly made a free choice between the two priced categories of goods. Absent any such evidence we certainly cannot assume that respondent's customers responding to this advertisement, typically people of very limited financial means, were honestly confronted with the choice of $7.50 glasses or glasses costing many times more and freely and consistently purchased the higher priced glasses and in no single instance that we know of purchased the advertised glasses.

We are of the opinion that respondent's advertisement was not a bona fide offer, that respondent had no intention of selling glasses at this price and took whatever steps were necessary to persuade its customers to fill their eyeglass needs with glasses which cost substantially more than the advertised price and that complaint counsel's failure to show direct affirmative evidence of disparagement in the instant case is in no sense fatal to the allegation.

We conclude, therefore, that respondent has engaged in bait and switch advertising with respect to its eyeglasses in violation of Section 5 of the Federal Trade Commission Act.

(B) *The charge of misrepresenting eyeglass prices as "discount"*

The complaint also alleges that respondent advertised its eyeglass prices as "discount" prices whereas in fact respondent's prices were higher than the prices charged for comparable merchandise by other retail establishments in the same trade area. The hearing examiner ignored this allegation.[14]

The evidence respecting the prices charged by respondent for its eyeglasses and the comparable prices which would be charged for the same glasses in the trade area is based on respondent's own invoices and on the expert testimony of Dr. Zachary Ephraim offered by counsel supporting the complaint.[15] Dr. Ephraim's

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[14] The examiner did consider the evidence on eyeglass prices in connection with an entirely different complaint allegation—*i.e.*, the charge that respondent's prices generally are unconscionably high. We discuss below these findings of the examiner. However, it is significant that in his analysis of the unconscionability issue the examiner concluded that respondent's eyeglass prices "are well within normally encountered limits" (I.D., p. 1375), thus implicitly finding that they were not discount prices.

[15] Although respondent's appeal brief questions the reliability of Dr. Ephraim's testimony on trade area prices, we hold that Dr. Ephraim was extremely well qualified to testify as an

—Cont'd.

estimates of trade area prices are based upon his intimate knowledge of the prices charged by members of the Optometric Society, whose members comprise about 52% of the total number of practicing optometrists in the District.[16] He explained that the members often discuss the subject of prices at their regular meetings and that their prices generally do not vary more than two or three dollars. Clearly Dr. Ephraim's estimates are reliable evidence of the prevailing trade area prices for the eyeglasses sold by respondent.[17]

Respondent's counsel argues that Dr. Ephraim's estimates of the comparable prices prevailing in the trade area must be adjusted upwards by some $25–$30 in order to make them truly comparable to respondent's prices. Respondent's view of these prices as thus adjusted is reflected in Table 5 of its proposed findings and reproduced in the hearing examiner's initial decision as Appendix C.

We have carefully considered Dr. Ephraim's testimony and respondent's arguments with respect to it and have concluded that we cannot rely upon respondent's tabulation to compare accurately respondent's eyeglass prices vis-a-vis the prevailing trade area prices. In our view respondent's purported upward "adjustments" to Dr. Ephraim's price estimates are unrealistic and not justified by anything which we can find in the record. For example, respondent contends that because Dr. Ephraim's testimony with respect to eyeglass prices charged in the trade area did not include a charge for an eye examination, these trade area prices for eyeglasses should be increased by $10–$15 to include examination fees. As we have discussed above, respondent continuously represented its eye examinations to be "free." Nevertheless, in the interest of ensuring comparability, we are willing to allow some adjustment for the eye examination, but this ad-

expert on this subject. He has been practicing optometry in the District of Columbia for 18 years since graduation from the Columbia University School of Optometry. He is president of the Board of Examiners of Optometry in the District of Columbia which administers examinations to prospective licensees and passes upon their applications. He is also the vice president of the D.C. Optometric Society (Tr. 227–8, 254).

[16] There are, of course, sources of eyeglasses other than optometrists. Oculists (or ophthalmologists) examine eyes for the purpose of diagnosing diseases as well as prescribing corrective lenses. They generally do not fill prescriptions. Opticians, on the other hand, do not prescribe lenses but only dispense eyeglasses. Thus optometrists are the only ones who both examine the eyes and dispense glasses. Dr. Ephraim estimated that there were nearly twice as many optometrists in the District as oculists (Tr. 228, 254).

[17] Dr. Ephraim stated that the prices charged by Optometric Society members were generally higher than the prices charged by nonmembers (Tr. 257, 261–2). Thus, if anything Dr. Ephraim's testimony may overstate somewhat the prevailing eyeglass prices in the trade area served by respondent and the Optometric Society members. If his estimates are in fact high, respondent's prices would of course appear lower, by comparison, than they really are.

justment should be made to respondent's own eyeglass prices so as to subtract from them the amount of $5 which it claims is built into its prices to cover the eye examination cost.[18]

Even a more flagrant error in respondent's tabulation is its upward adjustment for an eye examination on *each of several pairs* of eyeglasses purchased by *the same people on the same day*. Obviously one person requires no more than one eye examination on the same day. Respondent duplicated adjustments on each pair of eyeglasses purchased on the same day by Minnie Henry (two pairs) and Roland Taylor (three pairs) CX 31, 34, 35; CX 21, 27, 28, and 29).

Another major deficiency in respondent's tabulation arises from another "adjustment" in the trade area eyeglass prices which respondent made to reflect what it claims was Dr. Ephraim's testimony that these trade area prices might in fact vary by as much as $15. We do not agree that this is a proper reading of Dr. Ephraim's testimony. Dr. Ephraim testified as to what the prevailing trade area price would be for eyeglasses identical to those sold by respondent, and that prices among member optometrists would not vary more than two or three dollars. On cross examination he agreed that there might be extreme ranges, both high and low, to the prevailing prices. With respect to one pair of eyeglasses he made a guess that it was possible that his estimated prevailing price of $24 for this pair of glasses (reflected on CX 35) might vary in extreme cases from $7.95 on the low side to $30 on the high side.

By no stretch of the imagination can his testimony on this pair of eyeglasses be read as supporting an across the board upward adjustment of the average trade area price to which he testified by $15. Based on his testimony the upward range from his estimated prevailing price of $24 was $6 (from $24 to $30), not the $15 upward adjustment urged by respondent. However, respondent did not pursue this line of questions as to the high and low ranges on any other pair in evidence. Thus this particular testimony only involved the extreme range of prices on a single pair of eyeglasses in the record and no uniform, across the board upward adjustments for all eyeglass prices can be justified on this slim basis.[19] We are satisfied that it is proper

[18] Respondent argued in its brief that its *cost* for the "free" eye examination "* * * necessarily reflects itself in the price of the eyeglasses to the consumer" (R.B. 25). Its cost was $5 per examination (Tr. 156). We shall not pursue here, since it is not in issue in this complaint, the possible deception in the use of the word "free" under such conditions.

[19] Respondent's other attempted justification for adding $15 to the trade area estimates was Dr. Ephraim's guess, when respondent's counsel insisted on an answer, that his own eye-

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to compare respondent's prices (less $5 for the cost of the "free" eye examination) with the average prices *generally prevailing* in the trade area as was testified to by Dr. Ephraim without making any adjustments—upward or downward—to accommodate the range of prices which individual optometrists might have charged. Dr. Ephraim's testimony is reliable evidence of the prevailing trade area prices, and any "adjustment" to these prices is wholly inappropriate. The tabulation of eyeglass prices containing what we find to be the proper adjustments—*i.e.*, deducting $5 *per customer* from New York Jewelry's prices to cover the cost of eye examinations which counsel stated had been built into respondent's eyeglass prices and excluding respondent's $15 "variation" adjustments—appear herein as Table A.[20]

Table A shows that respondent's eyeglass prices are far from being "discount." In fact, they average 202% of, or about twice as high as, the trade area prices. It is clear on this evidence that respondent's eyeglass prices were substantially above the trade area retail price of comparable eyeglasses. We cannot refrain from pointing out, however, that even if respondent's tabulation were accepted, it would still demonstrate the falsity of respondent's advertising since it shows respondent's prices to be comparable to those charged in the trade area, not discount or bargain prices. Thus even were we to accept respondent's version of the prevailing trade area prices, which we do not, we would reach the same conclusion about the falsity of respondent's representation of its eyeglass prices as discount.

We conclude that respondent's consistent and emphatic advertising of its eyeglass prices as "bargain" and "discount" was false, misleading and deceptive in violation of Section 5, and that these complaint allegations are fully sustained by the record.

2. RESPONDENT'S FAILURE TO DISCLOSE ITS CREDIT TERMS

Paragraph Seven (2) and Paragraph Eight (3) of the complaint contain the allegation that respondent has misrepresented its credit policies and otherwise dealt unfairly with low-income

glasses might have an "extreme" price range of $14 (Tr. 263). However, respondent's counsel did not ask Dr. Ephraim what the "prevailing" price would be on his own glasses, so it is impossible to determine how much of the $14 range, if any, would be *above* Dr. Ephraim's estimate of the prevailing price.

[20] The double and triple adjustments which respondent made for eye examinations in the cases of Minnie Henry and Roland Taylor have been corrected by deducting one half and one third (respectively) of the cost for a single eye examination over each pair of eyeglasses purchased by them at one time.

members of the public by failing to inform prospective purchasers fully and adequately of all of the credit charges or finance fees imposed and in some cases failing to disclose the total price to be paid under the conditional sales contract or other credit instrument.

The hearing examiner concluded with respect to the disclosure allegations that "New York Jewelry has attempted to make the fullest and most adequate disclosure of both the total price to be paid, and the carrying charges imposed on credit sales" (I.D., p. 1374). He further concluded, without citing any record evidence in support, that the respondent made changes in his conditional sales contracts "in an effort to impose carrying charges which could be readily disclosed to, and understood by, its customers." In addition to these factual determinations the examiner stated as a matter of law that the Commission lacks jurisdiction over credit practices (I.D., p. 1376). We believe that the examiner's statement of the law is erroneous in this regard and our examination of the record compels the conclusion that the examiner's findings of fact are also in error.

