

Complaint

IN THE MATTER OF

DERBY CONSTRUCTION INC., ET AL.

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

Docket C-2316. Complaint, Nov. 13, 1972—Decision, Nov. 13, 1972

Consent order requiring a Providence, Rhode Island, real estate company, 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

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation 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 Derby Construction Inc., a corporation, and Howard A. Brynes, 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 Derby Construction Inc., 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 1359A Broad Street, Providence, Rhode Island.

Respondent Howard A. Brynes is an officer of the corporation. 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 in the past have been engaged in the advertising, offering for sale, and sale of real estate to the public.

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

PAR. 4. Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business as aforesaid and in connection with

their extension of consumer credit to customers who have purchased real estate from respondents, have caused and are causing customers to execute promissory notes hereinafter referred to as the "Promissory Note" secured by a second mortgage on real estate used or expected to be used on their principal residence. Prior to this extension of credit by respondents to customers who purchase the real estate, such customers enter into a first mortgage transaction involving the real estate with another third party creditor.

Respondents provide customers with no consumer credit cost disclosures other than on the promissory note. By and through the use of the promissory note, respondents:

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

2. Fail 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.

3. Fail to use the term "annual percentage rate" to describe the annual percentage rate of finance charge determined in accordance with Section 226.5 as required by Section 226.8(b)(2) of Regulation Z.

4. Fail to disclose the number of payments scheduled to repay the indebtedness and fail, in some instances, to identify the payments which are more than twice the amount of an otherwise regularly scheduled equal payment by the term "balloon payment" as required by Section 226.8(b)(3) of Regulation Z.

5. Fail to describe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit and a clear identification of the property to which the security interest relates as required by Section 226.8(b)(5) of Regulation Z.

6. Fail to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8(d)(1) of Regulation Z.

7. Fail to disclose the "finance charge" as required by Section 226.8(d)(3) of Regulation Z.

PAR. 5. By and through the use of respondents' promissory note in the ordinary course and conduct of their business as aforesaid, a security interest, as "Security Interest" is defined in Section 226.2(z) of Regulation Z is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the respondents' customers. Pursuant to Section 226.9(a) of Regulation Z, the customer therefore has the right to rescind such credit trans-

action. Having retained or acquired such a security interest, respondents:

1. Fail to provide each customer who is an owner of such property with two copies of a notice of their right to rescind, in the form and manner prescribed in Sections 226.9(b) and 226.9(f) of Regulation Z and in some instances fail to provide each customer with any copies of such notice.

PAR. 6. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements offering real property for sale, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist, directly or indirectly, the aforesaid extensions of consumer credit which respondents provide to their customers. By and through the use of the advertisements, respondents state that no down payment is necessary in connection with their extension of consumer credit, without disclosing, in the terminology prescribed by Section 226.8 of Regulation Z, the following additional items required by 226.10(d)(2) of Regulation Z:

1. The cash price or the amount of the loan as applicable;
2. The number, amount, and due dates or period of repayment scheduled to pay the indebtedness if the credit is extended;
3. The amount of the finance charge expressed as an annual percentage rate;
4. The sum of the payments.

PAR. 7. 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 hereby 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 regional office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by

respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

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

1. Respondent Derby Construction, Inc., 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 office and principal place of business located at 1359A Broad Street, Providence, Rhode Island.

Respondent Howard A. Brynes 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 Derby Construction, Inc., a corporation, its successors and assigns, and its officers, and Howard A. Brynes, 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 any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to furnish the customer with a duplicate of the instrument containing the disclosures required by Section 226.8 or a statement by which the required disclosures are made at the time those disclosures are made as required by Section 226.8 (a) of Regulation Z.
2. 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.

3. Failing to use the term "Annual Percentage Rate" to describe the annual percentage rate of finance charge determined in accordance with Section 226.5 and required by Section 226.8(b) (2) of Regulation Z.

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

5. Failing to describe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and failing to clearly identify the property to which the security interest relates as required by Section 226.8 (b) (5) of Regulation Z.

6. Failing to use the term "Amount Financed" to describe the amount of credit extended as required by Section 226.8 (d) (1) of Regulation Z.

7. Failing to disclose the "Finance Charge" as required by Section 226.8 (d) (3) of Regulation Z.

8. Failing in any transaction in which respondents retain or acquire a security interest in real property which is used or is expected to be used as the principal residence of the customer to comply with all requirements regarding the right of rescission set forth in Section 226.9 of Regulation Z.

9. Representing, directly or by implication, in any advertisement, the amount of the down payment required or that no down payment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or periods of repayment, or that there is no charge for credit, unless all of the following items are stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10 of Regulation Z.

