

Appearances

For the Commission: *James T. Halverson.*

For the respondent: *J. Wallace Adair, Howrey, Simon, Baker & Murchison, Wash., D.C.*

ORDER REOPENING PROCEEDING AND MODIFYING DIVESTITURE
ORDER

This matter is before the Commission on a petition filed by respondent American Cyanamid Company on Dec. 20, 1974, requesting that the proceeding in the above-captioned matter be reopened for the purpose of modifying the order of divestiture issued therein on Apr. 16, 1973, so as to relieve respondent of any further obligation to divest its plant located in Moosic, Pa.

In support of this request respondent alleges that the principal purpose of the divestiture provisions of the aforesaid Commission order has already been accomplished by respondent's sale of two lines of men's toiletries on Apr. 1, 1974; that the plant in question was never used to produce these two product lines; and that the plant is presently an unoccupied, nonproductive facility. The director of the Bureau of Competition has filed an answer to the petition advising that he does not oppose the granting of the relief requested.

Having considered the petition and the answer thereto, the Commission is of the opinion that in the circumstances shown to exist the public interest will be served by reopening this proceeding for the purpose of modifying the order to the limited extent requested. Accordingly,

It is ordered, That this proceeding be, and it hereby is, reopened, and that the Commission's order of Apr. 16, 1973, be, and it hereby is, modified by striking from Part I thereof the requirement that respondent divest itself of the plant located in Moosic, Pa.

IN THE MATTER OF

FUQUA INDUSTRIES, INC., ET AL.

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

Docket C-2626. Complaint, Jan. 21, 1975 - Decision, Jan. 21, 1975

Consent order requiring an Atlanta, Ga., vocational school operator and franchisor, among other things to refund up to \$1.25 million to eligible former students; and requiring a St. Petersburg, Fla., vocational school operator and franchisor,

Complaint

85 F.T.C.

among other things to disclose designated information such as drop-out rates and positions and salaries received by graduates; to allow enrollees a 10-day period in which to affirm their enrollment contracts, with cancellation of contract; and to provide prospective franchisees with full particulars on the franchise operation in writing.

Appearances

For the Commission: *Charles L. Hall, Morgan D. Hodgson and Donald Williams.*

For the respondents: *Kirkland, Ellis & Rowe, and Arent, Fox, Kintner, Plotkin & Kahn, Wash., D.C.*

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 Fuqua Industries, Inc., a corporation, Space/Time, Inc., a corporation, Nationwide Acceptance Corporation, a corporation, Fortune Enterprises, Inc., a corporation, and William L. Phillips, individually and as an officer and director of Fortune Enterprises, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fuqua Industries, Inc. (hereinafter sometimes referred to as F/I) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia.

Respondent Space/Time, Inc., (hereinafter sometimes referred to as S/T) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia. All the stock of Space/Time, Inc. is owned by Fuqua Industries, Inc. Respondent S/T is now and for sometime last past has been, an advertising agency for wholly-owned subsidiaries of respondent F/I, and for sometime last past, has caused publication and dissemination of advertising material, including, but not limited to, the advertising referred to herein, to promote the sale of vocational courses of instruction.

Respondent Nationwide Acceptance Corporation (hereinafter sometimes referred to as NAC) is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia. All the stock of Nationwide Acceptance Corporation is owned by Fuqua Industries, Inc. Respondent NAC is now and for sometime last past has been, a holder of commercial paper and a collection agency for respondent F/I.

Respondent F/I formulates, directs and controls the acts and practices of its said wholly-owned subsidiaries, including the acts and practices hereinafter set forth, and performed in same manner with respect to Career Enterprises, Inc. (hereinafter sometimes referred to as CE) a corporation respondent wholly-owned from June 1969 to December 1971. With respect to the acts and practices of Career Enterprises, Inc. hereinafter set forth, respondent F/I knew or should have known of the said acts and practices and failed to exercise its control to curb the said acts and practices. Alternatively, with respect to the acts and practices of Career Enterprises, Inc. hereinafter set forth, respondent F/I upon acquisition and thereafter failed to investigate the said acts and practices and, thus, failed to exercise its control to curb the said acts and practices. In Dec. 1971 CE was sold by respondent F/I to Fortune Enterprises, Inc.

Respondent Fortune Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 2951 34th Street South, in the city of St. Petersburg, State of Florida.

Respondent William L. Phillips is founder, president and sole stockholder of Fortune Enterprises, Inc., and was founder, director and chief executive officer of CE. Phillips formulates, directs and controls the acts and practices of Fortune Enterprises Inc., including the acts and practices hereinafter set forth, and performed in the same manner with respect to CE. Phillips and Fortune Enterprises, Inc. have the same business address.

PAR. 2. Through CE, respondents have for some time last past engaged in the formulation, development, offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment in the following positions: computer programmers, keypunch operators, cashier-checkers, PBX receptionists, secretaries, medical and paramedical personnel, nurses' aides and laboratory technicians. Respondents' volume of business in said courses of instruction was substantial.

Such business was conducted by respondents by establishing company owned branch facilities which offered resident instruction in the aforesaid courses and by selling franchises to other individuals,

corporations or partnerships to operate facilities offering resident instruction in the aforesaid courses.

Respondents' branch facilities and franchised facilities offered said courses to the general public under various trade names owned and authorized for use by respondents as follows: Career Training Institute (CTI); Career Training Center (CTC); Cashier Training Institute (CTI); Key punch Academy (KPA); and (name of city) Business Institute. Additionally, respondents entered into a management-sales contract whereby training facilities were established by respondents to offer courses in medical, paramedical, nurses' aide and laboratory technician training, and designated Medical Training Centers (MTC), and thereafter sold to a third party, reserving management rights and fees to respondents for the continued operation of such facilities.

Respondents furnished the means and instrumentalities for, and placed into operation and implemented themselves, a sales program whereby members of the general public, by means of advertisements placed in broadcast and printed media of general circulation, by promotional brochures, and by means of training and supplying personnel in the operation and management of said training facilities, and by means of statements, representations, acts and practices as hereinafter set forth, were induced to sign contracts of enrollment agreements for a course of instruction of a stated length of time and for a stated tuition cost, or induced to sign contracts to purchase franchises from CE.

Respondents arranged or assisted in the arrangement of credit and deferred payment terms for the financing of said executed contracts and accepted the proceeds and revenues following therefrom or derived substantial income therefrom in the form of royalty payments from said enrollment contracts, franchise contracts and management-sales contracts.

In the manner aforesaid, respondents dominated, controlled, furnished the means, instrumentalities, services and facilities for, and condoned, approved, and accepted the pecuniary and other benefits following from the acts and practices hereinafter set forth of respondents' company branch facilities and franchisees.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents for some time last past caused said aforementioned courses of instruction to be distributed from CE's place of business to said aforementioned branch facilities and franchisees located in various States of the United States other than the state of organization of said courses. Respondents transmitted and received and caused to be transmitted and received, in the course of the sale of, distribution of and financing of their courses of instruction by said company facilities

and franchisees among and between the several States of the United States, retail installment contracts, credit applications, checks, royalty reports, monies or other commercial paper. Respondents maintained at all times mentioned herein a substantial course of trade in said courses of instruction and said franchises in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and to induce the purchase of their courses of instruction by members of the general public, respondents and their company branch facilities and franchisees and the salespersons at the branch facilities and franchisees have disseminated or caused the dissemination of, via the United States' mails or other means, radio, television, newspaper, print media, or other forms of advertising, or other means and instrumentalities which are furnished, approved or condoned by respondents. In the further course and conduct of their business, as aforesaid, respondents have caused advertisements to be published in the "Help Wanted" columns of daily newspapers' classified advertising sections. In conjunction therewith, respondents and their company facilities and franchisees have made certain statements and representations respecting the existence of specific jobs in which graduates of respondents' training facilities will be placed upon completion of training, the offering of immediate or eventual employment of qualified applicants, the existence of a substantial demand for persons possessing the skills which are taught at respondents' training facilities, the time required to successfully complete respondents' courses, the nature of placement services offered, the offering of a vocational training program specially designed for known employment requirements and the offering of a financial plan of deferred tuition payments until after completion of training.

In further course and conduct of their business, respondents operated a sales plan to market their courses of instruction by enfranchising persons to sell such courses under an "Agreement and Franchise" purporting to assign a particular location in which the franchisee could sell one or more of the aforesaid courses of instruction to members of the public.

For the purpose of inducing the purchase of CE franchises, respondents have made statements and representations in oral sales presentations to prospective purchasers and in newspaper advertisements and promotional literature respecting the aforesaid courses of instruction, the earnings and profits to be realized by selling such courses, the training or business opportunity for absentee-management arrangements, and the demand for skills taught by respondents branch facilities and franchisees.

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

A. Radio and Television

Hey, men and women of BLANK and surrounding area, are you untrained or unemployed? Medical Training Centers are now selecting many, many nurses and trainees. * * * The first 23 people who qualify will start immediately. That's right - I said immediately.

* * * * *

* * * You need no high school diploma or experience, and there's no age limit. Don't wait. Start getting the big money and the fringe benefits and job security that only an IBM career brings.

* * * * *

Attention men and women of Grand Rapids and surrounding areas - there is now a shortage of trained personnel in the IBM field. Key punch Academy is now accepting applications for a special training program designed especially to fill these positions. * * * contact us immediately * * * call now and be job ready after a short training period.

* * * * *

Because of the tremendous need for trained IBM keypunch operators in the computer industry, (name of school) is now offering women and men in (city) and surrounding areas an opportunity to be trained * * *.

* * * * *

* * * CTI is now interviewing people to be IBM keypunch trainees. The people selected will be trained on the latest equipment and methods available * * *.

* * * * *

Need a job fast? People in (city) and surrounding areas, CTI now needs men and women to be IBM keypunch trainees.

* * * * *

Attention men and women of Grand Rapids and surrounding areas - there is now a shortage of trained personnel in the IBM field. Key punch Academy is now accepting applications for a special training program designed especially to fill these positions.

B. Newspaper

NEEDED NOW! Wanted Immediately - Keypunch trainees. No experience necessary, no age limit. We will train sharp individuals.

* * * * *

MALE ORDERLY Trainees needed for Nashville area. Training to start immediately * * *.

Complaint

CALL

254-7514

Medical Training Center.

* * * * *

NURSES ASSISTANT

MALE ORDERLY

After a short training period a future prestige job awaits you in the medical field.

* * * * *

NEEDED NOW

Trainees needed in Hospitals, Clinics, Nursing Homes and in Doctor's offices in the Nashville area * * * Free job placement service assistance. Student loans available.

* * * * *

JOB OPPORTUNITIES

UNLIMITED

* * * * *

\$ HELP \$

We need ladies immediately to be trained on our latest equipment and methods as keypunch trainees.

* * * * *

* * *CTI offers intensive *individualized* instruction especially designed for you.

* * * * *

START A NEW CAREER NOW

BE JOB READY IN 8-10 WKS

* * *must be willing to start work immediately.

* * * * *

* * *FREE placement service . . .TRAIN NOW - PAY LATER * * *

* * * * *

IBM KEYPUNCH TRAINEES

Immediate openings, no age or educational requirements, we will train. Call 436-9225 NOW.

Complaint

85 F.T.C.

* * * * *

NURSES AIDES

CTI is now selecting 30 nurses aid trainees for the Akron area. WE TRAIN YOU* * *

* * * * *

KEYPUNCH ACADEMY

ATTENTION! ATTENTION!

Men and Women in the Topeka and surrounding areas, KPA now needs thirty (30) people to train to be Keypunch Operators. . . If you don't have a job or you are tired of your present job, call 233-6494 to see if you qualify for one of these training positions* * *

* * * * *

KEYPUNCH OPERATOR

High School not required. No age limit. 542-7494

* * * * *

TRAIN NOW FOR GOOD

PAYING JOB OPPORTUNITIES

IN IBM KEYPUNCH . COMPUTER

PROGRAMMING.

Classes are limited. Individual Instruction.

* * * * *

HIGH SCHOOL SENIORS

OVER 260 IMMED. OPENINGS.

High school grads willing to train in a computer career. Salaries to \$145 per wk. Call Mr. Storke 654-8866, 305 W. 12 St.

* * * * *

Complaint

LIFETIME OPPORTUNITY

Own your own franchise in the
world's fastest growing business.

* Depression Proof

* Turn Key Operation

* Ideal for Husband? Wife Team

* Absentee Management Available

* Protected Franchise Area

* Minimum Cash Needed \$10,000

* Net \$10,000 to \$40,000 Per Year

Write or Call

B.A. HUTTER, V-P

CAREER

ENTERPRISES, INC.

C. Promotional Brochure

Here let us take a moment to comment upon the aspects of our advertisement which prompted your welcome query. We indicated that your first year of operation with us could produce a significant income ranging from \$15,000 to \$50,000. We mean just that, and these are net profit figures. The secret to our success is "low overhead, coupled with volume activity." This is not merely an idle claim. We have available for your inspection, certified figures on our own as well as our franchised schools. These figures reflect annual gross sales, operating costs, and net profit. Enclosed as part of this informational packet you will find information and recent figures applicable to representative schools within our system. A review of this information will readily reveal how your initial investment can be returned to you in just a few short months. This can not be said of any other business known to us.

First let us say that our offering is exactly as presented. The advertisement which prompted your query contains only true and correct details. Imagine if you will hundreds of training facilities located throughout the country, half of which are owned and operated by us, the other half operated under our franchise.

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

1. Inquiries are being solicited for the purpose of offering immediate training to qualified applicants who will be employed after the completion of said training.
2. Inquiries are being solicited for the purpose of offering

immediate employment to qualified applicants, who will be provided with on-the-job training.

3. Respondents have knowledge of specific jobs in which their graduates will be placed upon completion of training.

4. Respondents had a reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) would be at the time that persons then enrolling graduated from respondents' courses

an urgent need or demand for all or most of respondents' graduates in positions for which respondents trained such persons.

5. A purchaser will complete respondents' courses within the specified course duration advertised for said courses.

6. The placement assistance furnished by respondents is free.

7. Placement assistance is furnished to all graduates of respondents' courses who seek placement;

8. Respondents furnish individualized training or instruction.

9. Respondents offer a vocational training program which is specially designed to qualify graduates for the employment requirements known to be existing in the local community.

10. Respondents make available to purchasers of their courses of instruction a finance plan whereby all tuition payments may be deferred until after completion of training,

11. Respondents' graduates who seek employment in the positions for which respondents have trained them do not find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

12. Graduates of respondents' courses are presently being hired by certain local business entities.

13. Graduates of respondents' courses are guaranteed a job through respondents' placement office.

14. A purchaser of respondents' courses will receive a full refund of his "reservation fee" if he decides to cancel before beginning classes.

15. Certain of respondents' training facilities have standing contractual agreements with local business entities whereby said entities agree to employ the graduates of said facilities.

16. Respondents will place students in part-time employment positions during the time that such students are enrolled in respondents' courses of instruction.

17. Respondents' courses are approved by the appropriate government agency for veterans' educational assistance benefits from the United States Government.

PAR. 6. In truth and in fact:

1. Inquiries are not solicited for the purpose of offering immediate

training to qualified applicants who will be employed after the completion of said training, but are solicited for the sole purpose of obtaining leads to prospective purchasers of respondents' courses of instruction.

