complied with this order, submit to the Commission a detailed written report of its actions, plans and progress in complying with the provisions of Part IV of this order.

VIII

It is further ordered, That all charges respecting respondent L. G. Balfour be, and they hereby are, dismissed.

It is further ordered, That the Commission's decision is hereby modified by striking therefrom the Commission's findings that respondents misrepresented the extent of fraternities' trademark protection and the Commission's findings relating to the manner or motive of Balfour's acquisition of Burr, Patterson and Auld Company and Edwards Haldeman.

IN THE MATTER OF

UNIVERSE CHEMICALS, INC., ET AL.

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

Docket 8752. Complaint, Dec. 5, 1967—Decision, Sept. 23, 1971*

Order adopting the initial decision of the hearing examiner which found respondent Jordan L. Lichtenstein, an officer of Universe Chemicals, Inc., a Chicago paint company, to be subject to the order to cease using misrepresentations to sell its products and recruit dealers.

FINAL ORDER

This matter having been heard by the Commission upon respondent Jordan L. Lichtenstein's appeal from the Initial Decision,[1] and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having concluded on this record and the facts and circumstances set forth therein, and for the reasons expressed in the accompanying opinion, that the initial decision and order issued by the examiner should be adopted as the decision and order of the Commission;

It is ordered, That the Initial Decision and the order contained therein be, and they hereby are, adopted as the decision and order of the Commission.

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*Reported in 77 F.T.C. 598 as amended by Hearing Examiner's order of July 10, 1968.

[1] *See* 77 F.T.C. 598.

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

Opinion of the Commission

SEPTEMBER 23, 1971

By Jones, *Commissioner:*

On December 5, 1967, the Commission filed a complaint against Universe Chemicals, a corporation, and Raymond L. Rosen and Jordan L. Lichtenstein, as individuals and officers of said corporation, charging violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1964), in the marketing of water repellent paints and coatings.[1]

The complaint, as amended by July 10, 1968,[2] charged that respondents, in the course of their business, made numerous misrepresentations concerning the nature of their products and the benefits to be derived from their dealerships. More specifically, the complaint charged respondents with misrepresenting that the corporate respondent was affiliated with the Union Carbide Company and that their products were manufactured and tested by the Union Carbide Company (Compl. paras. 6(1)–(3), 7(1)–(3)). The complaint also charged that respondents misrepresented to prospective dealers the speed with which they could expect to sell respondents' products, their right to return unsold products, and the expected profits to be earned through their dealerships (Compl. paras. 6(6)–(8), 7(6)–(8)). Further, the complaint charged that the respondents falsely represented their guarantees and the contents and qualities of their products (Compl. paras. 6(4), (5), (9)–(12); 7(4), (5), (9)–(12)).

An Initial Decision by Hearing Examiner Moore holding against the respondents was appealed to the Commission on the grounds that the hearing examiner had denied respondents due process of law by

[1] The following abbreviations will be used for citations: Transcript of proceedings, "Tr."; complaint counsel's exhibits, "CX"; and Examiner's Initial Decision, "ID". Briefs of either the respondent (Res.) or complaint counsel (C.C.) will be cited as follows: Brief on appeal, "App. Br."; answering brief, "Ans. Br."; and reply brief, "Rep. Br.".

[2] The hearing examiner amended the complaint during the proceedings in the first trial to expand the alleged misrepresentations concerning the qualities of respondents' products. [The complaint as amended is reported in 77 F.T.C. 598.]

[3] The Commission remanded the case because of its conclusion that the hearing examiner's decision to schedule hearings at four different locations violated Section 3.41(b) of the Commission's Rules of Practice. The Commission directed that hearings in the second trial be held at a single location determined with regard to the convenience of the parties.

directing that hearings should be held in more than one city. After argument, the Commission agreed and remanded the case for a trial *de novo*.[3]

Thereafter, Hearing Examiner Bennett was designated to conduct the second trial which proceeded to hearing in August 1969. In his Initial Decision [77 F.T.C. 598], Examiner Bennett found that respondents had engaged in all the false and deceptive practices charged in the complaint and he also entered a proposed order requiring them to cease and desist from these practices. Counsel for respondents filed a notice of intention to appeal from the examiner's decision but later withdrew it on the grounds that the corporate respondent had made an assignment for the benefit of creditors and would no longer continue in business.[4]