Respondent utilized three different retail installment credit contract forms during the period from December of 1964 up to the date of the complaint in September of 1966 (referred to in this opinion as forms "A," "B," and "C").[21]

According to the preprinted provisions on these contracts, each form involves a different rate of finance charge to be imposed on the installment credit transaction. For example, the printed portion of the form "A" contract calls for an interest rate of ½% per month on the unpaid balance plus a service charge of 3% compounded monthly. Finance charges on transactions recorded on form "A" contracts, therefore, would total about 42% a year

[21] Examples of form "A" are CX 17, 27, 38, 19 and 21 (contracts 1–5 on the attached Table B); examples of form "C" are CX 69, 47, 48 and 66 (contracts 23–26 in the attached Table B); all the other conditional sale contracts in the record are examples of form "B" (contracts 6–22 in the attached Table B).

Respondent's counsel presented a chronological tabulation of all the installment contracts in the record (Table 1 of respondent's brief incorporated by the hearing examiner as Appendix B in the initial decision). This tabulation, with only one exception, shows that form "A" contracts were in use until December of 1965, that form "B" contracts were used during the period from December 1965 to May 1966, and that form "C" contracts were used from July 1966 to September 1966, the last date of respondent's installment contracts offered into evidence in this record.

One contract appears to be out of place in this tabulation. This conditional sales contract, CX 17, is a form "A" contract showing the sale of undisclosed merchandise to Mary Daughtry and bears a date according to respondent's table of December 26, 1965. It is interesting to note, however, that the cash register imprint on the side of CX 17 clearly discloses the date of December 26, 1964. Thus, it appears that CX 17 should have actually been placed at the top of respondent's tabulation and that form "A" was used for at least one year, from December of 1964 till December of 1965.

stated in terms of simple annual interest. The contract, however, does not disclose this annual interest rate. On the other hand, respondent's form "B" contract in its printed provisions does not disclose *any* percentage interest rate or carrying charges during the term of the contract either as a monthly or annual rate (but there is space for a dollar amount to be filled in). The only percentage rate disclosed is provision for a 1½% monthly carrying charge *after maturity* and in addition "the highest legal rate of interest." Form "C" contracts provide a third method of levying finance charges. The pre-printed provisions in these "C" contracts state that a flat 1½% monthly carrying charge will be levied on the unpaid balance with no indication as to how much money this will be, or who decides how it is to be computed.

In addition to these installment credit form contracts, respondent maintains a ledger card for each account on which payment is recorded.[22] So far as the record discloses, the same form of ledger card was used regardless of the form of installment credit contract. The ledger card recites that there is a monthly carrying charge of 1½% on the unpaid balance. Thus respondent's ledger card is inconsistent on its face with the printed terms of form contracts "A" and "B" insofar as the amount of finance charge imposed is concerned.

In addition to the installment contract and the ledger card, respondent also used a "payment card," or booklet, which the customer retained to keep track of his payments.[23] This payment card recites on front and reverse sides "Interest ½% per month, Carrying Charge 3% per month. No Interest or Carrying Charge if Paid within 30 days." The side of this payment card which shows the payments also bears an additional legend (which appears to be stamped on it) to the effect that balances remaining unpaid after one year are "subject to a carrying charge of 1½% on the unpaid balance." The record does not explain the apparent inconsistencies in the payment card provisions respecting interest and carrying charges nor whether they should be interpreted to mean the finance charges are increased or decreased after one year, or any rationale for doing either. The record is equally void of any attempt to resolve the obviously conflicting provisions among the printed contract forms, the ledger cards, and the payment cards. Nor do these credit instruments offer any explanation on their face as to which governed the amount of finance charges actually imposed on respondent's customers. Clearly, whatever re-

[22] Tr. 181–2, 307, CX 70.
[23] Tr. 307, CX 24 and 25.

spondent's practice may have in fact been with respect to calculating the amount of finance charges imposed on any particular sale, its customers had no way of knowing whether their interest payments were based on the payment cards or on their installment contracts.

Even if respondent's customers could have assumed that the printed provisions of their installment contract governed the rate of finance charges they would have to pay, we find that these contracts are by themselves in fact highly misleading as to the actual interest rates charged by respondent. We have undertaken to compute the simple annual percentage rate of the finance charges which respondent added to its "cash prices" for all of those contracts which contain sufficient information to do so. These appear in the attached Table B.[24]

Although the initial decision contains a tabulation of the contract forms, neither the examiner nor counsel bothered to compute the simple annual percentage rate of finance charges actually imposed by respondent, as we have done in Table B. Our tabulation clearly shows that regardless of the printed provisions of these various contract forms respondent in fact had no consistent, identifiable pattern of interest or finance charges which it imposed on its customers, contrary to its allegations (R.B. 9–14).

When one reviews the actual percentage rates which respondent has charged its customers, the examiner's conclusion that respondent has been consistent and has been trying to make meaningful disclosures to its customers is ludicrous. For example, four specific contracts which the examiner analyzed as carrying an annual interest rate of 18% in fact carried annual interest rates of 53%, 67%, 47% and 124%, respectively, when the time over which repayment was due under each contract is taken into account as it must be (Table B, contracts, 6, 9, 7, and 8, respectively).[25]

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[24] All of the installment credit contracts in the record appear in Table B. The annual interest rates shown therein were computed using a relatively simple formula (called the "constant-ratio" method) which gives a very close approximation of the true annual rate by taking into account the duration of the credit arrangement: $i = \frac{2\,m\,D}{P\,(n+1)}$ where i equals the annual finance fee, m equals the number of payment periods in a year, D the finance charge in dollars, P the principal in dollars, and n the number of payments to discharge the debt. See, *e.g.*, Neifeld, M. R., *Neifeld's Guide to Installment Computations*, Mack Publishing Co. (1951), ch. XI; and Board of Governors of the Federal Reserve System, *Consumer Installment Credit*, pt. I. vol. 1 (1957), p. 54. A computation was not possible for several of these contracts because they failed to disclose one or more critical factors such as the cash price (*i.e.*, the "principal") or the dollar amount of the finance charges actually imposed by respondent.

[25] The examiner stated:

"This contract form does not disclose the rate of carrying charge, but an inspection of the four contracts involved (CX 22, 31, 42, 43, 44) reveals that the carrying charge percentage is

—Cont'd.

Other executed contracts in the record tabulated in Table B further illustrate that respondent in fact charged its customers widely varying and completely unpredictable rates of interest. Contracts 10–13 in Table B show no extra charge added to the "cash price." Thus the interest rate or finance charge on these contracts was ostensibly zero. On the other hand, respondent charged one customer (Synithia Washington) an effective annual rate of 47% on one contract (CX 42) and on the same day charged the same customer an annual rate of 124% on another contract (CX 43/44).[26]

Further examples of respondent's hodgepodge of interest rates were involved in contracts numbered 14–22 on the attached Table B. Respondent alleged that during the period covered by these contracts it utilized a precomputed chart or table which took into account the amount financed and the duration of the credit, and amounted to approximately 1% per month (R.B. 12). However, as Table B shows, the finance charges appearing on contracts 14–22, calculated as a simple annual percentage, varied between 15% and 45% (except number 19 for which no computation was possible). Obviously, respondent's allegations as well as the examiner's findings that respondent was in fact using a logical and consistent method of levying finance charges during each period covered by the various contract forms fall apart in the face of Table B. This conglomeration of effective annual finance rates charged by respondent over the 21 months covered by the contracts defies the possibility that respondent had any kind of orderly or systematic procedure for imposing finance charges.

It is no wonder that the general manager of New York Jewelry for 25 years was unable to explain on the witness stand what procedure for imposing finance charges had been followed by respondent at various periods of time. Often he could not explain how finance charges were computed even when looking at a copy of the conditional sale contract involved (Tr. 189–91, 202, 302–5). Mr. Ullman tried to explain a variety of methods utilized by New York Jewelry for computing finance fees from time to time, but none of these methods coincided with the computation

approximately 18 percent. This is roughly equivalent, on an annualized basis, to the 1½ percent per month commonly charged by most retail establishments since 1½ percent per month × 12 months equals 18 percent" (I.D., p. 1372).

[26] Another intriguing observation is that CX 48, a conditional sales contract for Johnnie Johnson, includes a "balance of existing account" of $118.75 which is the face amount of the conditional sale contract, CX 47, executed the same day by Johnnie Johnson. Thus, presumably, CX 48 was intended to supersede and nullify CX 47, but *both* of these contracts were retained by respondent in its files and presumably both were in effect and could be at least prima facie evidence of dual liability by Mr. Johnson.

provided for in the printed portions of the form "A" contracts nor did they appear to be consistent with the printed financing provision of the ledger card formula.

