judge failed to require certain showings is belied by the pleadings submitted by complaint counsel and the judge's orders. These documents indicate that he has given ample consideration to respondents' objections and that he has not abused his discretion in rejecting them or in refusing to make a determination under Section 3.23 (b). Accordingly,

It is ordered, That the aforesaid applications for review, along with the requests for oral argument, be, and they hereby are, denied.

IN THE MATTER OF

BRITISH OXYGEN COMPANY, LIMITED, ET AL.

Docket 8955. Interlocutory Order, May 29, 1974

Order placing on Commission's docket for review and upholding the administrative law judge's order of April 23, 1974, which grants four respondents' motion for production of certain documents obtained in Commission investigation of industrial gas industry; and directing administrative law judge to accord confidential treatment to sensitive portions of documents in question as set out in Commission's order.

Appearances

For the Commission: *K. Keith Thurman.*

For the respondents: *Paul, Weiss, Rifkind, Wharton & Garrison,* New York, N.Y.

ORDER GRANTING APPLICATIONS FOR REVIEW

By order dated April 23, 1974, the administrative law judge granted a motion by respondents, British Oxygen Company, Limited, BOC Financial Corporation, BOC Holdings, Limited, and British Oxygen Investments, Limited (hereinafter BOC), for production, pursuant to Section 3.36 of the Commission's Rules of Practice, of certain documents obtained in a Commission investigation of the industrial gas industry. Pursuant to Section 3.23 (a) (1) of the rules, complaint counsel request that the Commission review this order on the grounds that BOC failed to make certain showings required by Section 3.36. Review is also sought by five companies who voluntarily submitted documents in connection with said investigation, and who are not parties to this matter but are participating with the permission of the administrative law judge.

The rulings of an administrative law judge on issues of this kind are entitled to great weight and will be reviewed only upon a showing that he has abused his discretion. *Warner Lambert Co.*, Dkt. 8891 (September 18, 1973) [p.485 herein]. We find no such abuse of discretion in the law judge's ruling on the instant motion to produce and it will be affirmed. We are concerned, however, that the maximum protection

consistent with a just determination of the issues be afforded to the more sensitive portions of the material in question and will accordingly direct that the law judge accord sensitive information the so-called "Mississippi River" type treatment, *i.e.*, submittal to an independent accounting firm for analysis and aggregation so as to avoid the disclosure of individual firm data of great competitive sensitivity. Accordingly,

It is ordered, That the order of the administrative law judge, dated April 23, 1974, be, and it hereby is, placed on the Commission's docket for review;

It is further ordered, That the administrative law judge's order of April 23, 1974, be, and it hereby is, upheld;

It is further ordered, That the administrative law judge accord the above-described confidential treatment to the sensitive portions of the documents whose production is required by his order of April 23, 1974.

IN THE MATTER OF

EXXON CORPORATION, ET AL.

Docket 8934. Interlocutory Order, June 4, 1974

Order denying respondents' motions for reconsideration of Commission's prior denial of respondents' motions to dismiss complaint.

Appearances

For the Commission: *Robert E. Liedquist.*

For the respondents: *William Simon,* Wash., D.C., *J. Wallace Adair,* Wash., D.C., *William Weitzel,* New York, N.Y. *Jesse P. Luton,* Houston, Texas, *John H. Chiles,* Houston, Texas, *Wickes, Riddell, Bloomer, Jacobi & McGuire,* New York, N.Y., *Oliver L. Stone,* Houston, Texas, *Frank R. O'Hara,* Pittsburgh, Pa., *Benjamin T. Richards,* New York N.Y., *Kaye, Scholer, Fierman, Hays & Handler,* New York N.Y.

ORDER DENYING RECONSIDERATION

By order dated February 1, 1974, the administrative law judge properly certified to the Commission certain oral and written motions to dismiss the complaint in this matter on the grounds that (1) the Commission lacked reason to believe respondents had violated the law at the time it issued the complaint and (2) the proceeding is not in the public interest. The Commission denied these motions by order of February 12, 1974, and respondents now urge reconsideration on those same grounds and, in addition, on an alleged denial of due process and the fact that complaint counsel are pursuing additional post-complaint investiga-

tion. Complaint counsel urge the Commission to grant the request for reconsideration and clarify its policy in the area of post-complaint investigations.