The order has become final as respects the corporate respondent and one of the individual respondents, Raymond L. Rosen. Respondent Jordan L. Lichtenstein, however, notified the Commission that he wished to appeal from the Initial Decision but was financially unable to retain counsel.[5]

Pursuant to its decision in *American Chinchilla Corp.*, FTC Docket No. 8774 (Dec. 23, 1969) [76 F.T.C. 1016], and its Policy Statement of December 15, 1970,[6] the Commission assigned a hearing examiner to make findings on Mr. Lichtenstein's financial status. On the basis of an affidavit filed by Mr. Lichtenstein concerning his financial resources,[7] the hearing examiner found that he lacked sufficient funds to retain counsel to prosecute his appeal to the Commission. By order dated December 8, 1970, the Commission granted Mr. Lichtenstein leave to proceed *in forma pauperis* and referred the matter to the Committee on the Federal Trade Commission of the Antitrust Section of the American Bar Association for the designation of counsel to represent Mr. Lichtenstein.[8] Thereafter, Mr. Lee N. Abrams served as counsel for Mr. Lichtenstein in perfecting his appeal of this case.

On the appeal which is now before us, respondent Lichtenstein does not challenge the hearing examiner's specific and detailed findings of

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[4] Letter from Franklin M. Lazarus to the Secretary of the Federal Trade Commission, April 4, 1970.

[5] From the time an answer to the complaint was filed on January 10, 1968, until this point in the proceedings, all of the respondents had been represented by Attorney Franklin M. Lazarus.

[6] The procedures for assessing indigency claims are set forth in the Commission's Statement of Policy: Respondents Unable to Afford Counsel, 35 Fed. Reg. 18998 (Dec. 15, 1970).

[7] In his affidavit dated November 3, 1970, Mr. Lichtenstein indicated *inter alia* that he was unemployed, had no assets, and was "taking bankruptcy."

[8] Following the *American Chinchilla* decision, the Antitrust Section of the American Bar Association created a panel of lawyers willing and able to represent respondents who were found by a hearing examiner to be unable to afford counsel.

fact and of law or any aspect of the cease and desist order. His sole claim of error is that the Commission denied him (as well as the other two respondents) due process of law by proceeding against him without taking any action against his competitor and former employer, Hydralum Industries, Inc., despite the fact that the marketing practices which the examiner found to be in violation of Section 5 of the Federal Trade Commission Act had been substantially copied from Hydralum (Res. App. Br. at 5).

The record shows that prior to organizing Universe Chemicals, both Lichtenstein and Rosen were employed by Hydralum which sells water repellent paints and coatings (Tr. 22, 32). In February 1965, they organized Universe Chemicals which also engaged in selling water repellent paints and coatings under the trade names, "Kleer-Kote" and "Kolor Kote" (Tr. 9, 121–22). Rosen and Lichtenstein were the stockholders, officers, and directors of the corporate respondent and formulated, directed, and controlled its practices and policies (Res. Ans. Br. 1; Tr. 111; ID 7).

The examiner found that upon leaving the employment of Hydralum, respondents adopted methods of doing business similar to those which had been pursued by Hydralum (Tr. 33, 121, 122, 1101; ID 8, 37). Specially, respondent Lichtenstein testified that they used a similar method of product distribution and similar sales presentations (Tr. 121, 1101). Many of the promotional materials which the examiner found were used in violation of Section 5 of the Federal Trade Commission Act had been copied from those used by Hydralum, including several of Hydralum's brochures, product labels and demonstration materials (Tr. 96–7, 102–103, 1101, 1133, 1146).

Lichtenstein testified that on two occasions during his employment with Hydralum, in 1960 or 1961 and again around 1964, Hydralum was investigated by the Federal Trade Commission.[9] Mr. Lichtenstein gave virtually no testimony as to the events surrounding the first investigation but stated that during the second investigation officials examined and copied "hundreds and hundreds" of documents in Hydralum's flies but that no action was taken by the Commission as a a result of this investigation (Tr. 1102–1104). When asked if one of Hydralum's sales brochures which was later copied by Universe Chemicals was obtained during the FTC investigation, Mr. Lichtenstein replied that he did not know from his personal knowledge but he

[9] Lichtenstein testified that the first FTC investigation occurred about three or three and a half years before the second investigation, and that the latter took place about a year before he left Hydralum to establish Universe Chemicals (Tr. 1103–1104), Thus. the investigations must have occurred in 1960 or 1961, and again in 1963 or 1964.