There are other deficiencies in respondent's use of these installment contract forms which further compound their misleading effect on respondent's customers. While the form "A" contracts have spaces permitting the filling in of total price to be paid as well as the amount and interval of each installment payment, in all but one of the executed form "A" contracts in the record, *these spaces have never been filled in* to show the repayment schedule. Moreover, there is no provision on these form "A" contracts for disclosing the amount of interest or service charge in dollars. The form "B" contracts, unlike form "A," do have spaces which can be filled in to reflect in dollars the "Total Cash Price," "Carrying Charge" and "Time Price," but (as already noted) no provision for including the percentage rate of the finance fees during the term of the contract either on a monthly or an annual basis. Moreover, many of the spaces in which information was supposed to be filled in were left blank by respondent on "B" contracts also.[27]

Respondent's brief suggests (at 12–14) that wholly aside from the deceptions involved in many of the contracts appearing in the record, its most recent contracts, designated as form "C" contracts, are quite clear and free from deception.[28] We reject any suggestion that respondent's latest practices would excuse its previous ones. More importantly, however, we vigorously disagree with counsel's evaluation of these most recent contracts and find that they too are deceptive. The finance charges imposed by these contracts are expressed solely in terms of a "carrying

[27] For example, CX 43, a Form B contract, described by respondent as one of Synithia G. Washington's contracts is unsigned without even any identification of the purchaser's name. CX 17, a Form A contract purported to have been executed by Mary Daughtry, is completely blank except for the customer's signature. Although Form B contracts contained spaces in which to fill in the carrying charges, these spaces in several executed contracts were left blank (CX 74, 94, 99) presumably meaning that no extra finance charges were levied. One of the customers who executed one of the Form B contracts containing blank spaces for total cash price, carrying charges and time price testified that he did not know how much the watch cost him until after he made the down payment (CX 1, Tr. 102–117). Since this amount was filled in on the contract appearing in the record, the inference is that this contract was filled in after the sale was made and with no discussion with the purchaser until his down payment had been received sealing the bargain. On several of the contracts the blanks intended for the amount and interval of installment payments have not been filled in on the contract itself or on the accompanying promissory note at the bottom of the contract (CX 17, 21, 37, 38). On two others, although the installment blanks are filled in on the contract, they are not filled in on the accompanying promissory note at the bottom of the contract (CX 94, 105). On yet another, the installment provisions on the contract are inconsistent with the installment payment provisions of the accompanying note (CX 89).

[28] The contracts involved here, designated as form "C," appear in the record as CX 47, 48, 66, and 69.

charge of 1½% per month on the unpaid balance, compounded." It is difficult indeed to imagine how this "disclosure" is interpreted by the average consumer, to say nothing of respondent's particularly unsophisticated customers. 1½% would undoubtedly be considered quite "easy" by many such customers, as respondent's advertising has assured them. There is no attempt to disclose that this percentage would be 18% on an annual basis, how much the finance charge would be *in dollars*, or even what the customer's *total obligation* is. Respondent's counsel cities the provision in the contract, "Time price: Cash price plus carrying charge of 1½% per month, compounded." He attempts to rationalize the failure to state the total contract price in dollars by arguing that it can vary, depending upon how quickly the customer repays the obligation. What he neglects to mention is the fact that the contract (and also the accompanying promissory note) calls for *specific installment payments at specific intervals.* Thus the precise dollar amount of the finance charges as well as the customer's total obligation could very easily be computed by respondent and disclosed to the customer before he decides whether to execute the contract. Respondent obviously prefers to rely upon its customer's inability to compute "1½% per month, compounded" and to assure them simply that the credit is "easy." [29]

We hold that respondent's installment credit sales practices have the capacity to and do in fact mislead. Even the best of respondent's contracts represent simply that a "carrying charge" of "1½% per month" will be levied, but this charge is not computed, so the customer does not know how much the extra charge will be, nor can he verify whether respondent is in fact charging him 1½% per month. These contracts also fail to state the interest rate as a simple annual percentage or even the customer's total obligation. Moreover, many of the earlier contracts were wholly silent on, or actually misrepresented, the percentage rate of the finance charges levied.

In view of the inconsistency between respondent's payment cards, ledger cards, and various contract forms; the great disparity among the effective annual interest rates charged by respondent to various customers (including disparity charged to some of the same customers); the failure by respondent to provide all of the information called for in the contract forms which it did use; and the failure to disclose the annual interest rate, the

[29] A question left unanswered in this record is the time. place and method of computation of the 1½% per month. Apparently, the customer is entirely at the mercy of one of respondent's personnel, who happens to take the customer's installment payment, to tell him how much more he owes.

amount of finance charges, or even the customer's total contractual obligation in its most recent contracts, we find that respondent's installment credit practices have the capacity to and do in fact deceive purchasers as to the actual cost of the credit and their total contractual obligation.

As noted previously, the hearing examiner asserted that the Commission "does not have jurisdiction to regulate * * * credit practices in the marketplace" (I.D., p. 1376). The hearing examiner is grossly in error. The Commission has jurisdiction under Section 5 over unfair or deceptive acts and practices in commerce, and no exception is made in the Federal Trade Commission Act or any other Act of Congress for acts and practices involving credit. Indeed the Commission has been actively enforcing Section 5 in the field of credit transactions for decades.[30] Even respondent in its brief does not urge any other contention. It confines its argument to the Commission's remedial powers in this field which we will deal with below in our consideration of the order to be entered against this respondent.

Accordingly, we conclude that respondent's failure to adequately inform his credit customers of all the credit charges and financing fees imposed on them, and failure in many instances to disclose the total price to be paid pursuant to conditional sale contracts, as alleged in the complaint (Par. Seven (2) and Eight (3)), is fully sustained by the evidence and constitutes unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act.

3. RESPONDENT'S PROMISES OF "EASY CREDIT" AND CHARGING UNCONSCIONABLY HIGH PRICES

Respondent reiterates in its brief at several different places that the complaint allegations are not models of precision and that it is necessary to read them carefully to determine exactly what is being alleged (*e.g.*, R.B. 2, 3, 18). Respondent then proceeds to interpret the allegations in paragraphs 7 and 8 as

[30] *General Motors Corp.*, 30 F.T.C. 34 (1939), *aff'd* 114 F. 2d 33 (2nd Cir. 1940); *Ford Motor Co.*, 30 F.T.C. 49 (1939), *aff'd* 120 F. 2d 175 (4th Cir 1941); identical complaints and stipulations were involved in Dkt. 3000, 3002, 3003, 3006 and 3007, 24 F.T.C. 1394–1401. The Commission in 1951 issued a Trade Practice Conference Rule Relating to the Sale and Financing of Motor Vehicles (16 C.F.R. § 197). Consent orders involving credit representations include *Lester Carr*, 55 F.T.C. 1406 (1959); *Bob Wilson, Inc.*, 57 F.T.C. 1213 (1960); *Audiographic Potomac*, 59 F.T.C. 1201 (1961); and *Custom Sleep Shoppes, Ltd.*, Dkt. 8709 (1966) [70 F.T.C. 1393]; *Empeco Corp.*, Dkt. 8702 (Feb. 24, 1967) [71 F.T.C. 158] involved stipulated facts and order; and *Allied Enterprizes, Inc.*, Dkt. 8722 (April 11, 1967) [71 F.T.C. 638], involved an order entered by default when respondent failed to contest the complaint. A recently litigated case involving credit representations is *Consolidated Mortgage*, Dkt. 8723 (Feb. 19, 1968) [73 F.T.C. 376].

containing a "key" allegation, to wit, that respondent's prices are unconscionably high, which it believes is the "main thrust" of the Commission's case (R.B. 18). The hearing examiner adopted respondent's reasoning, found that respondent's prices were not proven to be unconscionably high, and therefore dismissed all of the related allegations.

Irrespective of whether or not the complaint is a model of clarity, respondent cannot on that purported ground pick and choose among its charges and redraft the allegations to suit its own arguments.

Thus we do not agree with the hearing examiner or with respondent that the sole or primary charge in these paragraphs is that respondent's prices are unconscionably high.

As we read these paragraphs they contain a number of interrelated allegations dealing with several aspects of one basic problem—the deceptive use of credit—and specifying two respects in which respondent's credit is not "easy"—because its cash prices are unconscionably high or greatly in excess of other prices in the trade area; and because respondent, after giving the appearance of dealing quite leniently with credit customers, rigidly enforces its credit rights against customers who have been lured into their contractual arrangements by respondent's "easy credit" marketing practices.

Thus Paragraph Seven (1) of the complaint alleges that respondent utilizes a number of devices to lure customers into the store so it can sell them "eyeglasses or other merchandise on the so-called 'easy credit terms.' " Paragraph Seven (2) alleges:

> Without determining his customers' financial ability to pay or their credit rating respondent sells merchandise to them on 'easy credit terms' at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash.

Paragraph Eight (1) alleges that respondent through various means induces its customers

> * * * to purchase merchandise on credit terms that, contrary to respondent's representations, are not easy because of the fact that the prices charged by respondent for such merchandise are unconscionably high and greatly in excess of the reasonable or fair market value of such merchandise.

This paragraph also alleges:

> Respondent extends credit to such customers without determining their credit rating or their financial ability to meet their payments. As a result many of such customers are unable to make their credit payments where-

upon respondent seeks, and often with success, to obtain garnishments against their wages.

Paragraph Eight (2) alleges that respondent's ticketed prices include undisclosed credit charges and are greatly in excess of prices charged by others.

It is essential in evaluating respondent's "easy credit" representations in terms of these complaint allegations to consider first their impact on the consumers to whom they are directed. Respondent's customers are drawn largely from the low-income strata whose marketing sophistication and knowhow are minimal, who by and large must purchase on credit and who have difficulty in obtaining credit elsewhere.[31] To such low-income consumers, therefore, the *price* of merchandise is translated in terms of credit. The price which attracts them is not the "cash" price. They lack the experience of critically comparing retailers' cash prices, since they cannot pay cash in most instances anyway, and many probably assume that there is not a great deal of difference among the cash prices charged by various retailers in the same general locality.[32]

Respondent's customers are, therefore, obviously more sensitive to the size of the required downpayment and weekly or monthly payments than to the cash price. Respondent's low downpayments and, on occasion, its practice of requesting no downpayment at all, tends to reinforce the impression in its customers' minds that its credit terms are "easy" as represented. This impression is further reinforced by the low individual installment payments which are required on some occasions, the printed interest charges shown on the contracts which appear to range between 1½ and 3%, or are stated as $1, and in some cases, the apparent absence of any finance charges being imposed at all.

An integral part of respondent's "easy credit" representations and its purported low interest charges and downpayments is its further representations that it is a "bargain" store and that "Mr. Tash" is truly the friend of the poor. "Credit in a Flash, says Mr. Tash" is the headline of respondent's newspaper ads. And "Mr. Tash" reassured radio listeners that he would give them the "good things in life" at bargain prices and on "easy credit."