- (i) The cash price or the amount of the loan as applicable
- (ii) The amount of the down payment required or that no down payment is required, as applicable
- (iii) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if credit is extended
- (iv) The amount of the finance charge expressed as an annual percentage rate
- (v) The sum of the payments

10. Failing in any consumer credit transaction or advertisements 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, 226.10 of Regulation Z.

11. Failing within sixty (60) days after service of this order, to deliver notice of the right to rescind, in the number, manner and form set forth in Section 226.9 (b) of Regulation Z, to each customer who purchased property from respondents on or after July 1, 1969 and has not received such notice, in any credit transaction in which the respondents through a consumer credit agreement have retained or acquired or will retain or acquire a security interest in real property which is used or expected to be used as a customer's principal place of residence.

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

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

It is further ordered, That the 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 which may affect compliance obligations arising out of this order. Such notice shall include respondent's address or business and a statement as to the nature of the employment in which he is engaged as well as a description of his duties and responsibilities.

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

Complaint

IN THE MATTER OF

UNIVERSAL FIGURE FORM OF YOUNGSTOWN,
INCORPORATED, ET AL.

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

Docket C-2317. Complaint, Nov. 15, 1972—Decision, Nov. 15, 1972

Consent order requiring a Youngstown, Ohio, health club, among other things to cease misrepresenting time limits on offers of membership; representing prices as constituting a reduction or savings unless it is substantial; misrepresenting the benefits derived from membership; using "before and after" photographs deceptively, and failing to inform customers of their right to cancel within three business days.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Universal Figure Form of Youngstown, Inc., a corporation, and Jerome B. Kahn, George W. Jaconetti, and Donald W. Hudson, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Universal Figure Form of Youngstown, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 5922 Market Street, in the city of Youngstown, State of Ohio.

Respondent Jerome B. Kahn is an individual and an 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 address is G-3371 South Saginaw Street, Flint, Michigan.

Respondent George W. Jaconetti is an individual and an 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 address is G-3371 South Saginaw Street, Flint, Michigan.

Complaint

81 F.T.C.

Respondent Donald W. Hudson is an individual and an 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 address is G-3371 South Saginaw Street, Flint, Michigan.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the operation of physical fitness and/or health clubs, and in the advertising, offering for sale, and sale of memberships and related services to the public in said physical fitness and/or health clubs.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for sometime last past have caused, memberships in their health clubs to be advertised and sold to purchasers thereof located in the various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said memberships and related services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, many times in the ordinary course of their business, negotiate to third parties installment sales contracts or other instruments of indebtedness executed in connection with credit purchases.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of health club memberships, respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general circulation and other promotional material with respect to the price of said memberships and the benefits and facilities available for those who become members.

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

A Glorious New You! In Just 12 weeks lose or gain up to 20 lbs. in 20 visits

* * * * *

LAST WEEK

Before Rate Increase

Men—Women—

Enroll Now

* * * * *

785

Complaint

Enroll Now—\$10
Announcing the Spa's
Annual Spring Size Smaller
Sale—

10 Consecutive Visits \$10 Total Cost

* * * * *

WAIST

Lose 2 Inches

* * * * *

No Other Figure Control Salon Can Offer You These Fabulous Holiday Extras! Near Olympic Size Indoor Grecian Swimming Pools. Hot Hydro Swirlpools for the Ultimate in Relaxation. Huge Sauna and Adjoining Steam Rooms Completely Equipped, Modern Exercise Rooms. Beauty Sun Ray Booths to Give You a Palm Springs Tan.

* * * * *

Facilities For Men And Women

* * * * *

From "Matronly" to Glamorous * * * in 3 Months! Carol Kahn, 26-Year-Old Mother, Achieved these Changes in Her Measurements.

<i>Before</i>		<i>After</i>
34''	----- BUST -----	36''
27''	----- WAIST -----	23''
38''	----- HIPS -----	35''

Special courses for new mothers are designed and regulated to restore firm body tissues & help you to regain your youthful figure!

(These statements are accompanied by a picture showing Carol Kahn before and after changes in her measurements.)

* * * * *

In the course and conduct of their business, respondents instruct their salesmen, agents and other representatives to utilize various sales methods and statements in order to sell health club memberships to prospective purchasers. Typical and illustrative of such methods and statements, but not all inclusive thereof, are the following:

This is the time in the Interview Sheet you explain the Pending Event (the reason we are running our discount on memberships, the reason he has to MAKE A DECISION TO BUY TODAY). HIT STRONG HERE. TELL HIM YOU HAVE ONLY A FEW CARDS LEFT AND IF HE DOESN'T GET STARTED NOW HIS CHANCES OF GETTING THIS FANTASTIC VALUE ARE VERY SMALL.

* * * * *

Do not mention what days men or women are here until AFTER THE SALE HAS BEEN MADE.

* * * * *

Use the term "PAYMENT AGREEMENT" instead of "contract."