Respondents' argument that Congressional interest rather than the public interest prompted the issuance of this complaint is misplaced. None of the communications received by this agency from any member of Congress is even remotely of the character deemed improper by the courts. *Pillsbury* v. *FTC*, 354 F. 2d 952 (5th Cir. 1966); *D.C. Federation of Civic Associations* v. *Volpe*, 459 F. 2d 1231 (D.C. Cir. 1971). And it has long been settled that the adequacy of the Commission's "reason to believe" a violation of law has occurred and its belief that a proceeding to stop it would be in the "public interest" are matters that go to the mental processes of the Commissioners and will not be reviewed by the courts. Once the Commission has resolved these questions and issued a complaint, the issue to be litigated is not the adequacy of the Commission's pre-complaint information or the diligence of its study of the material in question but whether the alleged violation has in fact occurred. That is the posture of the instant matter.

Nor is there any merit in respondents' argument on the issue of post-complaint investigation. As we have said many times before and reiterated most recently in *Food Fair Stores, Inc.*, Docket 8935, Order of April 23, 1974 [p. 1578 herein], the division of the Commission's total investigative effort between the pre-complaint and post-complaint stages is entirely a housekeeping matter between the Commission and its staff, not one that can be used to challenge a post-complaint subpoena or the sufficiency of the Commission's pre-complaint investigation and hence of its "reason to believe" a violation has occurred. Post-complaint discovery by complaint counsel is entirely proper and the sole limits on its proper scope are the requirements of due process that govern in any judicial proceeding, *e.g.*, definiteness of the demand, relevance of the data sought to the issues raised in the pleadings, etc. *United States* v. *Morton Salt Co.*, 338 U.S. 632, 641 (1950). Nothing in the papers before us suggest that complaint counsel in this proceeding have exceeded these bounds in their discovery efforts.

The Commission finds no grounds here for reconsidering its prior denial of respondents' motions to dismiss the complaint in this matter. Accordingly,

It is ordered, That respondents' motions for reconsideration be, and they hereby are, denied.

Commissioner Nye did not participate.

IN THE MATTER OF

BEAUTY-STYLE MODERNIZERS, INC., ET AL.

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

Docket 8898. Complaint, Sept. 18, 1972 — Decision, June 11, 1974

Order requiring a Newark, N.J., seller of home improvement materials, supplies and installation services, 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: *James Manos.*

For the respondents: *Martin Gelber*, Newark, N.J.

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 Beauty-Style Modernizers, Inc., a corporation, and Morris Jakel and Saul Jakel, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and regulations, 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 Beauty-Style Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 432 Central Avenue, Newark, N.J.

Respondents Morris Jakel and Saul Jakel are the president and general manager respectively, of said corporation. They formulate, direct and control the consumer credit policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 sale of home improvement materials, supplies and installation services to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer

credit" are 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, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing their customers to enter into contracts for the sale of respondents' goods and services. On these contracts, hereinafter referred to as "the contract," respondents provide certain consumer credit cost information. Respondents provide these customers with no evidence of or information concerning the credit transaction, other than on the contract and the right of rescission form.

PAR. 5. By and through the use of the contract set forth in Paragraph Four respondents have:

1. Failed to obtain new contract forms or to alter their existing stock of contract forms prior to, during and subsequent to the period beginning July 1, 1969 and ending December 31, 1969, as required by Section 226.6 (k) of Regulation Z.

2. Failed to use the term "cash downpayment" to disclose and describe the amount of 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 disclose and describe the difference between the cash price and the cash downpayment, trade-in or total downpayment, as required by Section 226.8 (c) (3) of Regulation Z.

4. Failed to use the term "amount financed" to disclose and describe the amount of credit which the customer had the actual use of, as required by Section 226.8 (c) (7) of Regulation Z.