[31] See, for example, the profiles of a number of customers appearing in the attached Appendix A.

[32] Because of the type of merchandise carried by respondent it would have been extremely difficult for its customers to compare respondent's prices on many of the items it handled. Even the general manager testified that once he removed the manufacturer's tickets from Bulova watches he could not tell one Bulova watch from another (Tr. 331). Obviously, the comparative quality of such items as jewelry, watches, eyeglasses and used TV's are also very difficult for even the sophisticated consumer to evaluate with any degree of precision.

The sincerity of such promises could hardly be questioned when one approached the store and was offered a "free gift," a "free eye examination," and told that Mr. Tash thinks he has "a preferred credit rating" even though other stores have turned him down. If anyone wondered why New York Jewelry, a "bargain" store, would extend such liberal credit terms, "Mr. Tash" explained that it was "Because We Appreciate Your Business" (CX 123) and told radio listeners, "I'll take a chance on you" (CX 52, 54).

Thus, respondent clearly conveys the impression not only that credit is available, but also that it is offering these generous terms because it "appreciates" the poor man's business and is willing to "take a chance" on his credit. In this context, many comsumers would never be alert to the possibility that respondent's "easy credit" meant only that merchandise was available for low installment payments, and that in fact the credit might be costing them dearly because of excessively high prices of the merchandise itself. Indeed, respondent's advertising tended to counter any such suspicion from arising in its customers' minds through its claims to being a bargain and discount store.

Representations of easy credit to anyone, and particularly to persons who are dependent on the extension of credit in order to make any purchases at all, do not mean simply that the seller is representing that he will permit customers to make a purchase of merchandise without having to pay cash. It means much more. At a minimum, it means that customers purchasing at respondent's store will be given a substantial period of time within which to pay for the merchandise, that the individual payments will be low, that the charge imposed for this credit will be reasonable, and that the consumer will be fairly dealt with on all terms of the transaction including the consequences of a delayed or missed payment. When coupled, as here, with express and implied representations with respect to respondent's bargain operations,[33] the promise of the "good things in life" and "free gifts," we think such representations will be interpreted by the consumer as meaning that all of respondent's terms, including the total time price of the merchandise being purchased, are more favorable than the consumer could get in most other retail outlets.

Consumers faced with respondent's offers of easy credit will assume—and we believe reasonably so—that the "cash price" of

[33] See, for example, respondent's radio commercial CX 56 and newspaper advertisement CX 114 (Appendix B attached).

respondent's merchandise is a "bargain," or at least that it bears a reasonable relationship to the value of the article and is not substantially higher than prices generally prevailing in the trade area for the product. It is against these impressions, conveyed by respondent to its customers through its promotional and other merchandising techniques, that we must view respondent's actual pricing and installment credit practices.

(A) *Respondent's pricing practices*

The record indicates that respondent consistently followed a pricing practice of inflating its ticketed retail prices of a substantial number of lines of its merchandise substantially above the trade area prices for such merchandise.

We have already discussed respondent's misrepresentation of its eyeglass prices as discount. Table A reflecting our conclusions respecting New York Jewelry's eyeglass prices, even after deducting the cost of the "free" eye examination, demonstrates that respondent's eyeglass prices were at least *twice* as high as the prevailing trade area prices.

The record also shows that respondent followed a similar markup practice on the Bulova watches which it sold. Respondent's general manager admitted that Bulova's tickets, containing a suggested retail price, are removed by respondent before putting the watches on display and are replaced with its own tickets bearing prices which are *higher* than those suggested by the manufacturer (Tr. 332–5).[34] Other evidence in the record suggests that respondent's ticketed prices for Bulova watches represented markups averaging 700% in contrast to the trade area markup of approximately 100%.[35] For example, one invoice in the record covering 8 different models of Bulova watches which had cost respondent from $16 to $28 indicates sales prices fixed by respondent on these items ranging from $125 to $149.50 (CX 58).[36]

[34] Based upon the watch invoices in the record, Bulova watches are respondent's primary line of "higher" priced watches—*i.e.*, those with invoice costs over $15. RX 1–10 and CX 58 reflect purchases by respondent of 77 Bulova watches from November 1965, to April 1966.

[35] The cost to respondent of Bulova watches is undoubtedly no less than to major retailers in the area. These costs appear in numerous record invoices reflecting respondent's purchases of Bulova watches from the manufacturer (CX 58, RX 1–10). Stipulated testimony (CX 13, 14, and 15) establishes the selling prices of major jewelry retailers in the area for a number of the identical watches handled by respondent. These are tabulated in Appendix II of complaint counsel's brief and show the trade area markups to average about 100% over cost.

[36] The evidence as to respondent's ticketed selling prices for these Bulova watches was based on handwritten notations, one of a letter code and the other of prices, appearing between the listing of each watch model and the unit and total price paid by respondent. Respondent's —Cont'd.

Following is a retyped version of an invoice (CX 58) showing respondent's cost and ticketed selling prices (in handwritten notations) for a number of Bulova watches:

Quanity	Style	Description	Hand-written cost code	Hand-written prices	Unit cost	Total
1	03909 Y	Engineer K_____	IDME	$149.50	$24.95	$24.95
4	13220 Y	Craftsman AA____	CLME	125.00	15.95	63.80
3	13221 Y	Centennial_____	CLME	125.00	17.95	53.85
2	13441 Y	Yankee Clipper G_	ILME	149.50	27.95	55.90
5	63378 Y	Miss America M___	CLME	125.00	17.95	89.75
2	63379 W	Miss America N___	CLME	125.00	17.95	35.90
1	63421 W	Concerto N_____	CPME	125.00	16.95	16.95
1	73216 Y	Flight Nurse E____	CUME	125.00	18.95	18.95

The trade area prices for these same items ranged from $36 to $60, or a markup of about 100% in contrast to respondent's markup averaging around 700% (CX 13, 14, 15).[37]

While the evidence is not quite so clearcut, the record indicates that similar high markup policies were followed with respect to respondent's other merchandise. For example, stipulated testimony reveals the sale by respondent of a "Lord Tash" watch (apparently named after the respondent Leon Tashof) for $89.95.[38] While the cost to respondent of this particular watch was not established, *all* of the non-Bulova watch invoices in the record, covering respondent's purchases of 164 watches over a

general manager (Mr. Ullman) claimed that he did not know whether these handwritten notations represented the selling prices. Yet he admitted that the handwritten letters next to each type of watch listed on the invoice accurately translated (with the exception of one digit in the second item) the cost to respondent of each watch into the letter code used by New York Jewelry (Tr. 161–62, 169, 330–36). These two handwritten items, the cost code and the selling price, are the precise items that respondent writes on the price ticket, attached to each piece of merchandise in the store. Accordingly, we are convinced and so find that these handwritten notations on CX 58 reflected respondent's ticketed sales price for these watches. Moreover, complaint counsel testified that Mr. Ullman told him during the investigation that the handwritten prices appearing on this invoice (and also on two other invoices, CX 57 and 59) represented New York Jewelry's retail selling prices for these items (Tr. 636).

[37] Another instance which would bear out these high markup policies of respondent with respect to its Bulova watches involved a Bulova watch sold by respondent to a customer, Roland Taylor, for $295 (CX 9). The watch itself could not be located, and so its cost could not be clearly established. However, the record does contain evidence that the watch was pawned three months after purchase for $10. Moreover, the invoices in the record showing respondent's purchases of 77 Bulova watches over a five month period (Nov. 1965 to April 1966) reveal that the *highest* price paid by respondent for any Bulova watch which it had purchased in this period was $39.95 suggesting that the $295 Bulova watch represented a probable markup of around 700% (CX 58, RX 1–10).

[38] CX 4, CX 19.

nine month period, show that respondent paid less than $13 for all but 11 of these watches (the most expensive one costing $17.95).[39] Moreover, since "Lord Tash" was respondent's house-brand, it is likely that it was among the lower-costing watches represented by these invoices and therefore also sold at a similarly high markup. Respondent offered no evidence indicating that the pricing of this non-Bulova watch was in some way atypical.

The evidence also suggests that similar high markups were placed by respondent on a variety of other items sold by it encompassing cookware, toasters, irons, clock radios and stereos. While respondent disputes the evidence of the prices at which it sold these items, it does not contest the evidence respecting its costs on the cookware and toaster items which ranged from $4.99 to $7.97. The evidence of its salesprices for these items, based on handwritten price notations appearing on respondent's invoices, indicate that these salesprices ranged from $24.75 to $79.50 (CX 57). Its cost for its clock radios and stereos ranged from $18.05 to $78.25. Again based on similar handwritten price notations, its selling price for these same items ranged from $89.50 to $295.00 (CX 59). In both of these cases respondent's general manager claimed not to know whether the handwritten notations represented respondent's ticketed selling prices. It is curious to say the least, however, that respondent's general manager could offer no opinion whatever as to what the selling prices were, when he himself is responsible for establishing respondent's prices. Even with the invoices in hand showing the cost of each item, the general manager claimed not to be able to testify as to the selling prices of *any* of the items listed on any of these invoices, CX 57, 58, or 59 (Tr. 169–173). Under such circumstances his alleged inability to confirm that the handwritten notations did in fact represent selling prices is of little consequence. The inference that these were selling prices is certainly enhanced by respondent's complete failure to offer any contradictory evidence whatsoever.