2. Inquiries are not solicited for the purpose of offering immediate employment to qualified applicants, who will be provided with on-the-job training, but are solicited for the sole purpose of obtaining leads to prospective purchasers of respondents' courses of instruction.

3. Respondents do not have knowledge of specific jobs in which their graduates will be placed upon completion of training.

4. Respondents had no reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) would be at the time that persons then enrolling graduated from respondents' courses,

an urgent need or demand for all or most of respondents' graduates in positions for which respondents trained such persons;

5. In a substantial number of instances purchasers of respondents' courses do not complete said courses within the specified course duration advertised for said courses.

6. The placement assistance furnished by respondents is not free, but rather included in the tuition cost of respondents courses.

7. Placement assistance is not furnished to all of respondents' graduates who seek placement.

8. Respondents do not furnish individualized training or instruction, but rather furnish group classroom instruction.

9. Respondents do not offer a vocational training program which is specially designed to qualify graduates for the employment requirements known to be existing in the local community, but rather offer a standardized curriculum.

10. Respondents do not make available to purchasers of their courses of instruction a finance plan whereby all tuition payments may be deferred until after completion of training. The terms of respondents' finance plan require that tuition be paid in installments during the scheduled duration of the course, with the last installment due before the scheduled completion of the course.

11. Respondents' graduates who seek employment in the positions for which respondents have trained them do find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

12. In a substantial number of instances, the aforementioned certain local business entities were not hiring respondents' graduates

at the time that the representation was made that graduates were being hired.

13. Graduates of respondents' courses are not guaranteed a job through respondents' placement office.

14. In many instances a purchaser of respondents' courses does not receive a full refund of his "reservation fee" if he decides to cancel before beginning classes.

15. Respondents' training facilities do not have standing contractual agreements with local business entities whereby said entities agree to employ the graduates of said facilities.

16. In a substantial number of instances, respondents do not place students in part-time employment positions during the time that such students are enrolled in respondents' courses of instruction.

17. In a substantial number of instances, respondents' courses were not approved by the appropriate government agency for veterans' educational assistance benefits from the United States Government at the time that such approval was represented.

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

PAR. 7. In the further course and conduct of their business, as aforesaid, respondents have placed or caused to be placed advertisements seeking purchasers for their courses of instruction in the "Help Wanted" or "Employment" columns of daily newspapers' classified advertising sections, thereby inducing members of the general public to believe that respondents are offering paid employment and not merely training for which the purchaser must pay. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 8. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of their courses by the general public, respondents acting directly through their company owned training facilities and furnishing the means and instrumentalities to their franchisees, directly or indirectly have engaged in the following additional acts or practices:

(a) Respondents have induced members of the general public to sign certain contracts entitled "Application." Respondents thereby have deceptively and misleadingly created the impression that said documents are not legally binding contractual agreements, when in fact said documents are legally binding contractual agreements.

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

PAR. 9. Through the use of the aforesaid advertisements and otherwise, respondents have represented, directly or by implication, that there was at the time of the representation, or would be at the time of graduation from respondents' courses, an urgent need or demand for respondents' graduates in positions for which respondents train such persons. At the time of the said representations respondents had no reasonable basis adequate to support such representation. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 10. Respondents have created an organization named National Career Educational Accrediting Association of Washington, D.C. (NCEAA) and have held out and represented that their company training facilities and franchisees are accredited by said organization, when in fact said organization has no standing as an independent, nationally recognized accrediting association. Respondents have thereby deceived and misled and furnished the means and instrumentalities to others to deceive and mislead the general public into believing that respondents' said company training facilities and franchisees are accredited institutions, and have induced enrollments in said company facilities and franchisees by reliance thereon. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 11. Respondents offered for sale courses of instruction in computer programming which required that students enrolled therein complete a certain amount of operating time on computer equipment without disclosing in advertising or through their sales representatives that respondents' training facilities did not contain all of the equipment necessary to instruct said students, and that said students must pay for the cost of transportation themselves between respondents' facilities and the location of the necessary equipment. Knowledge of such facts would indicate the full cost and time requirements of enrolling in said courses. Thus, respondents have failed to disclose a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase said courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 12. Respondents offered for sale courses of instruction intended to prepare graduates thereof for entry level employment as computer programmers, keypunch operators, cashier-checkers, PBX receptionists, secretaries, medical and paramedical personnel, nurses' aides and laboratory technicians without disclosing in advertising or through their sales representatives: (1) the percentage of recent graduates of each school for each course offered that were able to obtain

employment in the positions for which they were trained; (2) the employers that hired any such recent graduates for each course offered; (3) the initial salary any such recent graduate received for each course offered; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would be an indication of the probability of graduating from respondents' courses and would indicate the possibility of securing future employment upon graduating and the nature of such employment. Thus, respondents have failed to disclose material facts, which if known to a consumer would be likely to affect his or her consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 13. Respondents have entered into contracts with purchasers of their courses of instruction which contained provisions for the cancellation of said contracts and the refund of tuition monies paid by said purchasers. In many instances, respondents have failed to offer to refund and refused to refund to purchasers who have cancelled their contracts such monies as may be due and owing according to the terms of said contracts.

The use by respondents of the aforesaid practice and their continued retention of said sums, as aforesaid, is an unfair act or practice and an act of unfair competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 14. Respondents in many instances have terminated or caused to be terminated company branch facilities and franchise facilities without allowing students enrolled in said facilities at the time of termination to complete their course of training at no additional cost or change in terms, and have failed to offer to refund and refused to refund the tuition monies paid by said students to respondents.

The use by respondents of the aforesaid practice and their continued retention of said sums, as aforesaid, is an unfair act or practice and an act of unfair competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 15. By and through the use of statements set forth in Paragraph Four hereof, and others, including oral statements, similar thereto but not specifically set out herein, respondents have represented, directly or by implication, that purchasers of said franchises would receive:

(a) advice and assistance from respondent for successfully maintaining and operating their businesses.

(b) a substantial income from the operation of profitable businesses, such as \$10,000 to \$40,000 per year.

PAR. 16. In truth and in fact, in a substantial number of instances, purchasers of said franchises did not receive:

(a) advice or assistance from respondents for successfully maintaining and operating their businesses.

(b) a substantial income from the operation of profitable businesses, nor incomes between \$10,000 and \$40,000 per year.

PAR. 17. Respondents offered for sale said franchises without disclosing in advertising or through their sales representatives: (1) The business experience and background of the franchisor and various key personnel; (2) the recent profit and loss statements of representative franchises; (3) the number of franchises which operated at a loss during the previous year; (4) the percentage of recent graduates of representative franchises that were able to obtain employment in the positions for which they were trained; (5) the employers that hired any such recent graduates; (6) the initial salary any such recent graduates received; and (7) the percentage of recent enrollees at representative franchises that have failed to complete their courses of instruction. Knowledge of such facts would be an indication of the probability of successfully operating one of said franchises. Thus, respondents have failed to disclose material facts which, if known to a consumer, would be likely to affect his or her consideration of whether to purchase such franchise. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 18.

(a) Respondents as aforesaid, failed to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase courses of instruction whose value to the said persons for future employment in the jobs for which training was offered was virtually worthless, and to pay over to respondents substantial sums of money to purchase said franchises whose value to said persons as an investment was virtually worthless. Respondents have received the said sums and have failed to offer to refund and refuse to refund such money to such purchasers of their courses and franchises.

The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice.

(b) In the alternative and separate from subparagraph (a) above, respondents, who were in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of courses of vocational instruction, and the enfranchising of vocational instruction, did, as aforesaid, fail to disclose material facts while using false, misleading, deceptive or unfair acts or practices, to induce persons to

pay over to respondents substantial sums of money to purchase courses of instruction and franchises.

The effect of using the aforesaid acts and practices to secure substantial sums of money is or may be to substantially hinder, lessen, restrain, or prevent competition between the respondents and the aforesaid competitors.

PAR. 19. By and through the use of the aforesaid acts, practices, statements and representations, respondents placed in the hands of others the means and instrumentalities by and through which they misled and deceived the public in the manner and as to the things hereinabove alleged.

PAR. 20. In the course and conduct of their business, and at all times mentioned herein, respondents were in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of instruction covering the same or similar subjects.

PAR. 21. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts or practices, has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce a substantial number thereof to purchase respondents' courses and franchises by reason of said erroneous and mistaken belief.

PAR. 22. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent Fuqua Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia.

Respondent Nationwide Acceptance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia.

Respondent Space/Time, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia.

2. Respondent Fortune Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located 2951 34th Street South, in the city of St. Petersburg, State of Florida.

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

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

ORDER

I

It is ordered, That respondents Fortune Enterprises, Inc., a corporation, and its officers, and William L. Phillips, individually and as an officer or director of Fortune Enterprises, Inc., and those respondents' agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division, franchisee or other device, in connection with the creating, advertising,

promoting, offering for sale or distribution of courses of study, training or instruction or of any franchise for any product or service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing orally, visually, or in writing, directly or by implication, that:

(a) Inquiries are solicited for the purpose of offering employment to qualified applicants; or that employment is being held out or made available in any respect.

(b) Graduates of any course of instruction offered by respondents are not required to actively seek employment opportunities through sources other than respondents' placement office; or misrepresenting in any manner, the requirements, duties, obligations or responsibilities imposed upon any person who seeks placement assistance; or misrepresenting in any manner the capabilities or functions of any placement office, referral service or any other type of assistance in obtaining employment for persons completing any said course.

(c) A purchaser will complete any course of instruction offered by respondents within a specified course duration; or misrepresenting orally, visually, or in writing, the length of time required to complete any course of instruction offered by respondents.

(d) The placement assistance furnished by respondents is free or without cost; or misrepresenting orally, visually, or in writing, the cost of any placement assistance or service.

(e) The placement assistance furnished by respondents' is made available to all graduates of respondents' courses of instruction, unless placement assistance of the same kind and quality is made available to each such graduate; or misrepresenting orally, visually, or in writing, the extent of any placement assistance or service furnished by respondents.

(f) Individualized training or instruction is furnished in any course of instruction offered by respondents; or misrepresenting orally, visually, or in writing the nature or quality of instruction offered by respondents.

(g) Respondents offer a tuition finance plan which allows purchasers of respondents' courses of instruction to "train now, pay later," or words of similar import and meaning, unless in each and every instance respondents offer, in the regular course and conduct of their business, a tuition finance plan which operates to defer all tuition payments until after the scheduled completion of training.

(h) (1) There is an urgent need or demand, or a need or demand of any size, proportion or magnitude, for graduates of any course of instruction offered by respondents.

(2) Or otherwise representing orally, visually, or in writing that opportunities for employment, or opportunities of any type or number are available to such persons,

except as hereinafter provided in Paragraph 9(b) of this order. *Provided, however,* That respondents shall cease and desist from making such representations unless the respondents in each and every instance:

(A) Until the passage of a base period to be determined pursuant to Paragraph 9(b) of this order, after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where respondents did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(i) have in good faith conducted a statistically valid survey which establishes the validity of any such representation at all times when the representation is made, and

(ii) have disclosed in immediate and conspicuous conjunction with any such representation, that

All representations of potential employment demand or opportunities for graduates of this school (course) are merely estimates. This school (course) has not been in operation long enough to indicate what, if any, actual employment may result upon graduation.

(B) After the passage of a base period to be determined pursuant to Paragraph 9(b) of this order, and until two years after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where it did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(i) make any such representations in the form and manner provided in Paragraph 9(b) of this order, and

(ii) disclose in immediate and conspicuous conjunction with any such representation, that:

This school (course) has not been in operation long enough to indicate what, if any, actual employment may result upon graduation.

2. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice:

(a) Which disclose facts upon which any placement percentages or claims, or other representations of the type described in Paragraphs 1.(h) and 9(b) of this order are based; and

(b) From which the validity of any placement percentages or claims, or other representations of the type described in Paragraphs 1.(h) and 9(b) of this order can be determined.

3. Representing orally, visually, or in writing, directly or by implication, that:

(a) Graduates of respondents' course of instruction are hired by

certain local business entities, unless in each and every instance such companies are in fact hiring said graduates in substantial numbers at the time that the representation is made, and in the positions for which such persons have been trained by respondents.

(b) Graduates of respondents' courses are guaranteed a job through respondents' placement office.

(c) A purchaser of any course of instruction offered by respondents is entitled to receive and will receive a full refund of any monies paid as a "reservation fee" if said person cancels his enrollment prior to the commencement of classes; or representing that any refund method, right or privilege is available to purchasers of respondents' courses of instruction, unless said manner of refund is as represented in an integral provision of the written contract used by respondents to sell their courses of instruction.

(d) Any training facilities operated by respondents have standing contractual agreements with local business entities whereby said entities agree to employ the graduates of said facilities; or misrepresenting orally, visually, or in writing the relationship which exists between any of respondents' training facilities and local business entities.

(e) Respondents will place students in part-time employment positions during the time that such students are enrolled in respondents' courses of instruction; or misrepresenting orally, visually, or in writing that any form of employment, remuneration or tuition assistance is available to purchasers of any course of instruction offered by respondents during the time said purchasers are enrolled in respondents' courses of instruction.

(f) Any course of instruction offered by respondents is approved for veterans' education assistance benefits from the United States Government, unless in every instance, each such course is in fact so approved by the appropriate government agency; or misrepresenting orally, visually, or in writing the approval or other form of government action taken with respect to any course of instruction.

4. Failing to place the title "CONTRACT" in bold face type on any document which evidences an agreement between a person and respondents relating to the purchase of one of respondents' courses of instruction; and failing to remove from any such document the word "application," or words of similar import and meaning.

5. Failing to disclose, clearly and conspicuously, orally, visually, or in writing prior to the time that a prospective purchaser of respondents' courses of instruction signs an enrollment contract or contract of sale for any such course where all the necessary equipment to instruct said course is not contained on the premises of respondents' training

facilities, that any particular piece of equipment necessary for instruction is located elsewhere than on the premises of respondents' training facilities and that said purchasers must pay the cost of transportation between said facility and the point where the necessary equipment is located.

6. Failing to offer to refund and refund to purchasers of any course of instruction offered by respondents, in the event that any said course is discontinued by respondents prior to completion, or in the event that any said course is cancelled by respondents before classes begin, the full amount of all tuition monies paid by any said purchaser to respondents; *Provided, however,* That respondents may make available, to any said purchaser, who so selects, a transfer to the same course at a different, specified location where training shall be completed or commenced at no additional cost or change in contractual terms. It is understood and agreed that this paragraph shall become effective with respect to any course of instruction offered by respondents after the date this order is formally accepted by the Commission.

7. Representing orally, visually, or in writing, directly or by implication, that any of respondents' company training facilities or franchises have been or are accredited through the use of the name National Career Education Accrediting Association of Washington, D.C., or any abbreviation or seal of same, or any other similar name, or through the use of any name containing the word "Accrediting" or any other similar word, unless the said organization has been recognized by the United States Office of Education as an official accrediting association.

8. Placing any advertisement in any newspaper or magazine column entitled "Help Wanted," "Employment," "Preparing for Employment" or any other title of similar import or meaning, and failing to include in any advertisement, in a clear and conspicuous manner, the full name of any training facility which places or otherwise disseminates said advertisement.

