

Complaint

IN THE MATTER OF
WATCHUNG POOL SUPPLIES, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2473. Complaint, Oct. 30, 1973—Decision, Oct. 30, 1973.

Consent order requiring a North Plainfield, N.J., retailer and distributor of swimming pools, related accessories, and other products and merchandise, among other things to cease misrepresenting products or services as free or at a discount; misrepresenting prices as reduced or usual and customary; misrepresenting savings that purchasers may realize.

Appearances

For the Commission: *John A. Crowley and Kathryn E. McDonnell.*

For the respondents: *Hughes, McElroy, Connell, Foley & Geiser, Newark, N.J.*

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 Watchung Pool Supplies, Inc., a corporation, and Frank Jannuzzi and Frank C. Jannuzzi, individually and as officers of said corporation, hereinafter sometimes 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 Watchung Pool Supplies, 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 Route 22 and Maple Avenue, North Plainfield, N.J.

Respondents Frank Jannuzzi and Frank C. Jannuzzi are officers of the corporate respondent. They formulate, direct and control the 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 advertising, offering for sale, sale and distribution of swimming pools, swimming pool accessories and other

Complaint

83 F.T.C.

merchandise and products.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning said swimming pools and other products by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation, and by means of radio broadcasts transmitted by a radio station having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which had the tendency to induce, directly or indirectly, the purchase of respondents' swimming pools and other products.

In the further course and conduct of their business as aforesaid, respondents have caused, and now cause, their said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other states. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. By means of advertisements inserted in newspapers and disseminated, as aforesaid, respondents have made various statements and representations of which the following are typical and illustrative, but not all inclusive thereof:

Huge January Clearance

15-ft. POOL 99.99 Reg. 174.99

18' x 48'' POOL 179.99 Reg. 289.99

16' x 32' x 48'' Oval Pool 499.99 Reg. 749.99

Rummage Sale UP TO 50% Off One Week Only!

12' x 42'' POOL Reg. 139.99 Only 79.99

15' x 42'' POOL Reg. 174.99 Only 99.99

18' x 48'' POOL Reg. 309.99 Only 149.99

18' x 48'' POOL Reg. 259.99 Only 129.99

FEBRUARY SALE
SPECIALS 3 DAYS ONLY

	Reg.	Sale
12 ft. x 4 ft.	419.96	\$235
15 ft. x 4 ft.	470.95	260
18 ft. x 4 ft.	530.95	299
21 ft. x 4 ft.	570.95	340
24 ft. x 4 ft.	620.95	370
18 ft. x 12 ft. x 4 ft.	580.95	360
24 ft. x 16 ft. x 4 ft.	750.95	460
32 ft. x 16 ft. x 4 ft.	920.95	600

Sierra Hyde Park Sale \$1499 Reg. \$2995

4 DAY PRESIDENTIAL SALE

18' x 48" Sierra Special Reg. 386.96 Sale 289.99

12' x 18' x 48' Special Oval Reg. 476.96 Sale 299.99

4 MORE DAYS Presidential SALE JUST 4 MORE DAYS

PRE-SPRING SALE 4 DAY ONLY Your Choice

15' x 48" 376.96 Value Erected Free!

18' x 48" 391.96 Value Plus All Purpose Panel FREE!

21' x 48" POOL 379.99 Value ONLY \$289

ST. PATRICK'S DAY SALE!

Watchung's Spring-Fever Values!! 3-DAY SALE!

Spring Saving Fling Beat Summer Prices BUY NOW & SAVE!

April Shower of Savings ONE WEEK ONLY Sierra Hyde Park

Reg. 3214.85 Sale \$1499

ANNUAL SWIMMING POOL 4-DAY SALE

Sierra Hyde Park Reg. 2499.00 Sale 1499

Savings to 30% on Chemical Packages

Savings to 50% on Filters

SAVE UP TO 50%

Wild Mid-Summer Sale

4 DAY SALE

Save to 50% on Pool Toys and Accessories with these Money Saving Coupons

FREE Winter Cover Kit

4th of July SAVINGS

4 DAYS ONLY Stock Clearance Sale

FABULOUS Warehouse Expansion SALE

After Inventory Sale 60% Off & MORE!

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. Respondents' customers will receive, in certain cases, free products and/or services by virtue of their purchasing respondents' advertised products.

2. Respondents' customers will, in certain cases, receive coupons entitling them to purchase some of respondents' products at discount prices.

3. Respondents' offer to sell swimming pools and other merchandise at "sale" prices is made for a limited time only.

4. The prices advertised as "Reg." are respondents' usual and customary retail prices for the advertised pools and other merchandise.

5. Respondents' customers will be afforded a saving of the

Complaint

83 F.T.C.

difference between the price advertised by respondent as "Reg." and the price advertised as "sale."

PAR. 6. In truth and in fact:

1. Respondents' customers do not receive free products and/or services by virtue of their purchasing respondents' advertised products. To the contrary, the cost of the "free" service and/or product is included in the increased price of the advertised product.

2. Respondents' customers are made to pay for the cost of the "discounted" coupon products via an increased price of the advertised product.

3. Respondents' offer to sell swimming pools and other merchandise at "sale" prices is not made only for a limited period of time. Said products are advertised consistently at "sale" prices.