We find that with respect to respondent's eyeglasses and Bulova watches, its prices for these products greatly exceeded the prices charged for like or similar merchandise by other retail establishments in the same trade area. We find that with respect to respondent's prices on its Lord Tash line of watches, and on its cookware, toaster, clock radio and stereo items the evidence sup-

[39] CX 60, RX 12, 13, 16–20.

ports the same conclusion but we are regarding this latter evidence as of only cumulative significance.[40]

In determining whether these practices constitute unfair and deceptive acts within the meaning of the Federal Trade Commission Act, we must start with the premise that our responsibilities in administering Section 5 of the Federal Trade Commission Act are to protect the most credulous, gullible and unsuspecting customers, *F.T.C.* v. *Standard Education Society,* 302 U.S. 112 (1937); *Progress Tailoring Co.* v. *F.T.C.,* 153 F. 2d 103 (7th Cir. 1940); *Doherty, Clifford, Steers & Shenfield* v. *F.T.C.,* 392 F. 2d 921 (6th Cir. 1968).

Markups of the magnitude fixed by respondent have been held unconscionable in cases involving not dissimilar consumer household items.[41] And we have no doubt that the use of unconscionable selling prices can, by itself, constitute an "unfair" or "deceptive" practice, or an "unfair method of competition" in violation of Section 5 of the Federal Trade Commission Act. In the instant case, however, we are not confronted simply with a retailer's practice of selling goods at high markups—rather we have here a respondent who promises people "easy credit" and induces them to sign credit contracts because it is so "easy" to take the merchandise—little or no downpayment being required and the payments being low—while at the same time charging prices which are greatly in excess of what other retailers charge, knowing that such customers are unaware of this fact. Obviously under these circumstances, the credit is not "easy" to respondent's customers, as represented. To the contrary, it is in fact costing them dearly since the overall amount of money which they must pay respondent for its eyeglasses, for example, is twice as much

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[40] The complaint cited as a specific example of extremely high markups, transistor radios costing respondent $3.45 and bearing price tickets of $59.50, and others costing $2.70 bearing price tickets of $49.50 (Complaint, Paragraph Seven (2), CX 122, Tr. 637, 595). Respondent did not deny that these radios bore such price tickets, but argued that the high prices must have resulted from a clerical error in misplacing a decimal point. It introduced invoices allegedly representing the sales of the great majority of its transistor radios to show that none of them actually sold for $49.50 or $59.50. Yet according to respondent's own tabulation, there were no sales of transistor radios at $4.95 which presumably would be the intended selling price if, as it argued, the $49.50 price really resulted from the misplacement of a decimal point on the $49.50 price ticket. However, the evidence is at best equivocal and we refrain from making any specific findings on this issue since in our view a resolution of this factual issue is not material to our findings in this case.

[41] For example, see *Frostifresh Corporation* v. *Reynoso,* 274 N.Y.S. 2d 757 (1966) [rev'd. for trial to determine damages, 281 N.Y.S. 2d 965 (1967)] where total credit price of $1,145 was unconscionable for a refrigerator-freezer costing the seller $348; *American Home Improvement* v. *Mac Iver,* 201 A. 2d 886 (1964) where a credit price of $2,568 for goods and services valued at $959 was unconscionable; *State by Lefkowitz* v. *I.T.M.,* 275 N.Y.S. 2d 303 (1966) where prices from two to six times cost were unconscionable.

as other optometrists charge and for its watches many times as much as these could be purchased in the general market. Add to this the bewildering variety of finance charges imposed by respondent on its various credit transactions ranging from zero percent to 142% and it is clear that respondent's customers are not receiving easy credit.

It is not necessary for us to conclude that on the basis of some absolute scale, respondent's prices were unconscionably high. On items representing a substantial part of its business, its prices were in excess of the prices prevailing in the trade area. To customers who are told that by patronizing respondent they will get easy credit, we hold that these markup policies together with the other credit terms imposed on respondent's customers are unfair and deceptive. Representing "easy credit" while at the same time promising discount and bargain prices, but in fact charging prices which substantially exceed the trade area price is obviously deceptive. We conclude, therefore, that respondent has deceived his customers and dealt unfairly with them, through its use of "easy credit" advertising and its markup and other promotion practices. When the entire format of respondent's business is considered, it is clear that it is attracting customers who cannot obtain credit elsewhere by the two pronged, doubly deceptive gimmick of "discount" prices and "easy" credit. As utilized by this respondent, both practices are deceptive and are in violation of Section 5 of the Federal Trade Commission Act.

(B) *Respondent's collection policies*

The complaint also alleges that respondent takes unfair advantage of its customers by extending credit to purchasers without determining their financial ability to pay and thereafter suing the customers who do not meet their credit obligations, often obtaining garnishments on their wages.

The evidence is clear that respondent's credit eligibility policies are exceedingly liberal.[42] Respondent's newspaper ads (all with the headline "Credit in a Flash, says Mr. Tash"), radio commercials, and free gift credit cards (which were both mailed to customers and given to passers-by on the sidewalk) hammer away at the theme that New York Jewelry extends credit to *everyone,* "Even if you never had credit, lost your credit, or others have turned you down" (CX 123). It is in fact rather astonish-

[42] The testimony of the credit expert, Mr. Edward Garretson, appears in the record at Tr. 443–471, and the credit applications appearing in the record are CX 2, 16, 18, 20, 30, 36, 41, 46, 61, 64, and 65.

ing that respondent alleged, albeit meagerly, that it did not extend credit indiscriminately. This is astonishing not just because it was not supported with any facts (not even evidence of a single credit rejection), but primarily because this argument contradicts virtually all of respondent's own advertising.

The evidence is also clear that respondent follows a rigorous collection policy. The record contains stipulated evidence that during 1964, for example, New York Jewelry filed 1,178 lawsuits against defaulting customers. In 1965 respondent filed 1,631 such lawsuits and in 1966, 707.[43] As for garnishment proceedings, it was stipulated that during the 14 month period January 1966 through February 1967 New York Jewelry filed 411 garnishment proceedings. For purposes of comparison, it was further stipulated that the C & P Telephone Company during the same 14 month period had only 91 garnishment proceedings, the Hecht Company 217, Kay Jewelers (with 10 branch stores in the Washington area) 202, and Reliable Stores Corporation 305.[44] All of these stores undoubtedly had many times more customers than the respondent's 5,000.[45]

Some appreciation of the percentage of customers who have been sued by New York Jewelry can be obtained by looking at the approximate number of accounts and the number of lawsuits filed. As mentioned, about 5,000 accounts were utilized during 1966. During that year 700 suits were filed, or about 14% of the customers were sued. It is interesting to note, however, that the year prior, when 1,631 suits were filed, the percentage was undoubtedly much higher. Even assuming that there were as many accounts utilized in 1965 as in 1966, 1,600 lawsuits for 5,000 accounts indicates that 32% of the customers were sued. In other words, during 1965, New York Jewelry sued about every third customer.

At first blush these allegations in the complaint respecting respondent's eligibility and collection practices might appear to rest on a premise that it is illegal or somehow wrong or unfair for a retailer to adopt a generous policy with respect to the extension of credit. We reject any such premise. To even suggest the validity of such a premise would carry particularly harsh overtones for our nation today when we are so tragically aware of the almost twenty-six million people in our country who are living below or just at the poverty line and who can only hope

[43] Tr. 483–488.
[44] Tr. 485.
[45] Tr. 520.

to acquire even the bare necessities of life by purchasing on time, much less any of the other goods and services so consistently advertised in every media as being part of the good life in our society. The need in our nation is for more reasonable credit eligibility criteria and for greater availability of credit in many areas of our economy.

Nor do these complaint allegations proceed on any notion that buyers—and particularly low-income consumers—are under no obligation to exercise self-restraint and responsibility for their own actions. No one has suggested that the law merchant should be suspended because a consumer comes from the low-income segment of our society. A retailer's credit eligibility and collection practices as such are not the thrust of this charge in the complaint.

On the other hand, it is manifestly unfair to adopt a marketing policy which has the effect of luring unsophisticated customers into entering contractual obligations which in all likelihood they have little understanding of, convincing them that the credit is "easy" and prices are low and at the same time following a rigid collection policy resulting in default judgments and garnishments being levied against their meager wages.

It is impossible to assume that customers reading the advertisements of this respondent representing "Mr. Tash" as one who would make it possible for them to have "the good things in life," would realize that the lure of extending easy credit to all customers meant that they were subjecting themselves to overpriced merchandise and the possibility of having their salaries garnished as well.

Nowhere has respondent alerted its customers to the fact that despite its liberal credit eligibility policy, it follows a rigorous collection policy and that a delayed or missed payment can operate to call the entire debt due and subject the buyer to immediate payment of the purchase price when the very reason for seeking extended payment privilege is the buyer's inability to pay the purchase price in one lump sum.[46]

Certainly it is manifestly unfair to lure a customer into purchasing on credit without any regard to his ability to pay and din into his ears that the credit extended is easy and then turn around and sue every third customer who falls for the bait. As a minimum, a generous credit eligibility policy must be matched

[46] Indeed if respondent's customers read the installment contract provisions on this point, they would have found some confirmation for their assumptions of leniency by respondent on this point since their contracts nowhere stated that a missed or delayed payment would call the entire debt due but only that if payments were missed the seller "may" call the entire debt due.

either with some rational basis for believing that the customer can and will pay or with an equally generous collection policy. Otherwise, the generous eligibility policy itself is dangerously tantamount to an inducement to customers to part with money under false pretenses.

We have no doubt that respondent's practices of extending credit liberally and of following a rigid collection policy took unfair advantage of its customers when looked at in the context of its entire marketing practices of luring customers into its store through its offer of free gifts, its advertising or easy credit and its representations that its merchandise was available at discount and bargain prices. The entire thrust of respondent's marketing strategy was to lull its customers into a feeling that respondent was their friend, would give them a break and would give them a better deal than they could get elsewhere. We conclude that these practices of respondent are unfair and deceptive and in violation of Section 5 of the Federal Trade Commission Act.

We conclude that respondent has violated Section 5 of the Federal Trade Commission Act and that an order should be entered. We turn now to a consideration of the order.