9. Failing to send by certified mail, return receipt requested, to each person who shall contract with respondents for the purchase of any course of instruction, a written notice printed in at least ten (10) point type which shall disclose in substantially the same form as provided in Appendix A the following information and none other:

(a) The title "IMPORTANT INFORMATION" printed in bold face type across the top of the form;

(b) Paragraphs reciting the following information to be computed in the manner and form set forth below for the applicable base period as hereinafter defined in subparagraph (6);

(1) For each different course of instruction offered by respondents

for each school, location or facility at which respondents offer said courses of instruction;

The dates of the "base period" as computed in (b)(6);

The total number of students who graduated during such base period;

The numbers and percentages of total graduates who attained employment in the fields for which such graduates were trained. Such information must include an accurate description of each position in which such graduates attained employment.

(2) As to the same graduates used to compute the placement and employment statistics in (b)(1) above, a list of all employers which hired any such graduates during the base period, the number of such graduates hired by each firm or employer and the positions in which said graduates were hired.

(3) As to the same graduates used to compute the statistics in (b)(1) and (b)(2) above, the annual salary or income of said graduates. Such salary or income shall be classified by number of graduates attaining employment in each position described in (b)(1) at starting salaries expressed in consecutive categories of one thousand dollar amounts, in the form described in Appendix A.

(4) In compiling the foregoing information respondents shall not include any such graduates who respondents know have not retained such positions for more than one month from the initial date of employment. Respondents may use information supplied to them by graduates, employers, or other sources and shall not be required to obtain such information independently.

(5) For each course of instruction for which respondents are required to disclose information pursuant to subparagraphs (b)(1) through (b)(4), the total number of students who enrolled in said course and were scheduled to graduate during the base period and the number and percentage of the enrollees in said course who failed to complete the course of instruction. The term, "failure to complete," shall encompass those enrollees who:

(A) withdrew;

(B) failed the course (i.e., were academically terminated);

(C) did not complete the course within the base period in which they were scheduled to graduate and must take (a) make-up exam(s) in order to graduate;

(D) completed the course but did not receive a graduation certificate due to their failure to pay the balance of the tuition; or

(E) for any other reason, did not successfully complete the course within the base period in which they were scheduled to graduate.

(6) "Base Period" shall mean a six (6) month period beginning eight

(8) months before and ending two (2) months before the date on which respondents must begin to disseminate the necessary statistics with respect to the base period.

There shall be a one month period immediately following the close of a base period during which respondents shall gather the necessary statistics with respect to said base period. These statistics will relate to those graduates who successfully completed the particular course of instruction during the base period and who obtained employment during the base period or the one month period thereafter. Respondents may not include in the computation of the statistics for the base period any persons who graduate during the month after the base period and who find jobs during said one month period. Such persons will be included in statistics for the base period during which they graduate.

At the end of the first month period immediately following the close of a base period, respondents shall be allowed a second one-month period to calculate and prepare for distribution the necessary statistics with respect to said base period.

On the first day of each month, respondents shall begin to distribute statistics relating to the base period for the period beginning eight months before and ending two months before the first day of each month. Respondents shall continue to distribute said statistics until the first day of the next month and not thereafter.

For any six month period during which respondents have no graduates for a particular course of instruction, respondents may continue to distribute the statistics with respect to the prior base period for said course of instruction until such time as respondents have graduates of said course of instruction and have had one month in which to gather statistics with respect to those graduates and a second month during which to calculate and prepare for distribution the necessary statistics.

Appendix B contains a sample base period calculation.

Provided, however, That subparagraph (b)(1) through (b)(6) above shall be inapplicable to any newly established school that respondents may establish in any metropolitan area or county, whichever is larger, where they did not previously operate a school, or to any course newly introduced by respondents, until such time as the new school or course has been in operation for the base period defined in subparagraph (b)(6) above. The following statement shall be included in such notice during such period:

All representations of potential employment or salaries are merely estimates. This school (course) has not been in operation (offered) long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

After such time as the new school or course has been in operation for

the base period (subparagraph (b)(6) above), and until two years after the establishment of a new school location in any metropolitan area or county, whichever is larger, where they did not previously operate a school, or after the introduction of any new course by respondents, the following statement shall be included in such notice:

This school (course) has not been in operation (offered) long enough to indicate what, if any, actual employment or salary you may expect to achieve upon graduation from this school (course).

10. Contracting for any sale of any course of instruction in the form of a sales contract or other agreement which shall become binding prior to the purchaser affirming the enrollment contract by signing and returning to respondents the affirmation form specified in Paragraph 11, within ten (10) days of his receipt of that form. If the purchaser fails to affirm the enrollment contract within the ten (10) day period, respondents shall consider the contract null and void and within ten (10) business days of the expiration of the affirmation period shall refund all monies paid by the purchaser and cancel and return to the purchaser any evidence of indebtedness.

11. Failing to send by certified mail, return receipt requested, to each person who shall contract with respondents for the purchase of any course of instruction, a one page form, in duplicate that contains the following unsigned affirmation statement printed in bold face type of at least ten (10) points:

NOTICE TO THE PURCHASER

THE ENROLLMENT CONTRACT THAT YOU SIGNED WITH (NAME OF SCHOOL) ON (DATE) TO ENROLL IN (NAME OF COURSE) IS NOT EFFECTIVE OR VALID UNLESS YOU FIRST SIGN THIS STATEMENT AND RETURN IT TO THE ABOVE NAMED SCHOOL WITHIN TEN (10) DAYS FROM THE TIME THAT YOU RECEIVED THIS STATEMENT. YOU ARE FREE TO CANCEL YOUR ENROLLMENT AND RECEIVE A FULL REFUND OF ANY MONIES YOU HAVE PAID TO THE SCHOOL *BY NOT SIGNING OR MAILING THIS STATEMENT WITHIN TEN (10) DAYS. AT THE EXPIRATION OF THIS TEN (10) DAY PERIOD THE SCHOOL HAS TEN (10) BUSINESS DAYS TO SEND YOU YOUR REFUND (IF ANY) AND TO CANCEL AND RETURN TO YOU ANY EVIDENCE OF INDEBTEDNESS THAT YOU SIGNED. HOWEVER, IF YOU DO WANT TO ENROLL IN THE ABOVE NAMED SCHOOL, YOU SHOULD SIGN YOUR NAME BELOW AND MAIL THIS STATEMENT TO THE SCHOOL WITHIN TEN (10) DAYS. KEEP THE DUPLICATE COPY FOR YOUR OWN RECORDS.*

(Date)

(Signature)

The Affirmation Form shall not contain any information or representation other than the information specified in this paragraph, and the Form shall be mailed in the same envelope that is used to mail placement information as required by Paragraph 9. The Affirmation

Form and said placement information shall be sent by respondents no sooner than the next day after the person shall have contracted for the purchase of any course of instruction. During such period provided for in this paragraph, respondents shall not initiate contact with such person other than that required by this paragraph.

12. Making any representation of any kind whatsoever in connection with the creating, advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in any course offered to the public in any field in commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

13. Using course names and descriptions which either directly or by implication indicate that respondents' courses are designed to prepare students for certain entry-level positions when in fact a substantial number of graduates of such courses do not achieve such entry-level positions.

14. Representing orally, visually, or in writing, directly or by implication, that purchasers of franchises will receive advice or assistance for maintaining or operating any business, or will receive a franchise that places its graduates in positions of employment; unless respondents have a reasonable basis for each such statement or representation and maintain and upon reasonable notice provide access to the Commission or its representatives for purposes of inspection or copying, for a period of three (3) years after each such statement or representation, full, complete and accurate records which will disclose:

(a) The time, frequency and duration of use or publication, and the content of each such statement or representation, and details as to the media or other means utilized in its dissemination or publication, and

(b) A factual, documented and verifiable basis for substantiation of each such statement or representation. *Provided further*, That with respect to any statement or representation as to placement or employment, such substantiation shall include a list of firms or employers which are currently hiring graduates of such courses in substantial numbers and in the positions for which such graduates have been trained, and the salary range of such graduates, computed in the manner provided in Paragraph 9 above.

15. Failing to furnish any prospective franchisee with the following information in a legible, written document, at the earlier of the time (1) when the first personal meeting for the purpose of discussing the possible sale of a franchise occurs between such prospective franchisee and the franchisor or its sales representative; or (2) at least fifteen (15) business days prior to the execution by the prospective franchisee of any franchise agreement or any other binding obligation, or the

payment by the prospective franchisee of any consideration in connection with the sale or proposed sale of a franchise:

(a) A distinctive and conspicuous cover sheet with the following notice in bold face type of not less than ten (10) point size, and containing no other promotional claims or other information not required by state law:

(1) INFORMATION FOR PROSPECTIVE FRANCHISEES REQUIRED BY FEDERAL TRADE COMMISSION

This information is provided for your own protection. It is in your best interest to study it carefully before making any commitment. The information contained herein has not been reviewed or approved by the Federal Trade Commission, but any misrepresentation may constitute a violation of Federal law.

(2) If you do sign a contract, you may cancel it and promptly obtain a full refund of any money paid, for any reason, within ten (10) business days after either signing such contract or receiving this disclosure statement, whichever occurs later.

(b) A detachable form which a franchisee may use as a notice of cancellation, which indicates the proper address of accomplishing any such cancellation.

(c) (1) The trade name(s) or trademark(s) under which the franchisor and the prospective franchisee will be doing business; (2) the official name(s) and address(es) and principal place(s) of business of the franchisor, the parent firm or holding company of franchisor, if any; and (3) all persons the franchisee is required or is suggested to do business with by the franchisor which have a substantial connection with the franchisor.

(d) The business experience stated individually of each of the franchisor's directors and chief executive officers including the biographical data concerning all such persons; except, however, that the information required by this subparagraph need not be disclosed where the franchisor is a listed company on a national stock exchange, although such fact shall be disclosed.

(e) The business experience of the franchisor, including the length of time the franchisor has conducted a business of the type to be operated by the franchisee; has granted franchises for such business; and has granted franchises in other lines of business.

(f) A certified balance sheet for the most recent year, a certified profit and loss statement for the most recent three (3) year period, and a statement of any material changes in the financial soundness of the franchisor since the date of such financial statements.

(g) Where such is the case, a statement that the franchisor or any of its current directors or chief executive officers:

(1) has been held liable in a civil action by final judgment, convicted of a felony or plead *nolo contendere* to a felony charge if such felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property for the most recent seven (7) year period.

(2) is subject to any currently effective State or federal agency injunctive or restrictive order relating to or affecting franchise activities or the franchisor/franchisee relationship.

(3) has filed in bankruptcy or has been associated as a director or chief executive officer of any company that has filed bankruptcy or reorganization proceedings for the most recent seven (7) year period.

(4) has been a party to any cause of action brought by franchisees against the franchisor for the most recent seven (7) year period which resulted either in an out of court settlement or a judgment against the franchisor.

(5) is presently a party to any cause of action brought by a franchisee against the franchisor.

Such statement shall set forth the identity and location of the court, date of conviction or judgment, and penalty imposed or damages assessed, and the date, nature, and issuer of each such order or ruling.

(h) A factual description of the franchise offered to be sold.

(i) (1) A statement of the total funds which must be paid by the franchisee to the franchisor or to a person having a substantial connection with the franchisor, in order to obtain or commence the franchise operation, such as deposits, downpayments and fees.

(2) If all or part of these fees or deposits are returnable under certain conditions, these conditions should be set forth; and if not returnable such fact so disclosed.

(j) A statement describing the recurring fees required to be paid, in connection with carrying on the franchise business, by the franchisee to the franchisor or to persons having a substantial connection with the franchisor, including but not limited to royalty, lease, advertising, training, and sign rental fees.

(k) A statement disclosing (1) the number of franchises and company-owned outlets operating at the end of the last calendar year, and (2) the names and addresses of the ten (10) franchises or company-owned outlets nearest the prospective franchisee's intended location, indicating which units are company-owned outlets.

(l) A statement of the number of franchises, if any, that operated at a loss during the previous year.

(m) A statement describing any real estate, services, supplies, products, signs, fixtures or equipment relating to the establishment or the operation of the franchise business which the franchisee is required

to purchase, lease or rent directly or indirectly from the franchisor or persons having substantial connection with the franchisor.

(n) A description of the basis and the amount of any revenue or other consideration to be received by the franchisor, or persons having a substantial connection with the franchisor, from suppliers to the prospective franchisee in consideration for goods or services required or suggested to be purchased by the franchisee.

(o) (1) A statement of the terms and conditions of any financing arrangement offered directly or indirectly by the franchisor or any person having a substantial connection with the franchisor, and

(2) A description of any payments received by the franchisor from any person for the placement of financing with such person.

(p) A statement whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services he may offer for sale, or limited in the customers to whom he may sell such goods or services.

(q) A statement of the extent to which the franchisor requires the franchisee to participate personally in the direct operation of the franchise.

(r) A statement disclosing:

(1) the conditions and terms under which the franchisor allows the franchisee to sell, lease, assign, or otherwise transfer his franchise, or any interest therein, and

(2) the amount of consideration which must be paid to the franchisor for such sale, lease, assignment or transfer, if any.

(s) A statement disclosing:

(1) the conditions under which the franchise agreement may be terminated by the franchisor, renewal may be refused, or the franchise may be repurchased by the franchisor at its option;

(2) the number, stated for each category, of franchises which were terminated, renewal refused or repurchased during the preceding calendar year and a complete explanation thereof; and

(3) the conditions under which the franchise agreement may be terminated by the franchisee and the number of franchises voluntarily terminated by franchisees during the preceding calendar year.

(t) If site selection is involved, a statement disclosing the range of time that has elapsed in the preceding calendar year, between signing of a franchise agreement and site selection. If, in addition, operating units are to be provided, a statement disclosing the range of time that has elapsed in the preceding calendar year between the signing of the franchise agreement and opening of the franchise outlet.

(u) If the franchisor offers a training program or informs the prospective franchisee that it intends to provide him with training; the

franchisor must specify the specific type and nature of the training, the number of hours or days of instruction, and the cost to the franchisee, if any.

(v) If a franchisor uses the name of a "public figure" in connection with the recommendation of the franchise or as a part of the name of the franchise operation, a statement disclosing: (1) the nature and extent of the public figure's involvement and obligations to the franchisor, including but not limited to the promotional assistance the public figure will provide to the franchisor and to the franchisee; (2) the total investment of the public figure in the franchise operation; and (3) the amount of any fees the franchisee will be obligated to pay for such involvement and assistance provided by the public figure.

(w) A statement explaining clearly the terms and conditions of any covenant not to compete which a franchisee may be required to enter into.

16. *It is further ordered*, That in addition to the information required by Paragraph 15 above, respondents Fortune Enterprises, Inc. and William L. Phillips, in connection with the creating, advertising, promoting, offering for sale or distribution of franchises for courses of study, training, or instruction, shall disclose to any such prospective franchisee in the same manner and form as prescribed in Paragraph 15 above:

(a) The placement percentage for graduates as computed in the following manner: Separately for each course of instruction offered by each of the said franchises at which franchisees conduct business or offer any course of instruction, and during the six month period immediately preceding such computation, the total number of graduates during said period divided into the total number of such graduates who during said period, within the actual knowledge of such school, location or facility, attained employment in the entry-level positions for which said graduates were trained.

(b) The percentage of enrollees, during the past six months, separately for each course of instruction offered by each of the said franchises, who have failed to complete their courses of instructions.