"assumed" it was (Tr. 1102). He testified that since the Commission did not proceed against Hydralum, he felt he would not be violating the law in copying the brochure (Tr. 1103).

Mr. Lichtenstein also stated that during the Commission's investigation of Universe Chemicals in 1967, a Commission representative told him that the Commission had "a little bit of evidence against Universe Chemicals and a whole room full of evidence against [Hydralum and its affiliates]" (Tr. 1106).

Respondent Lichtenstein now contends on appeal that the Commission should postpone the effective date of the hearing examiner's order until the Commission concludes its investigation of Hydralum's marketing practices which are similar to those found unlawful in the instant case. In support of this contention he argues that the Commission has denied him due process of law in two respects. First, he claims that he reasonably relied upon the Commission's failure to take action against Hydralum as evidence that its marketing practices were lawful, that he was thereby misled into believing that he could legally copy these practices, and that the Commission is, therefore, estopped from proceeding against him. Second, he claims it is unfair to permit his competitor, Hydralum, to continue operating its business in a manner denied to him. We will deal with these contentions seriatim.

ESTOPPEL ARGUMENT

Respondent Lichtenstein's contention that he was misled by the Commission is not borne out by the facts and circumstances upon which he seems to rely.

Mr. Lichtenstein does not contest the examiner's findings that he engaged in a series of misrepresentations and deceptions concerning the origin, contents, qualities and guarantees of his products and the benefits of his dealerships. It is inconceivable that he can now seriously urge that while these statements were false—he makes no claims that they were not—he was of the view that in some way these deceptions had become immunized merely because a prior company for which he had worked had also engaged in some similar false and misleading sales promotions and had not been proceeded against by the Commission.

Certainly the Commission gave him no grounds for believing that those materials he copied from Hydralum were lawful. In his testimony Mr. Lichtenstein stated that he had observed that Hydralum was investigated by the Commission, but he admitted that he did not have firsthand knowledge of which documents or sales materials were

uncovered (Tr. 1102). There was no evidence that the Commission investigators ever informed Mr. Lichtenstein that they approved the materials they discovered. He stated that he merely "assumed" they were lawful, although he further testified that "[o]f course, I didn't have any knowledge of the way the Federal Trade Commission operated." (Tr. 1103.) In short, Mr. Lichtenstein relied upon the Commission's failure to proceed against Hydralum without any knowledge of the reasons for this inaction. Under such circumstances, we cannot find that Mr. Lichtenstein was misled by the Commission.

The courts have frequently held that the principles of estoppel shall not be applied against government agencies in suits to enforce a public right or protect a public interest. *Wallace Corp.* v. *NLRB*, 323 U.S. 248, 253 (1944); *Utah Power and Light Co.* v. *United States*, 243 U.S. 389, 408–09 (1917); *P. Lorillard Co.* v. *FTC*, 186 F. 2d 52, 55 (4th Cir. 1950); *United States* v. *Vulcanized Rubber & Plastics Co.*, 178 F. Supp. 723, 726 (E.D. Pa. 1959), *aff'd* 288 F. 2d 257 (3rd Cir. 1961), *cert. denied*, 368 U.S. 821 (1961). In the instant case, the estoppel defense should similarly be denied Mr. Lichtenstein since to do otherwise would frustrate the aim of the Federal Trade Commission Act to prevent unfair and deceptive practices and would leave him free to engage in such practices to the severe detriment of the public.

CLAIM OF UNFAIRNESS

Respondent Lichtenstein further argues that the Commission has deprived him of due process of law by unfairly preventing him and his corporation from operating a business in a certain manner, while permitting his competitor, Hydralum, to conduct its operations in exactly the same manner.

The courts have held, however, that a litigant has no *right* to be free from prosecution merely because his competitors, who are also alleged to be engaged in the same challenged practices, have not been similarly proceeded against. *See FTC* v. *Universal-Rundle Corp.*, 387 U.S. 244 (1967); *Moog Industries, Inc.* v. *FTC*, 355 U.S. 411 (1958). If the law were otherwise and the Commission were required to proceed similarly against all competitors, "Commission orders would be forever pending and unlawful practices rarely, if ever, corrected." *United Biscuit Co.* v. *FTC*, 350 F. 2d 615, 624 (7th Cir. 1965), *cert. denied*, 383 U.S. 926 (1966).

Thus, the courts have recognized that the Commission must have broad discretion in selecting cases to proceed against so that it may:

> [D]evelop that enforcement policy best calculated to achieve the ends contemplated by Congress and * * * allocate its available funds and personnel

in such a way to execute its policy efficiently and economically. *Moog Industries, Inc.* v. *FTC*, 355 U.S. 411, 413 (1958).