THE ORDER

Because of the hearing examiner's dismissal of this case, he did not give any consideration in his initial decision to the type of order which would be appropriate in the premises. A proposed order was attached to the complaint. Respondent has taken vigorous objection to some parts of this order. Complaint counsel urges that the proposed order, with some modifications, is proper and should be entered. We will consider the various provisions of the proposed order seriatim.

Respondent has not interposed any objection to paragraph 1 of the order as proposed, and we find the paragraph necessary and adequate to deal with the bait and switch allegations in the complaint. Paragraph 2 of the notice order was not urged by counsel supporting the complaint in their appeal brief, perhaps because it covers essentially the same practices as are already encompassed within the first prohibition of the order. Accordingly, we see no need for paragraph 2 of the notice order and are deleting it.

Paragraph 3 of the proposed order was designed to prohibit the misuse of representations of "discount" prices, and similar representations of that nature found in the present case. After having the benefit of a full hearing in this case, however, it has become

apparent to us that this provision should spell out more precisely the steps respondent should take to avoid misrepresenting its prices as discount. The record herein reflected *no* attempt by respondent to check on any trade area prices before making claims of "discount eyeglasses." The record also disclosed that respondent's prices were substantially in excess of the trade area prices on several product lines and represented extremely high markups over cost. We concluded, therefore, that respondent's representations in its advertisements that its prices were discount and bargain were flagrantly deceptive.

In our judgment, the only way in which the public interest can be adequately protected against a repetition of such misrepresentations is to require respondent to make some effort to substantiate the trade area prices in advance of making "discount" claims. We are, therefore, requiring respondent in paragraph 2 of the order to sample principal retail outlets in its trade area *before* it makes such bargain or discount representations and to verify the fact that the prices which respondent wants to represent as "discount" or "bargain" are in fact significantly below the prices charged by a substantial number of the stores selling the same merchandise.

This provision does little more than crystallize in order form essentially the same duty that any retailer has—namely, to be able to support any comparative pricing claims he may make. (See Commission Guides Against Deceptive Pricing, January 8, 1964.) In determining in the first instance whether pricing claims are true, we have permitted a respondent to demonstrate the validity of its claims on the basis of evidence of prevailing trade area prices without regard to whether this evidence of trade area prices was in fact in its files before the claim was made. However, in the instant case, respondent has been found to have flagrantly misrepresented its prices. We do not believe that we ought to risk subjecting the public to future deceptive practices by giving respondent free rein to make any such claims it wants to without *first* having evidence to support them. To protect the public interest here, therefore, we are requiring respondent to gather its evidence before making the representations and to keep the evidence available for a reasonable period thereafter so that we will be able to determine whether it is in fact complying with the order.

Paragraph 4 of the notice order which accompanied the complaint would prohibit the inclusion of costs attributable to the extension of credit in the stated "cash" price of merchandise.

Complaint counsel proposed essentially the same provision in their appeal brief (paragraph 3, A.B. 45), and respondent raised no objection to it. Paragraph 6 of the notice order prohibited misrepresentation of the fair market value of the merchandise. Complaint counsel, however, did not urge the adoption of this provision. Rather, they proposed a provision prohibiting credit sales to low-income customers at prices which greatly exceed the trade area prices unless a substantial number of sales are made at those same prices to customers paying cash (paragraph 4, A.B. 45–46). Respondent vigorously opposed this provision on the dual grounds that it was either too vague or an improper limitation upon the maximum prices which respondent could charge (R.B. 54–58). Respondent also objects to the last provision of the notice order (which is also urged by complaint counsel) on the grounds that it is too vague. This is a catch-all provision prohibiting credit practices which unfairly exploit low-income members of the consuming public.

We have considered respondent's objections to these paragraphs and have concluded that some modification is appropriate. It is indeed difficult to tailor cease and desist provisions which are sufficiently precise that respondent can be certain of the full extent of the prohibited practices, but provisions which will at the same time protect unsophisticated customers from the variety of tactics which can be used to take unfair advantage of them.

As we stated in our discussion of the complaint allegations, we did not find that respondent's prices were "unconscionably high" in an absolute sense that would, without more, violate § 5 of the Federal Trade Commission Act. Additionally, we did not find that the practice of recouping in the markup on "cash" prices a portion of the expenses of extending credit was, by itself, an unfair or deceptive act or practice. Rather, we believe that these practices are deceptive because of respondent's misrepresentations of "easy credit" through which it has lured low-income customers into exceedingly harsh contractual obligations and that the order provision with respect to these easy credit misrepresentations will cure the deceptions found here.

Paragraph 3 of the order being entered herein prohibits respondent from representing that its terms of credit are easy. The record amply demonstrates respondent's gross abuse of "easy credit" advertising, including its deceiving customers into thinking that they had "preferred" credit ratings. In fact respondent's terms of credit have been "easy" only in the very limited sense of being readily available, but have in all other re-

spects been exceedingly harsh, not only in terms of the finance charge itself, but also according to the provisions of the various contracts utilized by respondent and its extensive use of legal proceedings to enforce its credit contracts. We do not believe that there is any effective means available of preventing respondent's misuse of "easy credit" advertising short of an outright prohibition. We could prohibit the use of "easy credit" advertising in connection with some types of harsh contractual provisions, but respondent would surely be able to create new, equally harsh provisions. We could also prohibit respondent from levying excessively high "finance" charges, but to do so would only compel respondent to conceal an even greater portion of its credit expenses in its "cash" markup than it does already. Respondent's entire marketing strategy is directed to individuals who cannot pay cash and who cannot obtain credit elsewhere. The number of lawsuits and garnishments which respondent has initiated is extremely high. Such collection expenditures obviously mean that respondent's method of doing business on credit is costly. To conduct a profitable business, respondent will have to recoup these expenses in some manner—either through the markup built into the "cash" prices or through supplemental charges to credit customers.

We cannot predict the precise means which respondent might employ to recoup its credit expenses, whether in the form of high markups or high interest charges, or both as it has charged here in many transactions. Certainly one fact is clear—respondent's credit is not "easy." The only effective measure by which to prevent the deceptions involved in respondent's easy credit representations is to put an end to the "easy credit" illusion. This prohibition does not preclude respondent from advertising that its credit is readily available if in fact it extends credit to those who may be unable to obtain credit elsewhere and it is careful not to misrepresent that other terms of such credit are lenient. On the other hand, if respondent should decide in the future to alter its marketing strategy so that both its cash price and its finance charges are in fact "easy" compared to terms which are generally available, then it is free to petition the Commission for a modification of this order under § 3.72(b) of the Commission's Rules of Practice.

Paragraph 4 of the order requires that if respondent makes any representations as to one or more of the credit terms available (for example, "no money down" or "pay only a dollar a week"), then such representations are to be accompanied by an

explanation of all the credit terms in a manner which can be easily understood. Paragraph 5 provides that representations of percentage rates of finance charges are to be in terms of the annual rate. These provisions are substantially identical to the requirements of § 128 and § 144 of Public Law 90–321, the "Consumer Credit Protection Act," enacted May 29, 1968, Title I of which ("Truth in Lending") is to become effective on July 1, 1969. Paragraph 6 of the order provides that respondent disclose to its customers before completing the sale the details of the finance charges being imposed. This is similar to § 128 and § 121 of the Truth in Lending Law.

The Consumer Credit Protection Act does not, of course, in any way pre-empt the Commission's jurisdiction over deceptive acts and practices in commerce, even if such acts may involve credit practices. There is no suggestion in the law or in the legislative debates which preceded its enactment that it was designed to pre-empt the Commission's jurisdiction. The purpose of that law is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit" (§ 103). Our jurisdiction, on the other hand, stems from unfairness and deception and has traditionally extended to credit practices as well as all other types of sales and promotion practices which are unfair or deceptive. It is important that our orders, when requiring disclosure of the same credit information as is required by the new law, employ the same definitions so that ambiguities and inconsistencies are avoided. However, where as here the order is designed to eliminate deception, and not merely to ensure uniformity of disclosure of relevant credit data, its terms must go beyond the requirements of the Consumer Credit Protection Act. For example, paragraph 6 which bears upon the disclosure to be made to any customer making a purchase on credit, requires the disclosure to be made not only in writing, but also orally. A substantial proportion of respondent's customers lack sophistication and education (see Appendix A to this opinion). It is unlikely that many of them could read and clearly understand all of these terms as they are contained in the written contract. Therefore in our judgment it is essential that respondent be required to make these disclosures orally to its customers at the time when the price or the terms of credit are *first* discussed or referred to with the customer.

We have also concluded that it is essential that the disclosures required to be made in paragraphs 4 and 6 be made

with respect to *all* credit transactions. The Consumer Credit Protection Act exempts certain sales from its disclosure requirements (Section 128 (a) (7) (A) and (B)). Many of respondent's sales have involved finance charges of less than $5. As Table B attached illustrates, the true annual percentage of these finance charges was substantial, ranging from 15% to 45% (contracts 14–20 in Table B). On small purchases with credit extending only over a brief period of time, finance charges of less than $5 can represent a very substantial percentage rate, and customers solicited by this respondent must have some idea of how costly the credit is which respondent is seemingly so generous in extending. Accordingly, we have concluded that respondent must make the required disclosures with respect to all of its credit transactions.