(c) A list of firms or employers which are currently hiring graduates of respondents' courses in substantial numbers and in the positions for which such graduates have been trained, as to the same graduates used to compute the placement percentage in (a) above.

(d) The salary range achieved by the same graduates used to compute the placement percentage in (a) above, based upon a statistically valid survey conducted in good faith at each location or facility where franchises offer training.

17. *It is further ordered*, That respondents Fortune Enterprises, Inc. and William L. Phillips shall not:

(a) Make any oral or written representation of a prospective franchisee's potential sales, income, gross or net profit unless:

(1) such sales, income or profits are reasonably likely to be achieved by the person to whom the representation is made;

(2) the basis and assumptions for such representation are set forth in detail;

(3) such representation and the underlying data have been prepared in accordance with generally accepted accounting principles;

(4) in immediate conjunction therewith, the following statement is clearly and conspicuously disclosed:

THERE IS NO ASSURANCE THAT INCOME AND PROFIT PROJECTIONS WILL BE ATTAINED BY ANY SPECIFIC FRANCHISEE. THEY ARE MERELY ESTIMATES; and

(5) the amounts represented are not in excess of sales, income or profits actually achieved by existing franchises. If franchises have not been in operation long enough to indicate what sales, income or profits may result, then representations of such to a prospective franchisee are prohibited.

(b) Make any claim with respect to past or potential sales, profits, or earnings in any advertising, promotional material, or disclosure statement, or in any oral sales presentation, or discussion between a franchisor's representatives and prospective franchisees, for which the franchisor does not have substantiation in its possession, which substantiation shall be made available to prospective franchisees or the Commission or its staff upon demand.

(c) Make any claim or representation in advertising or promotional material, or in any oral sales presentation, solicitation or discussion between a franchisor's representatives and prospective franchisees, which is inconsistent with the information required to be disclosed by this order.

(d) Fail to furnish the prospective franchisee with a copy of the completed franchise agreement which shall not become binding prior to the end of the tenth (10th) day after the date of receipt by the customer of the form of notice provided for in Paragraph 15 of this order.

(e) Fail to orally explain to the prospective franchisee, before an agreement is consummated, the cancellation procedure provided in this order, namely that any contract or other agreement may be cancelled for any reason within ten (10) business days after the contract becomes legally binding on both parties or after the franchisee receives this disclosure statement, whichever occurs later.

(f) Fail to return the funds or deposits in accordance with subparagraph 15(i) of this order.

18. For the purpose of this order, the term "in connection with the creating, advertising, promoting, offering for sale or distribution" of any franchise for any product or service shall not include a relationship between respondents and any natural person, partnership, corporation, group, association, or any other business entity involving the mere investment of money.

19. For the purpose of this order, the term "franchise" shall incorporate by reference the first alternative definition of "franchise" contained in the Federal Trade Commission's revised Proposed Trade Regulation Rule on Disclosure Requirements And Prohibitions Concerning Franchising published at 39 F. R. 30362.

20. *It is further ordered*, That in the event the Federal Trade Commission promulgates a final Trade Regulation Rule on Disclosure Requirements And Prohibitions Concerning Franchising, then such Trade Regulation Rule shall completely supersede and replace all franchise provisions contained in this order, except Paragraphs 14, 16, 18 and subparagraphs 15(a)(2), 15(b), 15(1), 17(d) and 17(e), and such trade regulation rule shall become a part of this order.

II

1. *It is further ordered*, That Fortune Enterprises, Inc. and William L. Phillips:

(a) Deliver a copy of this order by hand or by certified mail to each of their present and future franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or to any other person or entity which promotes, offers for sale, sells or distributes any course of instruction offered by respondents; provided however, with respect to any other franchise for any other product or service, respondents shall deliver to such persons described above a copy of those paragraphs in Part I of this order applicable to franchising such other products or services and Part II;

(b) Provide each person or entity described in subparagraph (a) above with a form returnable to the respondents clearly stating his (its) intention to be bound by and to conform his (its) business practices to the requirements of this order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(c) Inform each person or entity described in subparagraph (a) above that the respondents will not use or engage or will terminate the use or engagement of any such person or entity, unless such person or entity agrees to and does file notice with the respondents that he (it) will be bound by the provisions contained in this order;

(d) Shall not, if such person or entity as described in subparagraph (a)

above will not agree to so file the notice set forth in subparagraph (b) above with the respondents and be bound by the provisions of the order, use or engage or continue the use or engagement of such person or entity to promote, offer for sale, sell or distribute any course of instruction or franchise included in this order;

(e) Inform each person or entity described in subparagraph (a) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this order;

(f) Institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (a) above conform to the requirements of this order;

(g) Discontinue dealing with or terminate the use or engagement of any person or entity described in subparagraph (a) above, as revealed by the aforesaid program of surveillance, who continues on his (its) own any act or practice prohibited by this order.

2. *It is further ordered*, That respondents Fortune Enterprises, Inc. and William L. Phillips shall forthwith distribute a copy of this order to each of their operating divisions which promotes, offers for sale, sells or distributes any course of instruction or franchise offered by respondents.

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

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

III

1. *It is further ordered*, That respondents Fuqua Industries, Inc. ("Fuqua") and William L. Phillips ("Phillips") shall each within sixty (60) days from the effective date of this order, compile a list from Career Enterprises, Inc. ("Career") records in their respective possession, custody or control, or any other records in their respective possession, custody, or control, of the last known names and addresses of all persons who purchased a Career course of instruction in a

company-owned or franchise school of Career and who first paid monies to Career from Jan. 1, 1969 to July 17, 1972, including the names and addresses of the purchasers' nearest relative(s) or others whose addresses appear on any document relating to said purchaser, supplemented by a list of the same category of persons identified by the Commission and transmitted to said respondents within one hundred five (105) days after the effective date of this order.

2. *It is further ordered*, That respondents Fuqua and Phillips shall jointly, within sixty (60) days from the effective date of this order, employ an independent contractor acceptable to the Commission, and give to the independent contractor, within one hundred ten (110) days from the effective date of this order, the lists of names and addresses of persons referred to in Paragraph 1 above. Said independent contractor shall review the lists, strike out any duplication of names and addresses of persons who purchased a Career course of instruction, and shall prepare a final list of all persons to receive Appendices C and D. Said independent contractor shall make an inquiry in writing on the one hundred fiftieth (150th) day after the effective date of this order, to all persons whose names and addresses appear on the final list, in the language, manner and form shown in Appendices C and D, by first class mail and with a self-addressed postage prepaid envelope. With respect to all persons whose first mailed inquiry is returned unopened said independent contractor shall have a duty, commencing within three (3) business days after such mailed inquiry is returned unopened, to attempt to establish contact with persons referred to above by requesting by mail new addresses from the students' nearest relative(s) or others whose addresses appear on any document supplied to the independent contractor through which a student may be located.

3. *It is further ordered*, That (a) at the expiration of ninety (90) days after the independent contractor first mails Appendices C and D to persons on the final list referred to in Paragraph 2 above, the independent contractor shall transmit the Appendix D responses it has received by such date to respondents Fuqua and Phillips, and (b) respondents' obligation to make restitution shall extend only to such persons (i) whose names appear on the final list referred to in Paragraph 2 above and (ii) whose Appendix D responses have been received by the independent contractor at or before the expiration of said ninety (90) day period.

4. *It is further ordered*, That, within one hundred fifty (150) days after the independent contractor first mails Appendices C and D to persons on the final list referred to in Paragraph 2 above, respondents Fuqua and Phillips shall refund to purchasers of Career courses of instruction whose names appear on the Appendix D responses

transmitted by the independent contractor pursuant to Paragraph 3 above, less any prior refunds, seventy-five percent (75%) per person, of the total amount of monies paid by such persons to Career, or paid or owed by such persons to any third party financial institution or individual by virtue of the third party's purchase of a contractual debt owed by such persons to Career with respect to such enrollment or instruction; *Provided, however*, That this order provision shall not apply to any such person who paid less than one hundred dollars and one cent (\$100.01) with respect to enrollment or instruction in a Career course, or who attained an employment position as a result of or substantially related to the training received in the course of instruction purchased from or arranged by Career, or who, for reasons unrelated to the training or job demand, elected not to seek such employment, or who made a deposit but did not show up for classes, or who enrolled in a class and dropped out for reasons unrelated to the course of instruction or job demand; and provided further that respondents' obligation to make refunds of any nature whatsoever under this order provision and as contemplated by the complaint herein shall expire in all respects at the end of two hundred ten (210) days after the date on which the independent contractor first mails inquiries to purchasers of Career courses of instruction. It is understood and agreed and adopted as part of this order that respondents' liability for restitution shall not exceed one million two hundred fifty thousand dollars (\$1,250,000); and in the event that this sum is not adequate to provide a refund of seventy-five percent (75 %) of the total monies paid by persons eligible to receive a refund as set forth in this paragraph, then a proportionate percentage of the 75 percent refund due shall be paid to those persons eligible until the \$1,250,000 has been exhausted. Respondents Fuqua and Phillips shall bear equally the expense of making the restitution payments referred to in this paragraph, provided that in the event the total amount of restitution payments exceeds one million dollars (\$1,000,000), Fuqua shall bear the expense of making restitution payments in excess of one million dollars (\$1,000,000), up to one million two hundred fifty thousand dollars (\$1,250,000). In no event shall the total amount of Fuqua's liability to make restitution exceed one-half of restitution payments up to and including one million dollars (\$1,000,000), or, in the event the restitution payments required by this order exceed one million dollars (\$1,000,000), said one-half share, plus the amount of any required restitution payments over one million dollars (\$1,000,000), up to one million two hundred fifty thousand dollars (\$1,250,000), for a total maximum Fuqua liability of seven hundred fifty thousand dollars (\$750,000). In no event shall the total amount of Phillips' liability to make restitution payments exceed five hundred thousand dollars

(\$500,000) or one-half of the restitution payments up to one million dollars (\$1,000,000), whichever is less. It is further ordered that respondents Fuqua and Phillips' liability for restitution arising out of any of the acts or practices of Career does not and shall not extend to any other period of time or class of claimant other than as provided in this order.

5. *It is further ordered*, That if an independent contractor acceptable to the Commission is not employed by respondents Fuqua and Phillips within sixty (60) days from the effective date of this order,

then: (i) said independent contractor shall have ninety (90) days from the time of his employment to prepare the final list and to make the inquiry in writing referred to in Paragraph 2 above, and (ii) said respondents' liability to make refunds shall not expire until two hundred ten (210) days after the date on which the independent contractor first mails inquiries to purchasers of Career courses of instruction.

6. *It is further ordered*, That respondents Fuqua and Phillips shall maintain adequate records for two (2) years after the effective date of this order, same to be furnished upon request by the Federal Trade Commission, which disclose the dates and manner in which persons were contacted and responded pursuant to the above procedures including all documents received from such persons.

7. *It is further ordered*, That the respondents Fuqua Industries, Inc., Fortune Enterprises, Inc., and William L. Phillips shall notify the Commission at least thirty (30) days prior to any proposed change in the respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in respondents which may affect compliance obligations arising out of this order.

8. *It is further ordered*, That each respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth the manner and form in which each has complied with this order, and shall, within two hundred seventy (270) days after the independent contractor first mails the inquiries referred to in Paragraph 2 above, file with the Commission a report in writing setting forth the manner and form in which each has complied with Part III of this Order.

APPENDIX A

IMPORTANT INFORMATION

Regarding Students of Career Training Institute of New York, New York

Course: Key punch Operator

Appendix

85 F.T.C.

Base Period: Jan. 1, 1974 through June 30, 1974

Information Regarding Post-Graduate Employment of Graduates:

	<i>Number</i>	<i>Percent*</i>
Total graduates	80	100%
Total graduates obtaining employment as keypunch operators	16	20%

*Employers Hiring Persons Who Graduated From Career Training Institute
of New York, New York From Jan. 1, 1974 Through June 30, 1974:*

<i>As Keypunch Operators</i>	<i>Total Hired</i>
ABC Company	4
D _____ Company	4
H _____ & Sons	4
L _____ Company	4

*Salary Information Regarding Persons Who Graduated From Career Training
Institute of New York, New York From Jan. 1, 1974 Through June 30, 1974:*

As Keypunch Operators:

4 Graduate(s) began at a salary between \$5,000 and 5,999

6 Graduate(s) began at a salary between \$6,000 and 6,999

6 Graduate(s) began at a salary between \$7,000 and 7,999

*Information Regarding Total Number and Percentage Who Failed to Complete This
Course:*

Total number of students enrolled in this course and scheduled to graduate from Jan.
1, 1974 through June 30, 1974: 240

Total number who failed to complete this course: 160

* Total percentage who failed to complete this course: 66%

APPENDIX B

Base Period 1 begins Jan. 1, 1974 and ends June 30, 1974

During July, respondents shall gather the statistics with respect to Base Period 1. These statistics shall include the required information regarding jobs obtained by the Jan.-June graduates from Jan. 1 through July 31. These statistics may not include any persons who graduate during July and who obtain employment before July 31. Those persons will be included in the statistics for Base Period 2. During August respondents shall calculate and prepare the Base Period 1 statistics for distribution.

On Sept. 1, respondents shall begin to disseminate statistics with respect to graduates for the period Jan. 1 through June 30, and respondents shall continue to use those statistics through Sept. 30.

During August, respondents shall gather the statistics with respect to Base Period 2, which begins Feb. 1, 1974, and ends July 31, 1974. These statistics shall include the required information regarding jobs obtained by the Feb.-July graduates from February through August 31. During Sept., respondents shall calculate and prepare for distribution the necessary statistics.

* The examples in this Appendix are for illustration and are not based on actual statistics.

Beginning Oct. 1, respondents shall disseminate the necessary statistics for Base Period 2 and shall be prohibited from disseminating previous base period statistics.

APPENDIX C

IMPORTANT NOTICE

TO: (Name of Addressee)

SUBJECT: Your attendance at (Name of School and City), a Career Enterprises, Inc. school

By an order of the United States Federal Trade Commission entered on (date of order), we have been directed to determine from you certain facts concerning your relationship with the above Career school. The Commission has determined that the collection of this information is required under the Federal Trade Commission Act to properly implement a Commission order that requires the undersigned individual and Fuqua Industries, Inc. to meet certain obligations with respect to former enrollees of this school. It is important, therefore, that you provide us with your response to the enclosed questionnaire as soon as possible so that we may comply with the Commission's order.

Please mark or fill-in the appropriate spaces on the enclosed statement and return it by the self-addressed, stamped envelope within seven (7) days to:

[Independent Contractor]

[Name and Address]

[Telephone No.]

If you have any questions regarding this letter, please contact the above company. Your cooperation in this matter will be appreciated.

William L. Phillips
Former Chairman of the Board
of Career Enterprises, Inc.

APPENDIX D

SUBJECT: Your attendance at (Name of School and City), a Career Enterprises, Inc. school

1. Is your present address correctly shown on the envelope? Yes () No () If no, what is your address?

2. On what date did you enroll in the above Career school?

Month

Year

3. What is the total amount of money you paid for your course of the above Career school? In computing this amount, include both the amount you paid directly to the Career school, and the amount, if any, paid for such course to Career by any financial institution or individual who informed you that your debt obligation has been transferred from the Career school to such financial institution or individual and that, therefore, in the future you would not make payments on your tuition to the Career school, but would make such payments to the financial institution or individual who informed you of this new arrangement. (Total amount \$ _____).