The Commission's discretion in this area is limited, however, to the extent that its selective enforcement of the law cannot be "patently arbitrary and capricious." *FTC* v. *Universal-Rundle Corp.*, 387 U.S. 244, 250 (1967). The record of the instant case, however, is totally devoid of even a suggestion that would indicate or even imply that the Commission acted in an arbitrary or capricious manner in bringing the instant case. There is no evidence that the Commission singled out Mr. Lichtenstein for prosecution to the exclusion of others in the water repellent paint business. In fact, the opposite is true. Complaint counsel indicates that the Commission has been investigating and proceeding against a number of respondents' competitors, and several of them are now under cease and desist orders.[10] Thus, we find no reason to conclude that the Commission has been unfair or arbitrary in also proceeding against Universe Chemicals and respondent Lichtenstein.

We note that unlike the typical case in which a respondent seeks to stay prosecution on the grounds that he will suffer financial loss if he is prohibited from practices open to his competitors, Mr. Lichtenstein will incur no financial hardship if the cease and desist order against him takes immediate effect. Factually, the immediate entry of the order will not place him at a competitive disadvantage, since he states that he does not intend to establish a similar company in the water repellent paint business. It is difficult to see how the effectiveness of the order can in any way affect his ability to obtain and hold a job.

Finally, we point out that even if respondent succeeded in demonstrating that he would suffer substantial injury through the enforcement of this order, the Commission would not be required to withhold its enforcement of the order. *FTC* v. *Universal-Rundle Corp.*, 387 U.S. 244, 251 (1967). Our overriding concern must be to protect the public from illegal practices which we have found to exist, and in this case, the only means to assuring that the public will be adequately protected is to immediately put into effect the cease and desist order.

Accordingly, we deny respondent Lichtenstein's claim that the effective date of the cease and desist order against him should be postponed and adopt the hearing examiner's Initial Decision and the order contained therein.

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[10] The following companies, which were alluded to during Mr. Lichtenstein's testimony (Tr. 117, 1104–05), are under Commission orders: *Thermochemical Products, Inc.*, Docket No. 8725 (July 25, 1969) [76 F.T.C. 107]; *Wilmington Chemical Corp.*, Docket No. 8648 (June 17, 1966) [69 F.T.C. 828]; and *Excel Chemical Corp.*, Docket No. C–1432 (Sept. 30, 1968) [74 F.T.C. 880].

IN THE MATTER OF

NATHAN DIAMOND TRADING AS EMPIRE FURNITURE STORES, ETC.

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

Docket C-2052, Complaint, Sept. 24, 1971—Decision, Sept. 24, 1971

Consent order requiring a Los Angeles, Calif., individual trading as a seller and distributor of furniture to cease violating the Truth in Lending Act by failing to use the terms "cash price," "cash downpayment," "amount financed," "finance charge," "annual percentage rate," and other terms required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the 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 Nathan Diamond, individually, and trading as Empire Furniture Stores or Nat Diamond's Empire Furniture Stores, hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Nathan Diamond is an individual trading as Empire Furniture Stores or Nat Diamond's Empire Furniture Stores at two locations in Los Angeles, California, 4431 West Adams Boulevard and 4525 South Central Avenue.

PAR. 2. Respondent is now and for many years has been engaged in the offering for sale, sale, and distribution of furniture and other merchandise to the public through retail stores.

PAR. 3. In the ordinary course and conduct of his business, respondent regularly extends, and for sometime has 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, respondent, in the ordinary course and conduct of his business and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused and is causing his customers to execute retail installment conditional sales contracts. Respondent has made no other written disclosures in order

to comply with the Truth in Lending Act. By and through the use of these contracts, respondent:

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

2. Fails to use the term "cash price" to describe the cash price of the goods sold by him, as prescribed by Section 226.8(c)(1) of Regulation Z.

3. Fails to use the term "cash down payment" to describe any downpayment in money, as prescribed by Section 226.8(c)(2) of Regulation Z.

4. Fails to use the term "amount financed" to describe the amount financed, as prescribed by Section 226.8(c)(7) of Regulation Z.

5. Fails to use the term "finance charge" to describe the finance charge, as prescribed by Section 226.8(c)(8)(i) of Regulation Z.