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

PAR. 6. In the ordinary course of their business as aforesaid, and subsequent to July 1, 1969, respondents caused newspaper advertisements to be published as "advertisement" is defined in Regulation Z. These advertisements aided, promoted or assisted directly or indirectly in extensions of consumer credit in connection with the sale of respondents' goods and services. By and through the use of the advertisements, respondents:

Stated that "1st Payment in 6 months—Call or Write Now!" and "NO DOWN PAYMENT—3 YEARS TO PAY"; thereby implying and stating that no downpayment was required in connection with consumer credit transactions, without also stating all of the following items in

terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10 (d) (2) thereof:

(i) The cash price;

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

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

(iv) The deferred payment price.

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 have thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY HARRY R. HINKES, ADMINISTRATIVE LAW JUDGE

AUGUST 31, 1973

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this proceeding on Sept. 18, 1972, charging the respondents with failure to comply with the provisions of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System and, pursuant to Section 108 of said Act, with having violated the Federal Trade Commission Act. By answer duly filed respondents admitted only that they are and were engaged in the sale of home improvement materials, supplies and installation services to the public. Otherwise, respondents' answer either denied, or neither admitted nor denied, all of the other allegations of the complaint. Respondents also interposed "substantial compliance" as a special defense. By order dated January 17, 1973, the undersigned ruled that Paragraphs I and III of the complaint be deemed admitted because of the respondents' failure to conform to the requirements of Section 3.12(b)(1)(ii) of the Rules of Practice of the Commission by neither admitting nor denying the allegations contained in those paragraphs. In addition, respondents' special defense of "substantial compliance" with the requirements of Regulation Z of the Truth in Lending Act was stricken as insufficient at law or as failing to state a legal defense. On April 5, 1973, counsel to the parties in this proceeding executed an "Agreed Upon Statement of Relevant Facts and Documentary Evidence." This was supplemented by another statement executed by counsel to the parties on April 10, 1973. At around the same time

counsel to the parties also executed a stipulation specifying the contested issues of fact and law in this proceeding:

1. Whether respondents failed to obtain new contract forms prior to, during or subsequent to the period beginning July 1, 1969 and terminating December 31, 1969, which were in compliance with the requirements of Regulation Z.

2. Whether the retail installment contract forms as altered for the period July 1, 1969 to December 31, 1969, complied with the requirements of Regulation Z.

3. Whether respondents authorized, approved or ratified, expressly or impliedly, the publication of the various advertisements identified as Commission Exhibits 9(a), 9(b), and 9(c).

Evidentiary hearings were held at the New York Regional Office of the Federal Trade Commission on June 5, 6, and 7, 1973. Briefs have been submitted by the parties and have been given careful consideration. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this initial decision are hereby denied. To the extent the proposed findings, conclusions and briefs submitted by the parties have not been adopted by this decision in the form proposed or in substance, they are rejected as not supported by the evidence or immaterial.

References to the record are made in parentheses using the following abbreviations:

CX—Commission's Exhibit
RX—Respondents' Exhibit
RAC—Respondents' Answer to Complaint
Stip—Agreed upon statement of fact and evidence
Tr.—Transcript of testimony

Having reviewed the record in this proceeding with care and having considered the demeanor of the witnesses as they testified, together with the proposed findings, conclusions and briefs submitted by the parties, I make the following:

FINDINGS OF FACT

1. Respondent Beauty-Style Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 432 Central Avenue, Newark, N.J. (Order of Jan. 17, 1973 and Stip. 1).

2. Respondent Morris Jakel is an individual who is president of the corporate respondent. He formulates, directs and controls the consumer credit policies, acts and practices of the corporate respondent, including

the acts and practices of the corporate respondent (Order of Jan. 17, 1973).

3. Respondent Saul Jakel is an individual and the general manager of the corporate respondent. He formulates, directs and controls the consumer credit policies, acts and practices of the corporate respondent, including the acts and practices set forth in the complaint. His address is the same as that of the corporate respondent (Order of Jan. 17, 1973 and Stip. 2).

4. Respondents are now, and for sometime last past have been, engaged in the sale of home improvement materials, supplies and installation services to the public (Stip. 3; RAC).

5. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer credit" are 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 (Stip. 4; Order of Jan. 17, 1973).

6. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales as "credit sales" is defined in Regulation Z, respondents have caused and are causing their customers to enter into contracts for the sale of respondents' goods and services (Stip. 5; CX 6(a)–6(iii)).

7. The contracts described in Finding 6 above were signed by respondents, their employees, agents or authorized representatives and the customers identified thereon (CX 6(a)–6(iii); Stip. 13; CX 11(a), (b)).

8. Prior to, during the subsequent to the period beginning July 1, 1969 and ending Dec. 31, 1969, in the normal course of their business activities, respondents utilized in the completion of customer agreements a printed contract form identified as CX 2, to which respondents had made additions by means of a rubber stamp in an attempt to alter the contract's format to the requirements of Regulation Z (Stip. 8; CX 2, 6(fff 1, 2), 6(hhh, 1, 2), 6(iii), 11(a), (b)).

9. Respondents continued the use of CX 2 as altered at least up to Feb. 1970 (Stip. 9; CX 6(a), (b), (c),; Stip. 13).

10. Subsequent to Feb. 7, 1970, respondents used in the normal course of their business a new printed contract form identified as CX 3(a), (b), in connection with their consumer sales agreements (Stip. 9; CX 6(d)–6(aaa–1).

11. Beginning July 1, 1969 and continuing to at least July 1972, the respondents on their contracts:

(a) Did not use the specific term "cash downpayment" to disclose and describe the amount of the downpayment in money made in connection with the credit sale, but used the language "deposit herewith;"

(b) Did not use the specific term "unpaid balance of cash price" to disclose the difference between the "cash price" and the "cash downpayment," trade-in, or total downpayment but used the language "cash balance;"

(c) Did not use the specific term "amount financed" to disclose and describe the amount of credit which the customer had actual use of, but used the language "cash balance;" and

(d) Did not use the specific term "total of payments" to disclose and describe the sum of the payments scheduled to repay the indebtedness, but used the langauage "time balance" (Stip. 10; CX 2, 3, 6).

12. Respondents were advised that their contract did not conform with the requirements of Regulation Z. Thus, respondent Saul Jakel was asked:

Q. Now, was anything told to you by anyone as to the use or in the industry as to the use of contract number 2 after the date of July 1?
A. Yes.
Q. What was that?
A. There was a six month grace period allowed to contractors from July 1, 1969.
Q. To do what?
A. To January 1, 1970.
Q. To do what?
A. To use up their old contracts, provided that they put a stamp on the contract.
Q. Did you?
A. Yes I did.
Q. What was that stamp?
A. The stamp showed the deferred payment price the annual percentage rate (Tr. 176).

Similarly, Mr. Jakel was visited by a representative of the Federal Trade Commission in April or May of 1970 and described the visit as follows:

A. She told me that the contracts were in violation.
Q. Of what sir, do you know?
A. The terminology used in the financing portion of the contract were not as required by law.
Q. What happened next?
A. I then went over this with her.
Q. How did you do this sir?
A. Well she showed me the wording that was required (Tr. 145).

* * * * * * *

Q. (By Judge Hinkes) Now did she show you a written document containing those—containing that language?
A. Yes.
Q. Or did she just simply tell you?
A. She showed me a document, your honor.
Q. Now do you remember what the document was entitled?
A. I—
Q. Or what it looked like?

A. Can I have that book please?
Mr. Gelber: The witness is requesting Regulation Z.
A. She showed me this terminology here that should have been in place of the—
Judge Hinkes: Well, the witness is referring to a form marked Exhibit C in Regulation Z on page 22 which includes typical formats of disclosures under the Regulation (Tr. 147).