4. What is the name and address of this financial institution or individual?

5. What is the name of the course you signed up for?

6. Did you attend any classes? Yes () No ()

7. Did you complete the course? Yes () No ()

8. If the answer to question number 7 is no, set forth reason.
 9. Did you receive any refund of any tuition money paid to the above Career school?
 Yes () No ()

(If the answer to question number 9 is yes, please answer question number 10).

10. What is the total amount of such refunds received by you?

(Total amount \$ _____).

11. Did you ever attain any employment positions as a result of, or substantially relating to, the training you received from the Career school? Yes () No ()

12. If no, why not?

13. Please attach to this form any documents or copies of such documents that indicate you paid an amount of money for any course of instruction offered by the Career school.

This form should be signed and mailed, in the enclosed self-addressed postage paid envelope.

I HEREBY CERTIFY THAT THE ABOVE ANSWERS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

 (Date)

 (Social Security No.)

 (Signature)

 (Print Name Here)

 (Home Address)

 (Home Telephone No.)

 (Employer)

 (Employer's Address)

 (Employer's Telephone No.)

 IN THE MATTER OF

FEDERATED SANITARY CORP., ET AL.

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

Docket C-2627. Complaint, Jan. 27, 1975 - Decision, Jan. 27, 1975

Consent order requiring a New Rochelle, N.Y., seller and distributor of toilet bowl cleaners, air refreshers and other products to salesmen, franchisees and other distributors, among other things to cease misrepresenting earnings and profits of franchisees; misrepresenting the number of individuals engaged in the sale of respondents' products; using false testimonials, and failing to make certain disclosures to prospective franchisees.

130

Complaint

*Appearances*For the Commission: *Moirra P. McDermott.*For the respondents: *Sidney Schreiber*, New York, N.Y.

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 Federated Sanitary Corp., a corporation, and Harry Wessel, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, having violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Federated Sanitary Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 65 Plain Ave., New Rochelle, N.Y.

Respondent Harry Wessel is an officer of Federated Sanitary Corp. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of toilet bowl cleaners, air refreshers and other products to salesmen, franchisees and other distributors for resale. The toilet bowl cleaners and air refreshers are sold under the trade names of Toil-Ease, Flora-Scent and Petite.

PAR. 3. In the course and conduct of their business as aforesaid, respondents cause advertising concerning the sale and distribution of said products to be published in magazines which have interstate circulation and have caused sales brochures and promotional materials and said products to be mailed or otherwise shipped from their place of business in the State of New York to salesmen, franchisees and other distributors in various other States of the United States and the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing prospective salesmen, franchisees and other distributors to purchase and resell said products, the respondents have

made, and are now making numerous statements in said promotional materials and other advertisements with respect to the benefits of distributing said products or undertaking franchises for the sale of said products.

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

* * * And here's how easy it will be for you to be appointed the Toil-Ease [Petite] Franchise Distributor for your important territory.

Since the quota for your County is 48 dozen units of Toil-Ease [Petite] at the Franchise Dealer's rock-bottom cost of \$8.76 per dozen - (\$420.48) - all you need to do is rush me your remittance of either a Cashier's Check or Certified Check in this amount of \$420.48 covering your order for the 48 dozen units of Toil-Ease Petite * * *.

* * * * *

* * * And here's how easy it will be for you to be appointed the Flora-Scent Franchise Distributor for your important territory.

Since the quota for your County is 36 dozen units of Flora-Scent at the Franchise Dealer's rock-bottom cost of \$14.52 per dozen - (\$522.72) - all you need to do is rush me your remittance of either a Cashier's Check or Certified Check in this amount of \$522.72 covering your order for the 36 dozen units of Flora-Scent* * *.

* * * * *

There are no extra charges or fees of any kind for securing a [Toil-Ease or Flora-Scent] Franchise. . . . and it can be yours for life - and can be sold, transferred, or passed on to your children, if and when you decide to retire!

* * * * *

I have pocketed as much as \$100.00 for a half day of work* * *.

* * * * *

Average weekly profits of \$1,000.00 plus* * * 75 percent repeat business.

* * * * *

CALL THEM ON US!

These are some of the thousands of people making it with Federated Sanitary Corporation.

* * * * *

The biggest sales I've made to date have been to organizations in my town that use "Petite" to raise money for charity and other worthwhile services* * *, clubs, churches, Boy Scouts, Girl Scouts, etc.

* * * * *

Here Are Excerpts From Just a Few of the Scores of Letters in Our Files, Telling How Flora-Scent Salesmen Are "Cleaning" Up!

* * * * *

Recently a national sales magazine published an article about L. A. Coleman, Toil-Ease distributor in Utah.

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

1. That obtaining and holding a franchise or distributorship is solely conditional upon an initial purchase of, for example, 48 dozen units of "Toil-Ease" or "Petite," or of 36 units of "Flora-Scent."
2. That salesmen, franchisees or other distributors of said products earn or realize \$1000 per week full time or \$100 per half day, spare time, or other stated amounts of earnings or profits.
3. That thousands of persons are engaged as salesmen, franchisees or other distributors of said products.
4. That the testimonials quoted in said advertisements and promotional material are bona fide statements by salesmen, franchisees, or other distributors engaged in the sale of respondents' products.
5. That articles which have appeared in trade magazines about respondents' salesmen, franchises or other distributors have been independently written and published.

PAR. 6. In truth and in fact:

1. Obtaining and holding a franchise or distributorship is not solely conditional upon an initial purchase. To the contrary, respondents frequently require that additional purchases be made on a monthly or other basis, and do not disclose the material fact that failure to make the additional purchases, may be treated as a condition for terminating the franchise.
2. Few, if any, salesmen, franchisees or other distributors earn \$1000 per week full time or \$100 per half day, spare time, or other amounts set forth in respondents' advertisements and promotional material. To the contrary said salesmen, franchisees or other distributors, in the main, earn substantially less than those respective amounts.
3. Respondents have substantially fewer than a thousand salesmen, franchisees or other distributors regularly engaged in the sale of said products. Furthermore, many of said persons have purchased only a few small orders.
4. The testimonials quoted in said advertisements and promotional material are not bona fide statements by salesmen, franchisees or other distributors engaged in the sale of respondents' products. To the contrary, a substantial number of these persons have never dealt with the respondents.
5. Articles which have appeared in trade magazines and which were

reprinted and included in the respondents' promotional mailings or were quoted in publicity material included in the mailings were not independently written and published but were "puff editorials" which were solicited by the respondents and were either prepared by the respondents or respondents' agents or from material submitted by the respondents.

Therefore, respondents' statements and representations and their failure to disclose material facts, as set forth in Paragraphs Four, Five and Six hereof, were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business as aforesaid, respondents have misquoted, exaggerated and otherwise distorted testimonial statements and endorsements received from purchasers of their products. Typical and illustrative of said practice, but not all inclusive thereof, are the following:

*Respondents' Version of
Purchaser's Statement*

Repeat orders are fantastic!

Can't get enough order blanks-
everyone wants these items!

Been selling for 15 years -
nothing compares with Federated.
One of the best! Great order
demands!

Actual Statement

There is no problem
getting repeat orders.

* * *wish I had more time
this month to sell your
product. You see I am
a post office employee
so it is hard for me to
get time off because of
the holidays. I am sure
I can move Flora-Scent.
P.S. My last order took
almost three weeks to
get to me. Please send
me some more order blanks* * *.

* * *none of them compare
with Toil-Ease.
Toil-Ease is one of the
best to clean toilets
I've ever seen and keep
them clean and does not
harm the drain pipes.

Therefore, respondents' practice of misquoting, exaggerating and otherwise distorting testimonial statements and endorsements received from purchasers of their products, as set forth in Paragraph Seven hereof, was and is false, misleading and deceptive.

PAR. 8. In the course and conduct of its business, and at all times mentioned herein, respondents have been in substantial competition, in

commerce, with corporations, firms and individuals in the sale of articles of merchandise and services of the same general kind and nature as those sold by respondents.

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

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

DECISION AND ORDER

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

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

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

1. Respondent Federated Sanitary Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 65 Plain Ave., New Rochelle, N.Y.

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

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

ORDER

It is ordered, That respondents Federated Sanitary Corp., a corporation, its successors and assigns, and its officers, and Harry Wessel, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of toilet bowl cleaners, air refreshers, or other products, 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 individuals will earn any stated gross or net amount, or representing, in any manner, the past earnings of individuals where such profits represent unusual earnings by a small percentage of individuals unless the pertinent facts with reference to such earnings are disclosed: for example, full or part-time employment or whether the individual operates alone or employs a staff.

2. Representing, directly or by implication, a prospective franchisee's potential income or gross or net profits unless such representation is based upon the actual average figures for all franchises and distributorships in operation during the entire preceding twelve-month period and unless there is disclosed clearly and conspicuously immediately adjacent to any such representation that "REPRESENTATIONS ARE BASED ON THE AVERAGE EARNINGS OR PROFITS OF ALL FRANCHISES AND DISTRIBUTORSHIPS IN OPERATION DURING THE PAST YEAR. THESE FIGURES SHOULD NOT BE CONSIDERED AS ACCURATE REPRESENTATIONS OF POTENTIAL EARNINGS OR PROFITS OF ANY SPECIFIC FRANCHISEE OR DISTRIBUTOR."

3. Misrepresenting, directly or by implication, the number of individuals regularly engaged in the sale or distribution of respondents' products.

4. Using testimonials from individuals who did not purchase from the respondent corporation the products covered by the testimonials.

5. Failing to furnish any prospective distributor or franchisee, in a

separate written statement in a clear and concise manner, prior to the consummation of any contracts between respondents and any such prospective distributor or franchisee:

A. The conditions under which the franchise or distributorship agreement may be terminated or renewal refused by respondents, and a statement of the number of franchises or distributorships which were terminated or renewal refused in the past calendar year.

B. Complete financial details pertaining to the distributor or franchise agreement including the amount to be paid by the distributor or franchisee for the distributorship or franchise, the amount to be paid for any services to be rendered by respondents and the amount to be paid for any merchandise offered for sale or sold thereunder.

C. The median and mean gross sales to respondents' franchisees or distributors, exclusive of initial inventories sold to new franchisees or distributors, during the 12-month period preceding the month in which the information is to be furnished.

D. The number of franchisees or distributors at the beginning of the 12-month period, the number appointed during the 12-month period, the number terminated during the 12-month period, the number retained at the end of the 12-month period, and the median and mean length of time that those retained at the end of the 12-month period have been respondents' franchisees or distributors.

6. Using reprints of magazine articles, describing the experience of respondents' salesmen, distributors or franchisees with the respondents' products when such articles are suggested, drafted or prepared by respondents or on their behalf, unless it is clearly indicated that said articles were initiated by the respondents.

7. Misquoting, exaggerating or otherwise distorting statements from purchasers.

It is further ordered, That respondents furnish any prospective franchisee or distributor a copy of the franchise or distributorship agreement proposed to be used reasonably prior to the date the agreement is to be consummated or payment is to be made by the prospective franchisee or distributor for such franchise or distributorship.

It is further ordered, That respondents maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination and copying by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future office personnel employed

directly by respondents and to all persons engaged in the offering for sale or sale of respondents' distributorships or franchises or in any aspect of preparation, creation or placing of advertising and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

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

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of or the statutes administered by the Federal Trade Commission.

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

IN THE MATTER OF

TOWN FINANCE CORP., ET AL.

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

Docket C-2628. Complaint, Jan. 27, 1975 - Decision, Jan. 27, 1975

Consent order requiring a Bristol, R.I., moneylender in connection with financing insurance premiums, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the

extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *William P. McDonough*.

For the respondents: *Levy, Goodman, Semonoff & Gorin*, Providence, R.I.

COMPLAINT

Pursuant to the provisions of the Truth In Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Town Finance Corp., a corporation, and John Andrade, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Town Finance Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 557 Hope St., Bristol, R.I.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of lending money to the public in connection with the financing of insurance premiums.

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, have caused and are causing to be extended consumer credit, as "consumer credit" is defined in Regulation Z, and have caused and are causing customers to execute a binding insurance premium financing contract, hereinafter referred to as the

“contract.” Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the “contract” respondents:

1. Failed to use the term “cash price” as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the transaction, as required by Section 226.8(c)(1) of Regulation Z.
2. Failed to use the term “cash downpayment” to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.
3. Failed to use the term “unpaid balance of cash price” to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.
4. Failed to use the term “amount financed” to describe the amount of credit extended, as required by Section 226.3(c)(7) of Regulation Z.
5. Failed to use the term “total of payments” to describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.
6. Failed to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the “deferred payment price,” as required by Section 226.8(c)(8)(ii) of Regulation Z.
7. Failed to print the terms “annual percentage rate” and “finance charge” more conspicuously than other required terminology as required by Section 226.6(a) of Regulation Z.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid said

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

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

1. Respondent Town Finance Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office at 557 Hope St., Bristol, R.I.

Respondent John Andrade is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

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

ORDER

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

1. Failing to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the transaction, as required by Section 226.8(c)(1) of Regulation Z.

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

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

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

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

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

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

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

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

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

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

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

IN THE MATTER OF
VALLEY PREMIUM PLAN, ET AL.

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

Docket C-2629. Complaint, Jan. 27, 1975 - Decision, Jan. 27, 1975

Consent order requiring a Pawtucket, R.I., moneylender in connection with financing insurance premiums, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Lois M. Woocher.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Valley Premium Plan, a partnership, and William Fellner, George I. Parker, Edward L. Foster, William Hunt, R. Spencer Kyle, Abraham Snyder, George Stevens, John T. Wilmot and Alfred E. Hutchinson, individually and as partners in said partnership, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Valley Premium Plan is a partnership organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations having its principal office and place of business located at 100 East Ave., Pawtucket, R.I.

Respondents William Fellner, George I. Parker, Edward L. Foster, William Hunt, R. Spencer Kyle, Abraham Snyder, George Stevens, John T. Wilmot and Alfred E. Hutchinson, are individuals and are partners in the partnership respondent. They formulate, direct and control the policies, acts and practices of the partnership respondent

including the acts and practices hereinafter set forth. Their address is the same as that of partnership respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the business of lending money to the public in connection with the financing of insurance premiums.

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of their business as aforesaid, have caused and are causing to be extended consumer credit as "consumer credit" is defined in Regulation Z, and have caused and are causing customers to execute a binding combination promissory note and disclosure statement, hereinafter referred to as the "statement." Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the statement, respondents:

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

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

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

4. Failed to make consumer credit cost disclosures when any existing extension of credit is refinanced, or two or more existing extensions of credit are consolidated, or an existing obligation is increased, as prescribed by Section 226.8(j) of Regulation Z.

5. Failed to furnish the consumer with a duplicate of the instrument containing the required disclosures or a statement by which the required disclosures are made, as required by Section 226.8(a) of Regulation Z.

6. Provided additional information which misleads or confuses the customer or observer or detracts attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

7. Failed to make the disclosures required by Section 226.8 of

Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

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

DECISION AND ORDER

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

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

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

1. Respondent Valley Premium Plan is a partnership organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations with its principal office and place of business located at 100 East Ave., Pawtucket, R.I.