We believe that the provisions of this order are "as specific as the circumstances permit" without unduly limiting respondent's freedom.[47] To issue any more lenient order would be overprotection of respondent's merchandising practices at the expense of low-income members of the consuming public who can least afford to be deceived. If respondent cannot operate in the future as freely as it has in the past, it must remember that "having been caught violating the act, [it] must expect some fencing in." [48]

APPENDIX A

CUSTOMER PROFILES

1. *Roland Taylor*: 50 years old, Negro, employed by Manger-Annapolis Hotel as elevator operator earning $60 wages per week with no other income to support himself, his wife and his one child. He had no driver's permit and no bank accounts. The only other account appearing in his credit application was "Calvert Credit Corp." He noticed New York Jewelry's advertising for a free eye examination. He went there and was told he needed three pairs of eyeglasses—one for television, one for reading, and one pair of bifocals. He was sold three pairs for $59.50 each plus finance charges. This contract called for no downpayment and failed to state the number, amount, or interval of installment payments. Two months later, while he had an outstanding balance of $213.30, he was sold a Bulova watch by respondent for $295, a cigarette lighter for $24.95 and a heater for $22.50,

[47] *F.T.C.* v. *Colgate–Palmolive*, 380 U.S. 374, 393 (1965).
[48] *F.T.C.* v. *National Lead*, 352 U.S. 419, 431 (1957).

plus $63.54 carrying charges, with no downpayment. His outstanding balance then totaled $629, or 20% of his annual wages. Three months later he was financially in distress and pawned the watch for $10 (CX 9, 20, 21; Tr. 575–589).

2. *Preston William White*: Single, Negro, employed for seven or eight months at the time of the hearing by a linen service earning $60 per week gross wages. He testified that at the time of one transaction with respondent he was employed in the cafeteria at the Pentagon receiving a gross of $79 every two weeks. The credit application says he worked for Union News at Union Station, but perhaps that was filled out at a different time. It fails to reveal Mr. White's wages, how long he had been employed by Union News, or how long he had lived in the area. It fails to disclose Mr. White's address or whether he owns or rents his residence. It does reveal that he had no other charge accounts, no bank accounts, and no driver's permit. Mr. White purchased a pair of eyeglasses from respondent for $59.50 on March 30, 1966, bringing his total account with respondent at that time to $197.33. With respect to this transaction, Mr. White testified as follows:

Q. Did they tell you what this document was, Mr. White?
A. You mean before I signed it?
Q. Before you signed it or after you signed it, were you aware of what you were signing?
A. Well, I knew a little bit about how to open an account. As far as signing this contract, they told me to sign a contract and I signed it.
Q. What did they tell you this contract was for, Mr. White?
A. They told me to read it and they told me what it was about.
Q. What did they tell you it was about? Do you recollect?
A. I just read the printing. I read the printing on it. They have something you read before you sign.
Q. Can you tell me what this is?
A. This is the contract here.
Q. Do you know what it is for?
A. It is for, when you open an account, you have to go by it.

(CX 1, 2; Tr. 102–116).

3. *Mary Daughtry*: husband's age 39, Negro, employed by Country Club Cleaners, husband employed by Northwest Development Corp., previously employed by Safeway. The credit application fails to state salaries or positions held or whether she and her husband are buying or renting their dwelling. Mrs. Daughtry was walking by the New York Jewelry store when a man standing in front of the store handed her a card and told her to enter the store to receive a free gift. She did enter and received a plas-

tic flower as her gift. Mrs. Daughtry purchased an electric mixer from respondent for $79.95 and signed one of respondent's contracts in blank on Dec. 26, 1964 (CX 31, 16 and 17).

4. *Walter Whitfield:* age, race and employer have all been left blank on this credit application, unlike most of the others. It lists three friends or relatives and gives his wife's name as Nannie. There is no information provided as to length of time living at present address, whether buying or renting, or as to driver's permit, bank account or charge accounts. The record contains one of respondent's contracts executed by Mr. Whitfield with the total price filled in. Mr. Whitfield's stipulated testimony reveals that this contract was blank when he signed it. At the time Mr. Whitfield was employed by Cafritz Realty Company in Arlington, Virginia, earning $56 per week to support his wife and four children. He had been approached during his lunch break by a man who sold him a "Lord Tash" watch for $2 a week without inquiring how much Mr. Whitfield was earning. Mr. Whitfield thought $89.50 would be the total price, but the contract in the record states $101.63 with no itemization of cash price, sales tax, or finance charges. Mr. Whitfield's watch started losing time; and when New York Jewelry refused to repair it, he stopped making payments. New York Jewelry sued Mr. Whitfield and garnished his wages (CX 4, 18, 19).

5. *Synithia Gray Washington*: 19 years old, single, Negro, employed for one week by G.S.I. (presumably, this refers to General Services, Inc., an organization that operates cafeterias in government buildings). She was previously employed by People's Drug Store. Neither positions nor wages were noted on the credit application, but her stipulated testimony reveals that she was a waitress earning $1.25 per hour. Miss Washington had no driver's permit and no bank account or other charge account. One day when Miss Washington was walking by respondent's store, she was given a card and invited into the store by a man sitting at the door who told her she could get a free gift inside. She entered and received a pack of needles as her gift. She observed respondent's sign offering a free eye examination and had her eyes examined. She was told she needed glasses, but said she did not want any. Respondent's salesman convinced her to buy a pair by saying that the glasses had already been made up for her and could not now be sold to anyone else. She signed the contract for the eyeglasses, the total price being $70.15. She also purchased a wedding set for $150, plus tax and finance

charges. She returned this five days later. She also tried to return the eyeglasses, but respondent refused to accept them and to cancel the contract. Then Miss Washington secured the assistance of a lawyer working for the Neighborhood Legal Services Project, and respondent permitted the glasses to be returned (CX 5, 41, 42, 43/44 and 45).

6. *Johnnie Bruce Johnson*: 20 years old, single, employed as a truck driver earning $75 per week. He was renting his residence for $10 per week and previously lived in North Carolina. He had no bank account and no automobile, but he did have an account with one other store. On July 21, 1966, Mr. Johnson purchased a pair of wedding rings from respondent for $125 and two pairs of eyeglasses for $47, all on time. About a week later he bought a watch from respondent for $50 (CX 6, 46, 47 and 48).

7. *John Edward Freeman*: 20 years old, single, Negro, employed by A & P Food Store as a stock boy earning $72 per week. Mr. Freeman had no driver's permit, no bank account and no other store accounts. He was walking by respondent's store when a man sitting in front of the store invited him in for a free eye examination. He entered and had his eyes examined. He was shown some merchandise and selected a ring for $79.50. Respondent's salesman then told him that his eyeglasses were ready. He explained that he did not want any eyeglasses. He was finally persuaded to take the glasses for $59.50 when the salesman said they had been made to fit Mr. Freeman and could not be sold to anyone else. Mr. Freeman later defaulted on his payments, was sued by respondent, and his wages were attached. He was represented by an attorney for the Neighborhood Legal Services Project, and the suit was dismissed and the attachment released (CX 7, 36, 37, 38).

8. *Mrs. Minnie Alice Henry Fitzgerald*: 24 years old, employed as a countergirl at the Shoreham Drug Store, earning $85 every two weeks as the sole support for herself and her five children. She rented her residence for $50 per month. She had a savings account, but no checking account, no other store accounts, and no driver's permit. She received a card in the mail from the New York Jewelry store offering a free gift and free eye examination. She had her eyes examined there and was told she needed reading glasses and sunglasses. She signed one of respondent's contracts for two pairs of eyeglasses at $59.50 each plus $21.42 in carrying charges, payable $10 every two weeks (CX 8, 30, and 31).

9. *James and Alfreda Stubbs*: age not shown, Negro. Husband

is a construction worker earning $69 per week; wife is not working. They have no driver's permit, no bank account and no other store accounts. They purchased a used TV, an antenna, 1 pair of eyeglasses and a service guarantee from respondent for $193.50 payable $6 per week (CX 61, 62 and 63).

10. *Arthur Pratt*: 49 years old, Negro, married, employed by the Department of Agriculture earning $97 every two weeks. He paid $62.50 rent per month. Mr. Pratt had no bank account, no other store accounts and no automobile or driver's permit. On April 16, 1966, Mr. Pratt signed one of respondent's installment credit contracts for a used TV for $69.50, plus a $35 service guarantee. With a previous $16 balance, the contract totaled $131, payable $7 every two weeks. On July 9, 1966, Mr. Pratt signed another contract for a pair of eyeglasses and two watches totaling $119. On September 17, 1966, he signed another contract for another pair of glasses for $17.00 (CX 64, 65, 66, 67, 68 and 69).

APPENDIX B

CREDIT in a FLASH says MR. TASH, The Manager

[Picture of eye glasses]

DISCOUNT EYE GLASSES

Made While You Wait

Price includes lenses, frame, and case.
From $7.50 complete
Glasses Attractively Styled—Made Individually to Your Prescription
Oculists prescription filled, or have your eyes examined
by our registered optometrist.

Moderate Examining Fee

Repairs While You Wait

FRAME from $3.00 LENS from $3.00 TEMPLE from $1.00

OUR DOCTOR OF OPTOMETRY WILL SIGN TRAFFIC DIVISION
SLIP FOR DRIVER'S LICENSE MODEST CHARGE

New York Jewelry Co. 719 7th STREET, N.W. EX 3-0600

TABLE A

	Eyeglasses	New York Jewelry's price	New York Jewelry's adjusted price (subtracting cost of eye examination)	Trade area price	New York Jewelry's price as percent of (and approximate number of times as high as) trade area price
1	James Freeman: CX 37, 30, Tr. 243	$59.50	$54.50	$22	248 (2.5 times as high).
2	Minnie Henry: CX 31, 34, Tr. 242	59.50	57.00	22	259 (2.6 times as high).
	CX 31, 35, Tr. 242	59.50	57.00	24	238 (2.4 times as high).
3	Roland Taylor: CX 21, 27, Tr. 244	59.50	57.83	28	207 (2.1 times as high).
	CX 21, 28, Tr. 244	59.50	57.83	22	263 (2.6 times as high).
	CX 21, 29, Tr. 244	59.50	57.83	22	263 (2.6 times as high).
4	Elsie Hall: CX 112, Tr. 235	25.00	20.00	9	22 (2.2 times as high).
5	J. L. Dennard: CX 84, Tr. 236	39.95	34.95	24	146 (1.5 times as high).
6	R. Cavanaugh: CX 86, Tr. 237	44.50	39.50	28	141 (1.4 times as high).
7	Rosa Wesly: CX 89, Tr. 237-8	49.50	44.50	32	139 (1.4 times as high).
8	James L. Crowder: CX 91, 92, 94, Tr. 238	59.50	54.50	24	227 (2.3 times as high).
9	C. H. Logan: CX 99, Tr. 239	59.50	54.50	28	195 (2.0 times as high).
10	Etta Calloway: CX 105, Tr. 239	42.95	37.95	26	146 (1.5 times as high).
	Total		$627.89	$311	Average of 202% (2.0 times as high).