Mr. Jakel continued:

A. The second time she visited me she told me what the violations were. We went over them. The violations seemed very minor—
Q. To you?
A. Yes. Since the essence of the law was in the contract as I had it. The important parts.
Q. What was wrong with your contract?
A. Ok. On number 2 under the Heading of "Time Payment" in my contract, I used the expression "Deposit herewith" next to which I have the words "Check and Cash" with a box to be checked, you know, depending upon what the salesman received from the customer.
Q. Did she say there was anything deficient or defective about that?
A. Yes.
Q. What?
A. She said that should "Cash Downpayment."
Q. What else?
A. Where I have on here number 3 where I have "Balance, Amount Financed," she said that the law required it to read "Unpaid Balance of Cash Price." Under item number 5 where I have "Time Balance" she said it had to read "Total Payments."

* * * * * * *

A. Well I pointed out to her that in essence I was complying with the law, that everything the law required was in here, although the phraseology was slightly different * * * and she agreed * * * she said "I agree with you that the differences are slight but the law is specific as to what is required."

* * * * * * *

Q. Well, was anything said about the further use of your contracts by her?
A. Yes.
Q. What?
A. She indicated to me that I could use up my contracts.
Q. And how did she convey that to you?
A. She said "Well, you can use these contracts unless you hear further from us." (Tr. 154–159).

Mr. Jakel also testified that this representative of the Federal Trade Commission visited him another time in May 1970 and again spoke to him about the improper language in the respondents' contracts that were in use (Tr. 178). Shortly thereafter Mr. Jakel received a letter from the Federal Trade Commission (RX 1) dated May 18, 1970. In it the respondents were informed:

Although you recently printed new retail installment contracts, we still must require your immediate compliance with the above requirements. Willful and knowing failure to comply

with Truth in Lending may result in criminal liability * * * failure to respond to the above requests within 10 days will result in formal administrative action.

Sometime during the summer of 1970, Mr. Jakel received a telephone call from a different representative of the Federal Trade Commission who also advised him that the contract in use was in violation of the Truth in Lending Act (Tr. 346). Mr. Jakel said that he would like to continue to use the contract until the stock was depleted but the Commission representative told him "I don't know who could authorize you to continue to use a contract in violation of a Federal law" (Tr. 347). Mr. Jakel was later visited by this representative and, according to Mr. Jakel, was told that the representative would go back to the office to find out if he couldn't get Mr. Jakel an extension of time to use up his contracts. Mr. Jakel admitted, however, that:

He said that he couldn't get me any more delays on the use of the contract and that if I didn't change the contract and sign the affidavit or sign the consent order * * * that they were going to start proceedings against me.

Q. And what was your response?

A. My response was that I would change the contracts but I would not sign any affidavit.

Q. And did you do so?

A. No.

Q. You did not do what?

A. I did not print the new contracts (Tr. 199).

13. It does not appear that the respondents took *bona fide* steps prior to July 1, 1969 to order contract forms which would satisfy the requirements of Regulation Z.

Mr. Jakel was asked:

Q. Were you told by anybody including the bank that you were required under the law to make efforts to obtain new printed forms to be used prior to January 1, 1970 during the period from July 1, 1969 through December 31 1969? Were you told by anyone?

A. Not that I recall.

Q. Did you have knowledge that this was required?

A. No sir.

* * * * * * *

Judge Hinkes: Mr. Jakel did you take any steps before July 1, 1969?

A. I don't remember. I don't think so, because my understanding of the law was that it wasn't necessary to have the new contracts before 1970.

* * * * * * *

Q. And you said three months before December 31, [1969] approximately, you did in any event order new contracts for the purpose of complying?

A. Yes. I mean I say that I believe that that's probably when I took the step to order it. I would have allowed myself that much time (Tr. 247Z–31–Z–37).

14. The respondents' newspaper advertisements directly or

indirectly aid, promote or assist in extensions of consumer credit in connection with the sale of respondents' goods and services (Step. 15).

15. The following is language excerpted from an advertisement placed by the respondents in the New York Sunday News, Passaic-Bergen edition, on Dec. 7, 1969:

Easy Payments Arranged * * * First payment in 6 months * * * Beauty-Style Modernizers, Inc. 432 Central Avenue, Newark (CX 7).

16. In placing advertisements in the New York Sunday News, Passaic-Bergen edition, the respondents deal and have dealt directly with the advertising department of that newspaper. Respondents do not employ any agency or intermediary. Copies of the advertising contracts covering the period beginning Jan. 1, 1968 through Jan. 11, 1971 are identified as Commission Exhibits 8(a), (b), (c). (Stip. 17).