Respondents William Fellner, George I. Parker, Edward L. Foster, William Hunt, R. Spencer Kyle, Abraham Snyder, George Stevens, John T. Wilmot and Alfred E. Hutchinson are individuals and are partners in said partnership. They formulate, direct and control the policies, acts and practices of said partnership and their principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents Valley Premium Plan, a partnership, and William Fellner, George I. Parker, Edward L. Foster, William Hunt, R. Spencer Kyle, Abraham Snyder, George Stevens, John T. Wilmot and Alfred E. Hutchinson, individually and as copartners trading and doing business as Valley Premium Plan, or under any other name or names, their successors and assigns, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

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

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

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

4. Failing to make consumer credit cost disclosures when any existing extension of credit is refinanced, or two or more existing extensions of credit are consolidated, or an existing obligation is increased, as prescribed by Section 226.8(j) of Regulation Z.

5. Failing to furnish the consumer with a duplicate of the instrument containing the required disclosures or a statement by which the required disclosures are made, as required by Section 226.8(a) of Regulation Z.

6. Stating, utilizing or placing any additional information in conjunction with the disclosures required by Regulation Z to be made, which information misleads or detracts attention from the information required by Regulation Z to be disclosed.

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

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

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

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

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

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

IN THE MATTER OF

BELLEVUE LOAN COMPANY, ET AL.

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

Docket C-2630. Complaint, Jan. 27, 1975 - Decision, Jan. 27, 1975

Consent order requiring a Newport, R.I., moneylender in connection with financing insurance premiums, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Complaint

85 F.T.C.

Appearances

For the Commission: *William P. McDonough.*

For the respondents: *Moore, Virgigadamo, Boyle & Lynch, Newport, R.I.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bellevue Loan Company, a corporation, and Frank Heffernan, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bellevue Loan Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 39 Bellevue Ave., Newport, R.I.

Respondent Frank Heffernan is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of lending money to the public in connection with the financing of insurance premiums.

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

PAR. 4. Subsequent to July 1, 1969, respondents in the ordinary course of business as aforesaid, have caused and are causing to be extended consumer credit as "consumer credit" is defined in Regulation Z, and have caused and are causing customers to execute a premium finance agreement, hereinafter referred to as the "agreement." Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the agreement, respondents:

1. Failed in some instances to disclose the annual percentage rate accurately to the nearest quarter of one percent, computed in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
2. Failed to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the transaction, as required by Section 226.8(c)(1) of Regulation Z.
3. Failed to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.
4. Failed to use the term "finance charge" to describe the sum of all charges as required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z.
5. Failed to print the term "finance charge" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.
6. Failed to make the disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

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

DECISION AND ORDER

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

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

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

1. Respondent Bellevue Loan Company is a corporation organized, existing and doing business under and by virtue of the laws of the state of Rhode Island and Providence Plantations with its principal office and place of business located at 39 Bellevue Ave., Newport, R.I.

Respondent Frank Heffernan is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Bellevue Loan Company, a corporation, its successors and assigns, and its officers, and Frank Heffernan, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §601, *et seq.*) do forthwith cease and desist from:

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

2. Failing to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the transaction, as required by Section 226.8(c)(1) of Regulation Z.

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

4. Failing to use the term "finance charge" to describe the sum of

all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z.

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

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

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

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

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

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

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

Complaint

85 F.T.C.

IN THE MATTER OF

THEODORE STEPHEN COMPANY, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION, TEXTILE FIBER PRODUCTS
IDENTIFICATION AND TRUTH IN LENDING ACTS*Docket 8944. Complaint, Dec. 7, 1973 - Decision, Jan. 28, 1975*

Order requiring a Silver Spring, Md., carpet retailer, among other things to cease using bait and switch tactics; failing to maintain adequate records; misrepresenting savings available to consumers; misrepresenting prices or terms and conditions thereof; misrepresenting guarantees; misrepresenting credit services or terms; failing to notify consumers of their right to cancel contracts within three business days; misbranding and falsely advertising its textile fiber products; and failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Everette E. Thomas, Richard F. Kelly and Michael Dershowitz.*

For the respondents: *John H. Harmon, Coggins, Fireison & Harmon, Silver Spring, Md.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Theodore Stephen Company, Inc., a corporation, and Benjamin Eisenman, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, the implementing regulation, and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Theodore Stephen Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 14405 Sturtevant Rd., Silver Spring, Md.

Respondent Benjamin Eisenman is an individual and is the principal

152

Complaint

officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

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

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain and at all times mentioned herein have 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 their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of their salesmen to prospective purchasers with respect to their products and services.

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

CARPET SALE
ALL THE CARPET
YOU NEED
FOR 6 AREAS
\$125
*LIVING ROOM *BEDROOM
*DINING ROOM
*STEPS *HALL
*FOYER

* * * * *

POLYESTER SHAG \$5.99 SQ. YD.

Complaint

85 F.T.C.

100% ACRILAN \$6.99 SQ. YD.

* * * * *

ANNIVERSARY CARPET SALE
 TOTAL PRICES \$125
 ANY 3 AREAS
 COMPLETELY INSTALLED
 CARPETING, PADDING, LABOR
 UP TO 320 Sq. Ft.

* * * * *

IMMEDIATE INSTALLATION
 CARPET AND LABOR GUARANTEED
 LOWEST PRICES
 Because we don't give gifts

* * * * *

BANK RATE TERMS TO FIT
 YOUR BUDGET

* * * * *

LOW BANK RATE TERMS

* * * * *

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing, directly or by implication, that:

1. Respondents are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements.

2. By and through the use of the word "SALE," and other words of similar import and meaning not set out specifically herein, that said carpeting and floor coverings may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regularly selling prices.

3. By and through the use of the words "COMPLETELY INSTALLED, CARPETING, PADDING, LABOR" and other words of similar import and meaning, not set out specifically herein, that all of

the carpeting mentioned in such advertisements is installed with separate padding included at the advertised price.

4. Certain of respondents' products are unconditionally guaranteed.

5. By and through the use of the words "BANK RATE TERMS TO FIT YOUR BUDGET," "LOW BANK RATE TERMS" and words of similar import and meaning, not set out specifically herein, that respondents extend credit to their customers at or below rates which are usually charged by banks.

PAR. 6. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell said carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents or their salesmen, who make little or no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondents, through their salesmen, attempt to sell and frequently do sell the higher priced carpeting.

2. Respondents' products are not being offered for sale at special or reduced prices. To the contrary, the price respondents regularly advertise and their so-called advertised "sale" price are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price. In fact, seldom, if ever, are the advertised items sold, because the offer is designed to act as the inducement for the practices set forth in Paragraph Six, 1., hereof.

3. A substantial portion of the carpeting advertised by the respondents is not installed with separate padding which is included in the advertised price. To the contrary, a substantial portion of the advertised carpeting has rubberized backing which is bonded to the carpeting.

4. Respondents' carpeting and floor coverings are not unconditionally guaranteed. To the contrary, such guarantees as are available are subject to numerous substantial conditions and limitations.

5. Respondents arrange credit for customers through finance companies or other third parties at rates substantially higher than those generally charged by banks.

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

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their carpeting and floor coverings, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

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

PAR. 8. In the further course and conduct of their aforesaid business, and in connection with the representations set forth in Paragraph Four above, respondents offer carpet with padding and installation included at a price based upon specified areas of coverage. In making such offer, respondents have failed to disclose the material fact that the prices stated for such specified areas of coverage are not applied at the same rate for additional quantities of carpet needed, but are priced substantially higher.

The aforesaid failure of the respondents to disclose said material facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the prices charged for quantities of carpet needed in excess of the specified areas of coverage will not be substantially higher than the rate indicated by the initial offer.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents use the term "up to 320 sq. ft." to indicate the quantity of carpeting available at the advertised price.

PAR. 10. The unit of measurement usually and customarily employed in the retail advertising of carpet is square yards. Consumers are accustomed to comparing the price of carpet in terms of price per square yard, therefore respondents' use of the square foot unit of measurement confuses consumers who compare respondents' prices with competitors' prices advertised on a square yard basis.

Furthermore, respondents use of square foot measurements exaggerates the size or quantity of carpeting being offered, and therefore has the capacity and tendency to mislead consumers into the mistaken

belief they are being offered a greater quantity of carpet than is the fact.

Therefore, the acts and practices as set forth in Paragraph Nine hereof were and are unfair, false, misleading and deceptive.

PAR. 11. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and service of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 14. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products including carpeting and floor covering and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms

“commerce” and “textile fiber product” are defined in the Textile Fiber Products Identification Act.

PAR. 15. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively advertised, or otherwise identified as to the name and amount of constituent fibers contained therein.

PAR. 16. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

PAR. 17. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in *The Washington Post* newspaper published in the District of Columbia, and having a wide circulation in the District of Columbia and various other States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was “Acrilan,” and the true generic name of the fiber contained in such carpeting was not set forth.

PAR. 18. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

1. In disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

2. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said act, and the regulations promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

3. A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid rules and regulations.

PAR. 19. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, and unfair methods of competition, in commerce, under the Federal Trade Commission Act.

COUNT III

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

PAR. 20. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 21. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing customers to execute binding retail installment contracts, hereinafter referred to as the "contract."

PAR. 22. By and through the use of the contract respondents, in a number of instances:

(1) Failed to include in the finance charge the amount of the charges or premiums for credit life insurance in instances where customers desiring such insurance coverage did not give specific dated and separately signed affirmative written indication of such desire, as provided in Section 226.4(a)(5)(ii) of Regulation Z.

(2) By reason of failing to include in the finance charge the amount of the charges or premiums for credit life insurance, as stated in (1) above, failed to disclose accurately the "amount financed," and "finance charge," as required by Sections 226.8(c)(7), and 226.8(c)(8)(i), respectively, of Regulation Z, and the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

(3) Failed to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

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

PAR. 23. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY RAYMOND J. LYNCH, ADMINISTRATIVE LAW
JUDGE

JULY 31, 1974

PRELIMINARY STATEMENT

On Dec. 18, 1973, the Federal Trade Commission issued a complaint in this proceeding alleging that the respondents Theodore Stephen Company, Inc., a corporation, and Benjamin Eisenman, individually and as an officer of said corporation, violated the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, the Truth in Lending Act and the implementing regulations promulgated thereunder.

Respondents filed an answer to the complaint on Jan. 16, 1974, and a prehearing conference was held in the matter on Jan. 29, 1974. An amended answer to the complaint was filed on Feb. 26, 1974 admitting all of the allegations of the complaint. A prehearing conference was held on Feb. 27, 1974. Respondents filed a brief in support of their amended answer on Mar. 28, 1974, and complaint counsel filed a memorandum in support of their position on Mar. 29, 1974. Oral argument was held on Apr. 17, 1974. The respondents having admitted all of the allegations of the complaint, the only remaining matter to be determined is the nature of the sanction to be imposed.

FINDINGS OF FACT

1. Respondent Theodore Stephen Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Maryland, with its principal office and place of business located at 14405 Sturtevant Rd., Silver Spring, Md.

Respondent Benjamin Eisenman is an individual and is the principal officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of their salesmen to prospective purchasers with respect to their products and services.

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

CARPET SALE
ALL THE CARPET
YOU NEED
FOR 6 AREAS

\$125

*LIVING ROOM *BEDROOM
*DINING ROOM
*STEPS *HALL
*FOYER

* * * * *

POLYESTER SHAG \$5.99 SQ. YD.

100% ACRILAN \$6.99 SQ. YD.

* * * * *

ANNIVERSARY CARPET SALE

Initial Decision

85 F.T.C.

TOTAL PRICES \$125
 ANY 3 AREAS
 COMPLETELY INSTALLED
 CARPETING, PADDING, LABOR
 UP TO 320 Sq. Ft.

* * * * *

IMMEDIATE INSTALLATION
 CARPET AND LABOR GUARANTEED
 LOWEST PRICES
 Because we don't give gifts

* * * * *

BANK RATE TERMS TO FIT
 YOUR BUDGET

* * * * *

LOW BANK RATE TERMS

5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing, directly or by implication, that:

a. Respondents are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements.

b. By and through the use of the word "SALE", and other words of similar import and meaning not set out specifically herein, that said carpeting and floor coverings may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regularly selling prices.

c. By and through the use of the words "COMPLETELY INSTALLED, CARPETING, PADDING, LABOR" and other words of similar import and meaning, not set out specifically herein, that all of the carpeting mentioned in such advertisements is installed with separate padding included at the advertised price.

d. Certain of respondents' products are unconditionally guaranteed.

e. By and through the use of the words "BANK RATE TERMS TO FIT YOUR BUDGET," "LOW BANK RATE TERMS" and words of similar import and meaning, not set out specifically herein, that respondents extend credit to their customers at or below rates which are usually charged by banks.

6. In truth and in fact:

a. Respondents' offers are not bona fide offers to sell said carpeting

and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents or their salesmen, who make little or no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting, which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondents, through their salesmen, attempt to sell and frequently do sell the higher priced carpeting.

b. Respondents' products are not being offered for sale at special or reduced prices. To the contrary, the price respondents regularly advertise and their so-called advertised "sale" price are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price. In fact, seldom, if ever, are the advertised items sold, because the offer is designed to act as the inducement for the practices set forth in Finding 6 a, hereof.

c. A substantial portion of the carpeting advertised by the respondents is not installed with separate padding which is included in the advertised price. To the contrary, a substantial portion of the advertised carpeting has rubberized backing which is bonded to the carpeting.

d. Respondents' carpeting and floor coverings are not unconditionally guaranteed. To the contrary, such guarantees as are available are subject to numerous substantial conditions and limitations.

e. Respondents arrange credit for customers through finance companies or other third parties at rates substantially higher than those generally charged by banks.

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

7. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their carpeting and floor coverings, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Findings 4 through 6, above, respondents or their representa-

tives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

8. In the further course and conduct of their aforesaid business, and in connection with the representations set forth in Finding 4 above, respondents offer carpet with padding and installation included at a price based upon specified areas of coverage. In making such offer, respondents have failed to disclose the material fact that the prices stated for such specified areas of coverage are not applied at the same rate for additional quantities of carpet needed, but are priced substantially higher.

The aforesaid failure of the respondents to disclose said material facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the prices charged for quantities of carpet needed in excess of the specified areas of coverage will not be substantially higher than the rate indicated by the initial offer.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

9. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents use the term "up to 320 sq. ft." to indicate the quantity of carpeting available at the advertised price.

10. The unit of measurement usually and customarily employed in the retail advertising of carpet is square yards. Consumers are accustomed to comparing the price of carpet in terms of price per square yard, therefore respondents' use of the square foot unit of measurement confuses consumers who compare respondents' prices with competitors' prices advertised on a square yard basis.

Furthermore, respondents' use of square foot measurements exaggerates the size or quantity of carpeting being offered, and therefore has the capacity and tendency to mislead consumers into the mistaken belief they are being offered a greater quantity of carpet than is the fact.

Therefore, the acts and practices as set forth in Findings 9 and 10 hereof were and are unfair, false, misleading and deceptive.

11. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and service of the same general kind and nature as those sold by respondents.

12. The use by respondents of the aforesaid false, misleading and

deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

13. The aforesaid acts and practices of respondents, as set forth in Findings 11 and 12, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

14. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products including carpeting and floor covering and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

15. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

16. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

17. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in *The*

Washington Post newspaper published in the District of Columbia, and having a wide circulation in the District of Columbia and various other states of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Acrilan," and the true generic name of the fiber contained in such carpeting was not set forth.