6. Fails to print "finance charge" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

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

8. Fails to use the term "total of payments" to describe the sum of the payments, as prescribed by Section 226.8(b)(3) of Regulation Z.

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

10. Fails to print "annual percentage rate" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

11. Fails to make the disclosures required by Sections 226.8(b)(4) and 226.8(b)(5), as prescribed by Sections 226.8(a) and 226.801 of Regulation Z.

PAR. 5. By and through the acts and practices set forth above, respondent failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondent has 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 Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Truth in Lending Act and the regulation promulgated thereunder; and

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

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

1. Respondent Nat Diamond is an individual and sole proprietor of Empire Furniture Stores, also known as Nat Diamond's Empire Furniture Stores. He owns and operates two furniture stores. His office and main place of business is located at 4431 West Adams Boulevard, Los Angeles, California. The other store is located at 4525 South Central Avenue, Los Angeles, California.

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 Nathan Diamond, individually, and trading as Empire Furniture Stores or Nat Diamond's Empire Furniture Stores, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer

credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

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

2. Failing to use the term "cash price" to describe the cash price of the goods sold by him, as prescribed by Section 226.8(c)(1) of Regulation Z.

3. Failing to use the term "cash down payment" to describe any downpayment in money, as prescribed by Section 226.8(c)(2) of Regulation Z.

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

5. Failing to use the term "finance charge" to describe the finance charge, as prescribed by Section 226.8(c)(8)(i) of Regulation Z.

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

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

8. Failing to use the term "total of payments" to describe the sum of the payments, as prescribed in Section 226.8(b)(3) of Regulation Z.

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

10. Failing to print "annual percentage rate" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

11. Failing to make all the required disclosures in one of the following three ways, in accordance with Section 226.8(a) or 226.801 of Regulation Z:

(a) Together on the contract evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or

(b) on one side of a separate statement which identifies the transaction; or

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(c) on both sides of a single document containing on each side thereof the statement "Notice: See other side for important information," with the place for the customer's signature following the full content of the document.

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

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

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

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

IN THE MATTER OF

GERMAN AUTO AGENCY, ET AL.

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

Docket C-2053. Complaint, Sept. 28, 1971—Decision, Sept. 28, 1971

Consent order requiring an Arlington, Va., firm which sells, services and repairs used Volkswagen automobiles to cease misrepresenting that they are franchised Volkswagen dealers, that they sell new cars, failing to disclose that their cars are used, failing to reveal that the odometers have been altered and failing to disclose that their warranties are not the same as those of authorized Volkswagen dealers. Respondents are also required to make all the disclosures required by Regulation Z of the Truth in Lending Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of 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 German Auto Agency, a corporation, and George Sprague, individually and as an officer of said corporation, and Ray Culbertson, individually, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent German Auto Agency is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 3000 North 10th Street, in the County of Arlington, Commonwealth of Virginia.

Respondent George Sprague is an individual and officer of corporate respondent and respondent Ray Culbertson is an individual. The said individual respondents cooperate and act together to formulate, direct and control the acts and practices thereof including the acts and practices hereinafter set forth. Respondent George Sprague's address is 5443 85th Avenue, Lanham, Maryland. Respondent Ray Culbertson's address is 6010 Softwood Trail, McLean, Virginia.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution, and service and repair of used Volkswagen automobiles, and other used automobiles, to the public.

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, said automobiles to be sold to purchasers thereof located in the District of Columbia and in Maryland and in Virginia and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said automobiles 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 used Volkswagen auto-

mobiles, respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers transmitted through the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Typical and illustrative of such advertising representations but not all-inclusive thereof is the following:

(Located on either side,
'69 of a silhouette of '70
a Volkswagen)
$95 down
$58 mo. 36 mos.
$2207 deferred payment price
15.09 annual percentage rate
100% warranty
$1,695 up

Finance Manager on duty 9 A.M. 'til 9 P.M.
All Federal Taxes Included

German Auto Agency
3000 10th Street, N. Arlington, Va.
522-3444
'Til 9 P.M.

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 their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. The respondents are an authorized Volkswagen dealer, franchised by the manufacturer to sell Volkswagen automobiles.

2. The respondents have in stock and sell new and unused Volkswagen automobiles to the public.

PAR. 6. In truth and in fact:

1. The respondents are not an authorized Volkswagen dealer and are not franchised by the manufacturer to sell Volkswagen automobiles.

2. The respondents do not have in stock and do not sell new and unused Volkswagen automobiles to the public.

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