TABLE B

	Information appearing on the installment contracts					Independent calculations	
	Contract	Time price	Cash price	Finance charges	Installment payments	Annual percent of finance fees	Comments
1	Mary Daughtry: Dec. 26, 1964 CX 17	Blank	There is no provision on any of the first 5 contracts (form "A") for disclosing either the cash price or the amount of finance charges imposed.		Blank	Unknown	(1) None of the blanks on this contract form have been filled in except the purchaser's signature in 5 places. There is a cash register imprint in the margin of the contract which reads "$79.50", "2.40" and the date "Dec.26•64".
2	James Freeman: Sept. 11, 1965 CX 37	$71.50			Blank	Unknown	
3	James Freeman: Sept. 11, 1965 CX 38	87.90			Blank	Unknown	
4	Walter Whitfield: Oct. 12, 1965 CX 19	101.63			$2/week	Unknown	
5	Roland Taylor: Oct. 29, 1965 CX 21	196.50			Blank	Unknown	
6	Roland Taylor: Dec. 23, 1965 CX 22	416.06	$352.52	$63.54	$12/week	53	(6) 34.67 weekly payments are required to the pay

TABLE B—Continued

	Information appearing on the installment contracts					Independent calculations	
	Contract	Time price	Cash price	Finance charges	Installment payments	Annual percent of finance fees	Comments
							time price of $416.06. Principal = $352.52.
7	Synithia Washington: Jan. 8, 1966 CX 42	181.50	154.50	27.00	$10/2 weeks	47	(7) 18.15 bi-weekly payments are required to pay the time price of $181.50. Principal = $154.50.
8	Synithia Washington: Jan. 8, 1966 CX 43/44	70.15	59.50	10.65	$5/week	124	(8) 14.03 weekly payments are required to pay the time price of $70.15. Principal = $119.00.
9	Minnie Henry: Jan. 15, 1966 CX 31	135.42	119.00 (−$5 down)	21.42	$10/2 weeks	67	(9) 13.54 bi-weekly payments are required to pay the time

							price of $135.42. Principal = $119.00.
10	Charles Logan: Jan. 18, 1966 CX 99	79.00	79.00	None	$10/month	Zero	
11	Etta Calloway: Jan. 19, 1966 CX 105	32.95	42.95 (-$10 down)	None	$8/week	Zero	
12	James Crowder: Jan. 27, 1966 CX 94	119.00	119.00	None	7/week	Zero	
13	Elly Freshley: Mar. 26, 1966 CX 74	159.00	159.00	None	6/week	Zero	
14	Preston White: Mar. 30, 1966 CX 1	62.68	61.30	1.38	15/week	45	(14) 4.18 weekly payments are required to pay the time price of $62.68. Principal = $61.30.
15	Barbara Brown: April 5, 1966 CX 111	45.50	44.50	1.00	5/week	23	(15) 9.1 weekly payments are required to pay the time price of $45.50. Principal = $44.50.
16	Elsie Hall: Apr. 6, 1966 CX 112	26.00	25.00	1.00	5/month	15	(16) 5.2 monthly payments are required to pay the time price of $26. Principal = $25.00.

TABLE B (continued)

	Information appearing on the installment contracts					Independent calculations	
	Contract	Time price	Cash price	Finance charges	Installment payments	Annual percent of finance fees	Comments
17	Vernetta Henderson: Apr. 11, 1966 CX 109--	50.50	49.50	1.00	10/week------	35	(17) 5.05 weekly payments are required to pay the time price of $50.50. Principal = $49.50.
18	Arthur Pratt: Apr. 16, 1966 CX 68----------	115.03	106.60	8.43	7/2 weeks----	24	(18) 16.43 bi-weekly payments are required to pay the time price of $115.03. Principal = $106.60.
19	Rosa Wesley: Apr. 23, 1966 CX 89----------	44.50	49.50 (-$6 down)	1.00	6/---------- (unclear)	Unknown	(19) The true annual percent cannot be computed without knowing the duration of the "loan".

20	J. L. Dennard: Apr. 25, 1966 CX 84	38.45	39.95 (-$2.50 down)	1.00	7/2 weeks	21	(20) 5.49 bi-weekly payments are required to pay the time price of $38.45. Principal = $37.45.
21	Alfreda Stubbs: May 6, 1966 CX 62	193.50	174.90	$18.60	$6/week	33	(21) 32.25 weekly payments are required to pay the time price of $193.50. Principal = $174.90.
22	John Edmunds: May 10, 1966 CX 121	175.82	199.52 (-$31 down)	7.30	$15/2 weeks	18	(22) 11.72 bi-weekly payments to pay the time price of $175.82. Principal = $168.52. $31 down-payment includes a $15.50 "allowance".
23	Arthur Pratt: July 9, 1966 CX 69	Not shown	119.00	Not shown	$10/2 weeks	Unknown	(23)-(26) There is no provision on
24	Johnnie Johnson: July 21, 1966 CX 47	Not shown	128.75 (-$10 down)	Not shown	$15/week	Unknown	

TABLE B—Continued

	Information appearing on the installment contracts					Independent calculations	
	Contract	Time price	Cash price	Finance charges	Installment payments	Annual percent of finance fees	Comments
25	Johnnie Johnson: July 21, 1966 CX 48	Not shown	47.00	Not shown	$20/week	Unknown	any of the last 4 contracts (form "C") for disclosing either the total "time price" or the dollar amount of finance charges imposed. The preprinted contract form states that 1½ percent per month will be levied on the unpaid balance, but neither the contracts nor any other evidence in the record discloses what these customers were in fact charged
26	Arthur Pratt: Sept. 17, 1966 CX 66	Not shown	17.00	Not shown	$5/2 weeks	Unknown	

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision and upon briefs and oral argument in support of and in opposition to said appeal; and

The Commission having determined for the reasons stated in the accompanying opinion that the findings and conclusions and order contained in the initial decision should be set aside in accordance with the views expressed in the accompanying opinion,

It is ordered, That the initial decision be vacated in its entirety and that the Commission's findings and conclusions as expressed in the accompanying opinion be entered in lieu thereof.

It is further ordered, That the hearing examiner's order dismissing the complaint be vacated and that an order to cease and desist be entered which reads as follows:

ORDER

It is ordered, That respondent, Leon A. Tashof, an individual, trading as New York Jewelry Company, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of any merchandise, products, goods or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any merchandise or service is offered for sale when such offer is not a bona fide offer to sell such merchandise or service at the stated price.

2. Representing, directly or by implication, that any article of merchandise is offered for sale or sold at a discount price or at a price below the price charged by other retail establishments for the same or substantially similar merchandise unless respondent shall have conducted, within twelve months before making any such representation, a statistically significant survey of principal retail establishments in the same trade area, which survey establishes that a substantial number of such outlets sell the same or similar merchandise at prices substantially above the prices represented by respondent to be discount, and unless respondent

shall retain all documents relating to the manner in which such survey was conducted and the results thereof for at least twenty-four months after making any such representation.

3. Representing, directly or by implication, that respondent's terms of credit are lenient, including but not limited to the representations that respondent offers "easy credit" or that potential customers have a "preferred" credit rating.

4. Representing, directly or by implication, the rate of a finance charge, the amount of downpayment, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment unless respondent clearly and conspicuously discloses, in immediate conjunction with such representation, all of the following items:

(a) The cash price.

(b) The time price, consisting of the sum of the cash price, all finance charges, and any other extra charges before deducting any downpayment or allowance for a trade-in or otherwise.

(c) The downpayment, if any.

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

(e) The rate of the finance charge expressed as an annual percentage rate.

5. Representing the rate of a finance charge as any periodic rate unless the annual percentage rate is also disclosed in immediate conjunction with, and equally as conspicuously as, any other periodic rate.

6. Failing to disclose orally and in writing to each customer who executes a retail installment contract, or who otherwise purchases merchandise or services from respondent on credit, *before* such customer obligates himself to make any such credit purchase, all of the following items:

(a) The cash price of the merchandise or service purchased.

(b) The sum of any amounts credited as downpayment (including any trade-in).

(c) The difference between the amount referred to in paragraph (a) and the amount referred to in paragraph (b).

(d) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(e) The total amount to be financed (the sum of the amount described in paragraph (c) plus the amount described in paragraph (d)).

(f) The amount of the finance charge.

(g) The finance charge expressed as an annual percentage rate.

(h) The total credit price (the sum of the amounts described in paragraph (e) Plus the amount described in paragraph (f)) and the number, amount, and due dates or periods of payments scheduled to pay the total credit price.

(i) The default, delinquency, or similar charges payable in the event of late payments as well as all other consequences provided in the sales or credit agreements for late or missed payments.

(j) A description of any security interest held or to be retained or acquired by respondent in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

For purposes of paragraphs 4-6 or this order, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under [§ 106 and § 107 of] Public Law 90–321, the "Truth in Lending Act," and the regulations promulgated thereunder.

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

Commissioner Nicholson did not participate for the reason oral argument was heard prior to his appointment to the Commission.

IN THE MATTER OF

RODALE PRESS, INC., ET AL.

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

Docket 8619. Complaint, April 3, 1964—Decision, Dec. 4, 1968

Order dismissing a complaint dated April 3, 1964, and an order of June 20,