18. By means of the aforesaid advertisements and others of similar import and meaning not specifically found herein, respondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

a. In disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

b. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the regulations promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

c. A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid rules and regulations.

19. The acts and practices of respondents as found above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, and unfair methods of competition, in commerce, under the Federal Trade Commission Act.

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

21. Subsequent to July 1, 1969, respondents, in the ordinary course of business, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing customers to

execute binding retail installment contracts, hereinafter referred to as the "contract."

22. By and through the use of the contract respondents, in a number of instances:

(1) Failed to include in the finance charge the amount of the charges or premiums for credit life insurance in instances where customers desiring such insurance coverage did not give specific dated and separately signed affirmative written indication of such desire, as provided in Section 226.4(a)(5)(ii) of Regulation Z.

(2) By reason of failing to include in the finance charge the amount of the charges or premiums for credit life insurance, as stated in (1) above, failed to disclose accurately the "amount financed," and "finance charge," as required by Sections 226.8(c)(7) and 226.8(c)(8)(i), respectively, of Regulation Z, and the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

(3) Failed to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

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

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

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.
2. The complaint herein states a cause of action, and this proceeding is in the public interest.
3. Respondents have engaged in unfair methods of competition in commerce and have committed unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.
4. Respondents have violated the provisions of the Textile Fiber

Products Identification Act, the Truth in Lending Act and the implementing regulations promulgated thereunder.

THE REMEDY

As previously stated herein, the parties filed briefs and oral argument was held regarding the nature of the sanction to be imposed. It is the contention of counsel supporting the complaint that in order to protect the public interest corrective advertising such as that set forth in the complaint must be issued:

The Federal Trade Commission ha[s] found that we engage in bait and switch advertising; that is, the salesman makes it difficult to buy the advertised product and he attempts to switch you to a higher priced item.

The respondents, on the other hand, contend that Section 5 of the Federal Trade Commission Act in no way gives the Commission the power to issue an order requiring "the respondents [to] devote a certain portion of their future advertising to a confession and admission that they have been found by the Federal Trade Commission to have engaged in 'Bait and Switch' tactics." The respondents argue that the recommended remedy is penal in nature, unconstitutional and the taking of property without just compensation. Furthermore, that should the order issue, the net effect would be that the respondents would be put out of business.

The Commission is vested with broad discretion in determining the type of order necessary to ensure discontinuance of the unlawful practices found. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965). The Commission's discretion is limited only by the requirement that the remedy be reasonably related to the unlawful practices found. *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 613 (1946); *Niresk Industries, Inc., v. Federal Trade Commission*, 278 F.2d 337 (7th Cir. 1960), *cert. denied* 364 U.S. 883. It is well settled that the Commission may require affirmative statements in advertising where failure to make such statements leaves the prospective consumer without all the material facts on which to base his choice as to whether to do business with the advertiser or purchase the product advertised. *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67, 78 (1934).

The position of the Commission with respect to corrective advertising has been set forth very clearly in *Firestone Tire and Rubber Co.*, 81 F.T.C. 398, 471, where the Commission held that:

[A]n order requiring corrective advertising is well within the arsenal of relief provisions which the Commission may draw upon in fashioning effective remedial measures to bring about a termination of the acts or practices found to have been unfair or deceptive. If such relief is warranted to prevent continuing injury to the public, it is neither punitive nor retrospective.

* * * * *

[C]orrective advertising orders where necessary and appropriate will violate neither the letter nor the spirit of the First Amendment guarantees of free speech and press and are clearly within the remedial authority of the Commission.

Subsequently, the Commission had occasion to reiterate the theories in *ITT Continental Baking Co. Inc.*, F.T.C. Docket 8860, [83 F.T.C. 865], wherein it stated:

We have further evidence that many months after conclusion of the advertising campaign a small percentage of consumers recall the nutritional advertising of respondents though it is not clear from this evidence to what extent those consumers continued to believe that Wonder Bread is an extraordinary food (the misrepresentation found to have been made) * * * we cannot find in the record a sufficient basis upon which to conclude that corrective advertising is needed to eliminate the misrepresentation found.

In addition, the Commission has also set forth its position with respect to the imposition of sanctions in both the *Curtis Publishing Company* case, Docket No. 8800 [78 F.T.C. 1472], and the *Universal Credit Acceptance Company* case, Docket No. 8821 [82 F.T.C. 570], wherein they very emphatically decided that even in a case of what was deemed restitution they had the power to, and indeed did in *Universal Credit, supra*, impose an order which was referred to throughout as restitutionary relief.

Taking into consideration all of the cases that have come before, and the Commission's repeatedly stated position, the undersigned is of the opinion that he is bound by the precedent that has already been established by the Commission.

Therefore, the undersigned concludes that as a result of the respondents' activities, the request of counsel supporting the complaint for corrective advertising is not beyond the scope of the Commission's power, and that in order to stop the respondents and deter others from engaging in acts and practices as set forth herein, the corrective advertising provision of the Commission's order should be imposed.

ORDER

I

It is ordered, That respondents Theodore Stephen Company, Inc., a corporation, its successors and assigns, and its officers, and Benjamin Eisenman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other article of merchandise, in

commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of carpeting or other merchandise or services.

2. Making representations, orally or in writing, directly or by implication, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Disparaging in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

4. Representing, orally or in writing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

a. the cost of publishing each advertisement including the preparation and dissemination thereof;

b. the volume of sales made of the advertised product or service at the advertised price; and

c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

6. Using the word "Sale," or any other word or words of similar import or meaning not set forth specifically herein unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

7. (a) Representing, orally or in writing, directly or by implication, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, orally or in writing, directly or by implication, that by purchasing any of said merchandise, customers are afforded savings

amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, orally or in writing, directly or by implication, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise, unless substantial sales or merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

8. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraphs Six and Seven of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

9. Representing, orally or in writing, directly or by implication, that a stated price for carpeting or floor coverings includes the cost of a separate padding and the installation of such padding and carpeting thereof, unless in every instance where it is so represented the stated price for floor covering does, in fact, include the cost of such separate padding and installation thereof; or misrepresenting in any manner, the prices, terms, or conditions under which respondents supply separate padding and provide installation in connection with the sale of floor covering products.

10. Representing, orally or in writing, directly or by implication, that any product or service is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondents deliver to each purchaser, prior to the signing of the sales contract, a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, orally or in writing, directly or by implication, made to each such purchaser, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of each such guarantee.

11. Representing, orally or in writing, directly or by implication,

that respondents extend credit to customers or extend credit at bank rates; or misrepresenting in any manner, credit services or credit terms.

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

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

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

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

NOTICE OF CANCELLATION

[enter date of transaction]

(date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

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

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

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE

SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

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

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

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

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

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

18. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

19. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

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

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

22. Advertising the price of carpet, either separately or with padding and installation included, for specified areas of coverage

without disclosing in immediate conjunction and with equal prominence the square yard price for additional quantities of such carpet with padding and installation needed.

23. Advertising any carpeting or floor covering using a unit of measurement not usually and customarily employed in the retail advertising of carpet or which tends to exaggerate the size or quantity of carpeting or floor covering being offered at the advertised price.

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

II

It is further ordered, That respondents Theodore Stephen Company, Inc., a corporation, its successors and assigns, and its officers, and Benjamin Eisenman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported; of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

B. Falsely and deceptively advertising textile products by:

1. Making any representations by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same

information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Failing to set forth in advertising the fiber content of floor covering containing exempted backings, fillings or paddings, that such disclosure related only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

III

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

(1) Failing to include in the finance charge the amount of the charges or premiums for credit life insurance in instances where customers desiring such insurance coverage did not give specific dated and separately signed affirmative written indications of such desire, as provided in Section 226.4(a)(5)(ii) of Regulation Z.

(2) Failing to disclose accurately the "amount financed," and "finance charge," as required by Sections 226.8(b)(7), and 226.8(c)(8)(i), respectively, of Regulation Z.

(3) Failing to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

(4) Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance

charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

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

It is further ordered, That each of respondents do forthwith cease and desist from disseminating or causing the dissemination of, any advertisement of merchandise by means of newspapers, or other printed media, television or radio, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless respondents clearly and conspicuously disclose in each advertisement the following notice set off from the text of the advertisement by a black border:

The Federal Trade Commission has found that we engage in bait and switch advertising; that is, the salesman makes it difficult to buy the advertised product and he attempts to switch you to a higher priced item.

One year from the date this order becomes final or any time thereafter, respondents upon showing that they have discontinued the practices prohibited by this order and that the notice provision is no longer necessary to prevent the continuance of such practices may petition the Commission to waive compliance with this order provision.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor covering and other merchandise.

It is further ordered, That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

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

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

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

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

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

OPINION OF THE COMMISSION

BY HANFORD, *Commissioner*

Respondents appeal from that part of the order entered by the administrative law judge constituting a "consumer warning" requirement, which provides that respondents must include the following disclosure in all of their advertisements:

The Federal Trade Commission has found that we engage in bait and switch advertising; that is, the salesman makes it difficult to buy the advertised product and he attempts to switch you to a higher priced item.

On two occasions, we have faced the question of whether such a warning is justified in a contested carpet bait and switch case: *Wilbanks Carpet Specialists, Inc., et al.*, Docket 8933 (Sept. 24, 1974) [84 F.T.C. 670], and *Tri-State Carpets, Inc., et al.*, Docket 8945 (Oct. 15, 1974) [84 F.T.C. 1078]. In each instance, we determined that the record did not support such a requirement. We find nothing in the record of this case to distinguish it from *Wilbanks* and *Tri-State*. Therefore we find it necessary to delete Judge Lynch's "consumer warning" from the order. This determination is, of course, without prejudice to the Commission's right to reopen this proceeding to consider the imposition

Final Order

85 F.T.C.

of a "consumer warning" requirement, or to seek imposition of such relief in a civil penalty action against respondents,¹ should their future conduct warrant either course of action.

In all other respects, the order of the administrative law judge is affirmed.

FINAL ORDER

This matter has come before the Commission on the motion of respondents, for consideration of the question whether the consumer warning provision ordered by the administrative law judge should be adopted as part of the Commission's cease and desist order. The Commission has determined that this matter is indistinguishable from the matter of *Wilbanks Carpet Specialists, Inc., et al.*, Docket 8933 [84 F.T.C. 670] and *Tri-State Carpets, Inc., et al.*, Docket 8945 [84 F.T.C. 1078], inasmuch as the record presents insufficient evidence that a consumer warning is a necessary or appropriate means for the termination of the act or practices complained of or for the prevention of their recurrence. Having declined to order a consumer warning in the *Wilbanks* and *Tri-State* matters, the Commission has concluded that the same disposition is warranted herein.

Accordingly, the initial decision issued by the judge should be modified in accordance with the foregoing views of the Commission, and, as so modified, adopted as the decision of the Commission:

It is ordered, That the initial decision issued by the administrative law judge be modified by striking therefrom the following:

Those portions of the conclusions of law which concern "consumer warning" relief (at pp. 11-13 [pp. 168-169 herein] *sub nom.* "THE REMEDY"); and the second "FURTHER ORDERED" paragraph of Part III of the order to cease and desist issued by the judge (at pp. 29-30)[p. 176 herein].

As so modified, the initial decision is hereby adopted.

IN THE MATTER OF

AAMCO AUTOMATIC TRANSMISSIONS, INC.

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

Docket C-2305. Decision, Oct. 18, 1972 - Modifying Order, Feb. 3, 1975

Ordering modifying a consent order issued against respondent, 81 F.T.C. 618, 37 F.R.

¹ Section 5(1) of the Federal Trade Commission Act (15 U.S.C. §45(1)) empowers district courts hearing civil penalty actions "to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of * * * final orders of the Commission."

24737, corrections 25704, by deleting Paragraphs III and IV of the original order which permitted respondent to formulate and establish standards for a quality control program, "secondary level of inspection," whereby transmission parts are tested and inspected by vendors prior to sale; permitted respondent to maintain an approved vendors list which contains the names of vendors who actually perform a "secondary level of inspection"; and restricted franchisees to purchase only from AAMCO or vendors whose names appear on the approved vendors list. The respondent is required by the modified order to effect modification of the provisions of every contract between it and its franchisees contrary to or inconsistent with the modified order.

Appearances

For the Commission: *J. Thomas Rosch.*

For the respondent: *Martin Howard Katz*, Bridgeport, Pa., *Daniel J. McCauley, Jr.*, *Blank, Rome, Klaus & Comisky*, Philadelphia, Pa.

ORDER REOPENING PROCEEDING AND MODIFYING CEASE AND
DESIST ORDER

The Commission, on Oct. 30, 1974, having issued an order against respondent to show cause why the proceedings herein should not be reopened for the purpose of modifying the consent order to cease and desist entered on Oct. 18, 1972 [81 F.T.C. 618]; and

Respondent having answered that it has no objection to the reopening of the proceeding and the modification of the consent order, as set forth in the order to show cause.

Accordingly, *It is ordered*, That the matter be reopened, and that the order herein be modified so that it will read:

I

It is ordered, That respondent, AAMCO Automatic Transmissions, Inc. (AAMCO), a corporation, its successors, assigns, officers, directors, agents, representatives and employees, directly or through any corporate or other device, in connection with the franchising or licensing of persons to operate an automotive transmission repair franchise business, such franchising and operation constituting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from requiring, in any manner or by any means, directly or indirectly, its franchisees to purchase the automotive parts, new or rebuilt, equipment and merchandise used by such franchisees in the establishment and operation of their automotive repair business from AAMCO or from any other source;

Provided, That nothing in this order shall prohibit AAMCO from establishing, maintaining and implementing, from time to time, reasonable manufacturing specifications for transmission parts, equip-

Order

85 F.T.C.

ment or merchandise to be used by its franchisees in their business, and reasonable standards for transmission services, repairs, and rebuilding offered by its franchisees. Such specifications and standards shall be made available without charge to sources of supply of such items to AAMCO's franchisees.

II

It is further ordered, That respondent take all necessary action to effect the modification of each provision of every contract between it and its franchisees which is contrary to or inconsistent with this order.

III

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

IV

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

IN THE MATTER OF

KASSLER & CO.

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

Docket C-2631. Complaint, Feb. 3, 1975 - Decision, Feb. 3, 1975

Consent order requiring a Denver, Colo., mortgage banker, among other things to cease distributing to real estate agents forms which restrict the buyer's source of home loan credit, which require the purchaser to sign at a later date a real estate contract form, the terms of which are not set forth or attached to the earnest money agreement, and which require a purchaser's title insurance policy or preliminary report only be delivered to the respondent. Other provisions of the order will enable the buyer to be informed of the conditions of the real estate contract into which he is entering.

Appearances

For the Commission: *Dennis D. McFeely.*

For the respondent: *Jones, Grey, Bayley & Olsen, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Kassler & Co., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Kassler & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 600 Grant St., Denver, Colo. Respondent operates thirty branch and district offices located primarily in the western United States, including four offices in western Washington. Respondent services trust deeds and mortgages totaling in excess of \$882,000,000.

PAR. 2. Respondent is and has been engaged in the business of brokering, granting, and servicing loans secured by mortgages and trust deeds on residential real estate, and performing escrow and closing services in connection with the purchase of residential real estate.