* * * * *

PAR. 6. By and through the use of said advertisements, and others of similar import and meaning, but not expressly set out herein, and by oral statements and representations made by salesmen, agents, and representatives, respondents have represented, and are now representing, directly or by implication, that:

1. There are a limited number of memberships for sale at "special" or reduced prices for a limited period of time.

2. Prospective purchasers may purchase a membership for \$10 per 10 visits or \$20 per 20 visits.

3. In 60 to 90 days, or some similarly short period of time, members are likely to achieve a substantial reduction in body size or weight.

4. The results which are depicted in "before and after" photographs contained in advertisements, and employed as part of the oral sales presentation, will be achieved by any person participating in respondents' program.

5. Respondents' program will slenderize, beautify, and proportion peoples' figures without these people having to diet.

6. Respondents' facilities are open to both men and women every day of the week.

7. All advertised facilities are available at respondents' health clubs.

8. Respondents do not fail to discuss all the provisions of their membership agreement with prospective purchasers and also do not fail to inform prospective purchasers whether a third party will purchase their membership agreement.

PAR. 7. In truth and in fact:

1. There is no limit on the number of memberships available at respondents' facilities. Moreover, the prices at which memberships and services are sold are not special prices nor are they available for only a limited period of time. They are the usual and customary prices charged for health club memberships and have been substantially the same for an extended period of time.

2. Few, if any, prospective members are able to purchase a membership in respondents' health clubs at the low price of \$10 per 10 visits or at any other such low price.

3. Few, if any, members are likely to achieve a specified reduction in body size or in weight in a stated period of time.

4. The results depicted in "before and after" photographs contained in advertising and employed as part of the sales presentation will not be achieved by every person participating in respondents' health club programs.

5. Respondents' exercise programs will not slenderize, beautify and proportion peoples' figures unless these people adhere to a diet.

6. Respondents' health clubs are not open to all patrons every day of the week. On the contrary, there are separate days specifically set aside for which men or women may not use the facilities of the clubs.

7. All advertised facilities are not available at respondents' health clubs.

8. Respondents fail to discuss with prospective members all of the terms of the membership agreement. Moreover, the respondents also fail to mention that the membership agreement is often sold to a third party.

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

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition in commerce with corporations, firms, and individuals in the sale of memberships and related services in their physical and/or health clubs, said memberships and services being of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the unfair, false, misleading, and deceptive statements, representations, and practices, 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, representations, and advertisements are true and complete, and into the purchase of memberships in respondents' health clubs and/or physical fitness facilities 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, respondents' attorney, 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Universal Figure Form of Youngstown, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 5922 Market Street, Youngstown, Ohio.

Respondents Jerome B. Kahn, George W. Jaconetti, and Donald W. Hudson are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is G-3371 South Saginaw Street, Flint, Michigan.

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 Universal Figure Form of Youngstown, Inc., a corporation, its successors and assigns, and its officers, and Jerome B. Kahn, George W. Jaconetti, and Donald W. Hudson, individually and as officers of said corporation, and respondents' agents, representatives, salesmen, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, and sale of health club memberships, or other related services, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I. Representing, directly or by implication:

A. That fewer health club memberships or related services are available for sale for a limited time or in a limited number than are, in fact, available.

Decision and Order

B. That any price is a special price or constitutes a savings or reduction from the regular price unless:

1. Respondents maintain records with respect to each sale at a special price or at a savings or reduction from the regular price indicating:

- a. The name and address of each customer.
- b. The type of health club membership or related service sold to each customer.
- c. The price charged for each such sale.
- d. The terms and conditions of each such sale of the health club membership or related service.

2. Such price at which the health club membership or related service is offered constitutes a reduction from the price at which said membership is usually and customarily sold at retail by respondents in the recent course of business.

C. That membership in respondents' health club programs and/or use of respondents' health club facilities automatically means that every person will alter his body size or configuration or will lose weight.

D. That purchasers of memberships in respondents' health club facilities will lose weight as a result of using the facilities of respondents' health clubs without regulating caloric intake.

E. That any advertised facilities are available, unless such facilities are, in fact, available and generally in working condition and, regardless of the patron's sex, are available for use. If respondents' facilities are not available to all members at all hours, such fact must be clearly and conspicuously disclosed in all of the respondents' advertisements of such facilities. Such disclosure shall appear in a type larger than the size used to set out the facilities. If respondents' facilities are not available to all members at all hours, this fact must be affirmatively disclosed to patrons before any contractual agreement for use of the facilities is made between the patrons and the respondents.

II. Use of "before and after" or comparison photographs indicating any changes or body configuration, unless:

A. The person so depicted has attended respondents' health clubs and the results depicted were achieved through participation in respondents' health club programs; or