17. Following the publication of the Dec. 1969 ad in the Sunday News, respondents were informed by the Federal Trade Commission that the advertising in that issue was in violation of Regulation Z. Mr. Jakel was asked:

Q. And will you explain to the court what about that ad was brought to your attention by the Federal Trade Commission letter which you then acted upon?

A. May I take a moment to read the letter?

Q. Of course.

A. The first payment in six months was objected to.

Q. Anything else?

A. I believe the easy payments arranged phrase also was objected to (Tr. 134–135; see also RX 3).

18. Advertisements appeared in the Sunday Star Ledger on the dates indicated below and employed the quoted language as indicated:

(a) Aluminum Combination Windows and One Door * * * No Downpayment * * * Three years to pay * * * Beauty-Style Modernizers, Inc., 432 Central Avenue, Newark. This ad appeared on June 14, 21, and July 5, 1970 (CX 9(a), (b), and (c).

19. The advertisements described in Paragraph 18 above which appeared in the Sunday Star Ledger were prepared and placed by P & G Advertising Agency, 33 Evergreen Place, East Orange, N.J., for and in behalf of respondents (Stip. 20). According to respondents' clerk, Saul Jakel and P & G Advertising Agency prepared the copy for the ads jointly (Tr. 107).

20. The advertisements described in Paragraph 15 and 18, appearing in the Sunday Star Ledger and Sunday News failed to state:

(a) The cash price;

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

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

(d) The deferred payment price (Stip. 21).

CONTENTIONS AND CONCLUSIONS

Counsel for the respondents contend that the respondents have not violated Regulation Z in either their contracts for the sale of their goods and services or in their advertising of their goods and services.

The Contracts

In this connection three specific time periods are involved: The period prior to July 1, 1969 when the Truth in Lending Act became effective, the period beginning July 1, 1969 and ending Dec. 31, 1969, and the period subsequent to Dec. 31, 1969.

Section 226.6(k) of Regulation Z is particularly pertinent to both the period preceding July 1, 1969 and the period between July 1, 1969 and Dec. 31, 1969. It states:

(k) Transition period. Any creditor who can demonstrate that he has taken bona fide steps, prior to July 1, 1969, to obtain printed forms which are necessary to comply with the requirements of this Part may, until such forms are received but in no event later than December 31, 1969, utilize existing supplies of printed forms for the purpose of complying with the disclosure requirements of this Part, other than the requirements of paragraph (b) of Section 226.9:
Provided, That such forms are altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose to the customer are set forth clearly and conspicuously.

The meaning of this section is obvious. It simply permits a creditor to continue using his existing supplies of printed forms after July 1, 1969, provided he can demonstrate that he took bona fide steps *before July 1, 1969* to obtain printed forms complying with requirements of Regulation Z and provided further that such forms are amended as necessary to convey all of the information the creditor is required to disclose to the customer. There is no doubt that here respondents continued to use their existing supply of forms after July 1, 1969 and indeed at least until Feb. 1970. Their use of such forms, assuming that they were altered to convey the required information, was proper only if the respondents had taken bona fide steps before July 1, 1969 to obtain printed forms which did comply. This the respondents did not do. Indeed, Saul Jakel admitted that he thought it wasn't necessary to have the new contracts before 1970 and ordered new contracts around Sept. 1969. He could not remember taking any such steps before July 1, 1969 nor could he recall any instructions to make such effforts (See Finding 13 above). Respondents' continued use of their old contract forms was therefore improper and illegal after July 1, 1969, unless, of course, such contract forms contained the disclosures required by Regulation Z. This was also true of the new contract forms adopted by the respondents in 1970.