PAR. 3. In the course and conduct of said business, respondent sends substantial quantities of documents, records, and messages between its branch offices and regional headquarters located in Washington State and its head office in Denver, and also between the branch offices and regional headquarters located in Washington State and the office of the head of residential home mortgage production in Encino, Calif. Respondent also regularly transfers funds between Washington State and its Colorado headquarters. A significant portion of the foregoing activities pertain specifically to the generation and promotion of respondent's business. Respondent is thereby maintaining and has maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. For the purpose of promoting its business, respondent has distributed to real estate agents throughout many parts of western Washington a contract form generally known in that area as an "earnest money agreement" form. This form is utilized by real estate agents to create legally binding sale and purchase obligations between sellers and purchasers of residential real estate. The earnest money agreement form is written so that it can be utilized both for mortgage

loan financing and for sales of property pursuant to a real estate contract.

PAR. 5. Said earnest money agreement form contains, among others, the following provisions:

1. If financing is required, the purchaser and seller hereby authorize Agent herein to select the lending institution and to arrange the financing of this sale and to advance so much of the earnest money as may be necessary for loan costs. Purchaser agrees to make application immediately for such financing upon request of Agent, sign necessary papers and deposit, before closing, said advances and all closing costs attributable to purchaser.

2. If this agreement is for sale on real estate contract, seller and purchaser agree to execute a Real Estate Contract for the balance of the purchase price on Real Estate Contract Form No. A-1964 of Pioneer National Title Insurance Company, Security Title Insurance Company or Transamerica Title Insurance Company. The terms of said forms are herein incorporated by reference and the terms of any one of said forms are satisfactory to the parties hereto and said parties agree to execute any one of said contract forms selected by the closing agent.

3. Seller shall make available to purchaser, at office of KASSLER & CO. MORTGAGE BANKERS, or its agent, after acceptance of this offer, a standard form purchaser's policy of title insurance or report preliminary thereto issued by a Title Insurance Company, and seller authorizes Agent to apply at once for such title insurance. . . . Delivery of such policy or title report to KASSLER & CO. MORTGAGE BANKERS, or its agent shall constitute delivery to purchaser.

PAR. 6. The aforesaid provisions are unfair to purchasers of residential real estate in that:

1. The provision set forth above in Paragraph Five, subparagraph 1, (a) permits the real estate agent to select the lender, thereby preventing the home purchaser from shopping among competing financial institutions for the most favorable credit terms and services, (b) permits the real estate agent to advance the purchaser's money to a lending institution for preliminary loan costs without further consent of the purchaser, thereby restricting the purchaser's freedom to seek financing elsewhere, (c) may lead purchasers to interpret recommendations and suggestions made by real estate agents concerning sources of residential loans as being obligatory upon the purchaser, (d) permits real estate agents to send business to lenders without regard to the best interests of the purchaser in order to receive gifts, monies or other things of value from such lenders, (e) permits real estate agents to send business to lenders which will forego or diminish discounts chargeable to the seller while charging the buyer a higher interest rate, higher loan fees, or other charges, and (f) creates an irreconcilable conflict between the fiduciary duties owed by the real estate agent to the seller and duties owed to the purchaser.

2. The provision set forth above in Paragraph Five, subparagraph 2, requires the purchaser to sign at a later time a real estate contract form, the terms of which are not set forth in the body of the earnest money agreement, nor included as an attachment thereto. Such

undisclosed terms of the real estate contract which is required to be signed include, among other provisions, the following: (a) forfeiture of the entire amount theretofore paid by the purchaser in the event of a default by the purchaser, (b) that the purchaser has made full inspection of the real estate and that the seller will not be held to any covenant as to condition, or agreement for alterations unless in writing, (c) assumption by the purchaser of all risks of damage to the property during the term of the real estate contract. Although the foregoing terms, and other terms of the real estate contract, are of substantial significance to the purchaser, the purchaser, in the absence of the real estate contract form, is not normally aware of such terms at the time of signing the earnest money agreement.

3. The provision set forth above in Paragraph Five, subparagraph 3, requires only that a purchaser's title insurance policy or preliminary report be delivered to the respondent. The prevailing practice in transactions where respondent's said earnest money agreement form has been utilized is to deliver a copy of the preliminary report only to the respondent or other lending institution used by the buyer and to send a copy of the final title insurance policy to the purchaser only after the transaction has been closed and the monies disbursed. Accordingly, (a) there is no requirement that the purchaser be provided with a copy of any preliminary title report or insurance policy, (b) the purchaser is generally not apprised before the closing of the real estate transaction of the extent of title insurance coverage, including the existence of conditions and exceptions to such coverage, (c) the purchaser may be deprived of the opportunity for timely renegotiation of the purchase price to compensate for title defects not apparently curable, (d) the purchaser may be deprived of the timely exercise of his or her contractual right not to purchase because of incurable title defects, and (e) the purchaser may be deprived of the opportunity to undertake to negotiate prior to closing for the removal of unwanted encumbrances which would not normally be removed through the closing process.

PAR. 7. Inasmuch as most purchasers of residential real estate do not have sufficient knowledge or capability to effectively bargain with the seller or his representatives to vary the printed terms and conditions set forth in respondent's earnest money agreement form, the provisions set out in Paragraph Five are almost invariably retained and included in the executed earnest money agreements which utilize respondent's forms. Additionally, subsequent to the execution of the form earnest money agreement, purchasers of residential real estate which utilize respondent's said form generally do not have the

knowledge and capability to effectively ameliorate, renegotiate or otherwise diminish the effect of the terms stated in Paragraph Five.

PAR. 8. In the course and conduct of its business, and at all times mentioned herein, respondent has been and now is in substantial competition, in commerce, with corporations, firms and individuals engaged in the performance of services of the same general kind and nature as those provided by respondent.

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

DECISION AND ORDER

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

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

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

1. Proposed respondent Kassler & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 600 Grant St., Denver, Colo.

2. The Federal Trade Commission has jurisdiction of the subject

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

ORDER

It is ordered, That respondent Kassler & Co., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the promoting and granting of residential loans in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or distributing, in any manner, directly or indirectly, any earnest money or other contract forms used in connection with the purchase and sale of real estate (all hereinafter referred to as "earnest money forms"):

a. which provide that the seller or purchaser authorizes the real estate agent to select a lending institution, or to arrange financing of the sale, or to advance any of the purchaser's funds to any lending institution, or that otherwise have the effect of restricting where the purchaser may seek credit;

b. which provide that the seller or purchaser agree to execute a real estate contract or any other document without, at the option of respondent, either (1) setting forth the terms of such real estate contract or other document in the earnest money forms, or (2) setting forth the following language in the earnest money forms: "THIS AGREEMENT IS VOID without further action by any of the parties hereto unless a copy of the blank real estate contract form which the parties agree to execute is provided to the parties hereto prior to their signing this agreement.

I/WE ACKNOWLEDGE RECEIPT OF BLANK REAL ESTATE CONTRACT FORM NO. _____ ISSUED BY _____ PRIOR TO THE SIGNING OF THIS AGREEMENT.

Purchaser(s)

Seller(s)"

c. which provide for delivery of the title policy and report preliminary thereto to any party other than the purchaser, or which provide for delivery at any specified place; *Provided,* That nothing herein shall preclude the inclusion of a provision permitting the sending of copies of the preliminary report and title policy to the lender or other closing agent, or other interested parties.

2. Failing to send, by certified mail, return receipt requested, a notice to all purchasers of residential real estate (hereinafter referred to as "covered applicants") who have, after the effective date hereof, both (a) executed an agreement on the form printed and distributed by the respondent which contains the language quoted in Paragraph Five

of the complaint, and (b) filed a loan application with the respondent. Such notice shall be sent within two business days of the receipt of the loan application by any representative of Kassler & Co. and shall advise the covered applicant that he may withdraw his loan application without costs, obligations or penalties by delivering or posting written notice to respondent of his determination to do so within ten calendar days of receipt of the required notice from respondent. The notices described herein, which shall include a blank form of loan withdrawal notice, shall be sent by the respondent in the language, form and manner, and with the enclosures, approved by the Seattle Regional Office of the Federal Trade Commission or other representative designated by the Commission.

3. Failing to allow all covered applicants to withdraw their application for credit without costs, obligations or penalties if the respondent receives a loan application withdrawal notice as described above in subparagraph 2.

4. Failing to make contact in person with each real estate office to which respondent may have distributed earnest money agreement forms which contain the language stated in Paragraph Five of the complaint, and to use its best efforts to obtain possession of such earnest money agreement forms from the agent, and to destroy such forms.

It is further ordered, That respondent maintain at all times in the future, for a period, in each case, of not less than one year, complete records relative to the manner and form of its continuing compliance with the above terms and provisions of this order.

It is further ordered, That respondent deliver a copy of this order to cease and desist to the heads of each operating division and separate office within the company and to the heads of each region and branch office, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

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

It is further ordered, That respondent shall, within sixty days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF
ADOLPH COORS COMPANY

MODIFYING ORDER, IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT

Docket 8845. Decision, July 24, 1973 - Modifying Order, Feb. 4, 1975

Order modifying an earlier order dated July 24, 1973, 83 F.T.C. 32, 38 F.R. 23399, pursuant to decision and judgment of June 4 and 21, 1974, respectively, of the United States Court of Appeals for the Tenth Circuit,* by deleting Paragraphs 12 and 13 of the order which rewrite the termination provisions of respondent's distributor contracts.

Appearances

For the Commission: *Anthony Low Joseph and Thomas V. Vakerics.*
For the respondent: *Leo N. Bradley, Earl K. Madsen, Bradley, Campbell & Carney, Golden, Colo.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent, having filed in the United States Court of Appeals for the Tenth Circuit on Aug. 15, 1973, a petition to review and set aside an order to cease and desist issued herein on July 24, 1973, and the Court having rendered its decision on June 4, 1974, and its judgment on June 21, 1974, affirming the order to cease and desist, except for numbered Paragraphs 12 and 13 of the order which it directed be set aside.

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court to read as follows:

ORDER

It is ordered, That respondent Adolph Coors Company and its subsidiaries, successors, assigns, officers, directors, agents, representatives and employees, individually or in concert with others, directly or indirectly, or through any corporate or other device, in connection with the brewing, distribution, offering for sale or sale of beer in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, maintaining or enforcing any contract, agreement, combination, understanding or course of conduct which has as its purpose or effect the fixing, maintaining, establishing or setting of the

* *Cert. denied*, Jan. 13, 1975, 419 U.S. 1105.

prices at which distributors sell Coors beer to retailers or the prices at which retailers sell Coors beer to consumers.

2. Publishing, disseminating or providing any price list or other document indicating suggested or mandatory prices for the sale of Coors beer by any distributor to any retailer or any price list or other document indicating suggested or mandatory prices for the sale of Coors beer by any retailer to any consumer.

Provided, however, That nothing contained in this paragraph of the order shall prohibit respondent from complying with the requirements of any state law, provided that when respondent purports to be complying with the state law regarding price suggestions, respondent will specifically advise the Commission of the statute and all court decisions and administrative agency decisions and rulings interpreting said statute pursuant to which it is purporting to act.

3. Publishing, disseminating or providing to any distributor or any retailer any information or suggestions concerning what Coors may believe to be an appropriate or proper markup or profit for Coors beer when the distributor sells to the retailer or when the retailer sells to the consumer or a markup or profit below which the distributor or retailer is advised not to sell Coors beer.

Provided, however, That nothing contained in paragraphs two (2) and three (3) of the order shall prohibit respondent from publishing, disseminating, or providing any price list or other document indicating suggested prices for the sale of Coors beer or suggested markups or profits for Coors beer after three years from the effective date of this order. Two years following the effective date of this order respondent may petition the Commission, upon a showing that competition in the resale of its products has been restored, to be permitted to publish, disseminate or provide suggested prices, markups, and profits as set forth in this proviso.

4. Refusing to sell beer to any Coors distributor or terminating or threatening to terminate any Coors distributor because:

A. the distributor has in the past or might in the future sell Coors beer at prices, markups, or profits different from those approved or recommended by respondent;

B. one or more of the distributor's customers sold Coors beer or advertised Coors beer for sale at prices, markups, or profits different from those approved or recommended by respondent;

C. the Coors distributor sold Coors beer to another distributor or to a retailer whose business is located outside of the territory granted to the distributor; or

D. the Coors distributor distributes, has distributed, or proposes to distribute in the future the product of another brewer.

5. Entering into, maintaining or enforcing any contract, agreement, combination, understanding or course of conduct to fix, establish, limit or restrict the territory in which or the persons to whom a distributor may sell Coors beer.

Provided, however, That nothing contained in this paragraph of the order shall prohibit respondent from complying with the requirements of any state law, *Provided,* That when respondent purports to be complying with a state law requiring the restriction of territories or customers, respondent will specifically advise the Commission of the statute and all court decisions and administrative agency decisions and rulings interpreting said statute pursuant to which it is purporting to act.

6. Allocating Coors beer among its distributors in times of beer shortage at the Coors brewery, by any means other than by allocating shares to distributors equal to their proportionate purchases of Coors beer from the brewery during the last three months before the allocation or when the distributor has not been in business for more than a year as a Coors distributor, on some other equitable basis.

7. Refusing to deliver all of a distributor's order because the distributor has made sales to customers outside of the territory granted the distributor or because the distributor or the distributor's customer is selling Coors beer at prices, markups or profits lower than those approved by respondent.

8. Prohibiting its distributors from selling from central warehouse delivery; *Provided, however,* That respondent can establish refrigeration standards for the central warehouse which are substantially similar to those established for distributors and can require its distributors to be responsible, directly or indirectly, for maintenance of such refrigeration standards and for rotation of Coors beer in the central warehouse and at the retail delivery locations where the beer is redelivered from the central warehouse, if respondent changes its container dating system so that the retailer and the consumer will recognize the date without reference to a code or measuring stick.

9. Entering into, maintaining or enforcing any contract, agreement, combination, understanding or course of conduct with its distributors which has as its purpose or effect requiring that retailers serve Coors draught beer as their only light-colored draught beer.

10. Entering into, maintaining or enforcing any contract, agreement or understanding, or taking any action or course of conduct with any of its distributors which has as its purpose or effect the requirement that the distributor eliminate, or refrain from obtaining and handling rival brands of beer in order to become or remain a Coors distributor.

11. Hindering, suppressing or eliminating competition or attempt-

Order

85 F.T.C.

ing to hinder, suppress or eliminate competition between or among distributors or between or among retailers handling Coors beer.

It is further ordered, That respondent corporation shall forthwith distribute of copy of this order to each of its operating divisions, to its present and future sales representatives, to its present and future distributors.

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

In the event that respondent proposes a change in the corporate respondent, as set forth above, respondent shall require said successor or transferee to file, with the Commission, at the time of respondent's notification, a written agreement to be bound by the terms of this order; *Provided,* That if respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, respondent shall submit to the Commission a written statement setting forth said reasons at least sixty (60) days prior to the consummation of said succession or transfer.

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

Commissioner Thompson did not participate.

IN THE MATTER OF

SIR CARPET, INC., ET AL.

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

Docket 8981. Complaint, July 8, 1974 - Decision, Feb. 6, 1975

Order requiring a Takoma Park, Md., carpet retailer and installer, among other things to cease using bait and switch tactics and other deceptive sales practices.

Appearances

For the Commission: *Everette E. Thomas, Alice C. Kelleher and Gary M. Laden.*