Section 226.8(c) of Regulation Z requires the disclosure of certain specified items among which are:

(1) The cash price of the property or service purchased, using the term "cash price."
(2) The amount of the downpayment itemized, as applicable, as downpayment in money, using the term "cash downpayment," * * *
(3) The difference between the amount described in subparagraphs (1) and (2) of this paragraph, using the term "unpaid balance of cash price."
(4) All other charges * * *
(5) The sum of the amount determined under subparagraphs (3) and (4) of this paragraph.
(6) Any amounts required to be deducted under paragraph (e) of this Section * * *
(7) The difference between the amount determined under subparagraphs (5) and (6) of this paragraph, using the term "amount financed."

Section 226.8(b) (3) of Regulation Z requires the disclosure of scheduled repayments:

(3) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and * * * the sum of such payments using the term, "total of payments."

It has been stipulated that respondents' contracts did not use the specific terms "cash downpayment," "unpaid balance of cash price," "amount financed" or "total of payments." Instead, respondents' contracts used other language. Respondent contends, however, that the quoted language that was not used in their forms is not required by the terms of Regulation Z and that their use of different language was sufficient to disclose all of the credit terms to the customer. Counsel for the respondents cites Section 122(a) of the Truth in Lending Act:

(a) Regulations of the Board need not require that disclosures pursuant to this chapter be made in the order set forth in this chapter, and may permit the use of terminology different from that employed in this chapter if it conveys substantially the same meaning.

Counsel for the respondents argues that respondents' use of language differing from that quoted in Regulation Z but conveying the same meaning should therefore be considered compliance with Regulation Z. I do not agree.

A close reading of Section 122 of the Truth in Lending Act makes it clear that the Board is empowered to permit different terminology than that used in the Truth in Lending Act. The Board, however, in its issuance of Regulation Z specified exactly what language was permissible. Here, too, a close reading of 226.8 of that regulation makes it obvious that the Board required the specific language stated therein. I note, for example, that the Board requires the disclosure of certain "terms" and encloses such "terms" in quotation marks. If the Board had intended the use of language conveying a similar meaning it would have been simple to have said so or at least to have omitted the quotation

marks around the language which was to be used. Moreover, Section 226.6 of Regulation Z requires the "terminology prescribed:"

(a) Disclosure: General Rule. The disclosures required to be given by this part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this Section, and at the time and in the *terminology prescribed* in applicable sections. (Emphasis supplied)

Nor can such a requirement be deemed arbitrary and unreasonable. Uniform disclosure language is less apt to be subject to varying interpretations and impressions which would lessen the intended effectiveness of the Truth in Lending Act.

The case of *Richardson* v. *Time Premium Co.* reported in CCH Consumer Credit Guide, Par. 99, 273 is particularly apposite. There, as here, a defendant's form statement failed to use the quoted terminology of Regulation Z at Section 226.8 and it was argued that the use of the specific terms was not mandatory. The court disagreed:

It is, first of all, clear that the Regulations do make the use of specific terminology mandatory. 12 CFR 226.2(a) [226.6(a)] reads in part, "The disclosures required to be given by this part shall be made * * * in the terminology prescribed in applicable sections." 12 CFR 226.8 in describing what disclosure is required repeatedly uses the format "shall be disclosed: * * * using the term [with applicable term stated in quotation marks]." (Bracketed portion in original)

There, too, it was argued that Section 122 of the Truth in Lending Act contradicted any interpretation requiring the use of specific terminology. The Court held, however:

The following language of 15 USC 1632 is cited to support that position. "Regulations of the Board [* * *] may permit the use of terminology different from that employed in this part if it conveys substantially the same meaning." We do not read this language as a limitation upon the broad power to prescribe regulations as contained in 15 USC 1604 but as a limitation upon the discretion which the Board may allow creditors, which discretion it is not required to "permit" at all.

The conclusion is inescapable that respondents' failure to use the specific terms required by Regulation Z as set forth in the Findings above violated the provisions of that Regulation and of the Truth in Lending Act.

The Advertisements

Counsel for the respondents concedes that "the ads did appear as alleged in the complaint." He defends, however, on the ground that "respondent did not cause these ads to be so placed." He cites the fact that the Dec. 1969 ad appearing in the News was corrected after the Federal Trade Commission representative called its irregularities to the attention of the respondents. He goes on, however, to argue that "thereafter the ad reappeared inadvertently in format used before the