4. The prices advertised as "Reg." represent arbitrary figures bearing no relation to the prices at which swimming pools and other merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

5. Respondents' customers are not afforded a saving of the difference between respondents' "Reg." price and "sale" price. To the contrary, said customers receive either no saving at all or a much smaller saving than expected.

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

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of swimming pools, swimming pool accessories and other merchandise and products of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. 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 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 New York 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 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 purpose 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 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 Watchung Pool Supplies, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Route 22 and Maple Ave., North Plainfield, N.J.

Respondents Frank Jannuzzi and Frank C. Jannuzzi are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

Decision and Order

83 F.T.C.

ORDER

It is ordered, That respondents Watchung Pool Supplies, Inc., a corporation, its successors and assigns, and its officers and Frank Jannuzzi and Frank C. Jannuzzi, individually and as officers of said corporation and respondents' agents, representatives and employees directly or indirectly, in connection with advertising, offering for sale, sale or distribution of swimming pools, swimming pool accessories or any other products or merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a customer is to receive merchandise or services for "free" or at a discount upon the purchase of other advertised products where the respondents, in making such an offer, increase the regular price of the product required to be bought, or decrease the quantity or quality of that product, or otherwise attach strings to the offer.

2. Representing, directly or by implication, through the use of terms such as "OUR LOWEST PRICE EVER," "4 days only," "special sale price," "savings" or in any other manner, that any price is reduced from respondents' former price if respondents' business records fail to establish and show that such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

3. Using the words "value" or "made to sell for" or any other words or terms of similar import in connection with prices of merchandise unless such prices are those at which the merchandise has been sold by respondents in the recent regular course of business, or unless such prices are those at which the merchandise has usually and customarily been sold at retail in the trade area where the representations are made.

4. Representing directly or by implication that any amount is respondents' usual and customary retail price for merchandise unless such amount is the price at which the merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

5. Representing directly or by implication that any saving is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

6. Misrepresenting in any manner, the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced either from the price at which it has been usually and customarily sold by respondents in the recent regular course of business, or from the price at which it has been usually and customarily sold at retail in the trade area where the representation is made.

It is further ordered, That respondent corporation shall forthwith deliver a copy of this order to each of its operating divisions.

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

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

It is further ordered, That 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.

IN THE MATTER OF
CERTIFIED BUILDING PRODUCTS, INC., ET AL.

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

Docket 8875. Complaint, Feb. 14, 1972—Order and Opinion, Oct. 5, 1973.

Order requiring two Denver, Col., sellers, distributors and installers of residential siding materials, among other things to cease representing that offers of products are limited, prices are special or reduced, customers can receive percentage savings; misrepresenting the durability, performance or quality of its products; misrepresenting its guarantees; failing to make material disclosures to customers regarding the sale of instruments of indebtedness to third parties; and failing to disclose to consumers, in connection with the extension of consumer credit, information as required by Regulation Z of the Truth in Lending Act. Respondents are required to maintain adequate records to substantiate any representations or statements as to savings in price claims, claims regarding comparative values, etc. Further, the order closes the matter as to one of the individual respondents, Mr. Jack Bitman.

Appearances

For the Commission: *E. Eugene Harrison* and *Thomas H. Emerson*.

For the respondents: *Holland and Hart*, Denver Col. and *Gelt and Grossman*, Denver, Col.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Certified Building Products, Inc., a corporation, and Certified Improvements Company, a corporation, and Michael P. Thiret and Jack Bitman, individually and as officers of said corporations, and Claude Thiret, individually and as general manager of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the implementing regulations promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating in that respect as follows:

PARAGRAPH 1. Respondents Certified Building Products, Inc.,

and Certified Improvements Company, are corporations organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with their principal offices and places of business located at 3553 Brighton Boulevard in the city of Denver, State of Colorado.

Respondents Michael P. Thiret and Jack Bitman are individuals and officers of the corporate respondents. Respondent Claude Thiret is an individual and general manager of the corporate respondents. They formulate, direct, and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents. Respondents have cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of residential siding materials 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, their said products, when sold, to be shipped from their place of business in the State of Colorado to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of the aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made, and are now making, numerous statements and representations in advertising circulars and other promotional material and in oral statements made by their salesmen and representatives with respect to the nature of their offer, their prices, time limitations, guarantees and performance of their products.

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

Complaint

83 F.T.C.

NOW—You can have your home modernized * * * and also receive up to \$300 in CASH.

* * * * *

Let us explain how YOU can receive this advertising money we would normally spend in other advertising media to introduce this beautiful new product.

* * * * *

Guaranteed in writing for thirty beautiful years. Save Money * * * by eliminating the painting forever.

* * * * *

This card must be mailed within five days to qualify.

* * * * *

Savings * * * in painting cost * * * will more than pay for your new * * * siding installation.

* * * * *

Take the work, worry and expense out of maintaining your home.

* * * * *

PAR. 5. By and through the use of the aforesaid 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 offer to sell proposed respondents' materials is for a limited time only.
2. Respondents' siding materials are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling prices.
3. All purchasers of respondents' siding materials will realize a 50 percent savings in their air-conditioning and heating bills.
4. Siding materials sold by respondents will never require repairing.
5. Respondents' siding materials and installations are unconditionally guaranteed in every respect, without condition or limitation, for a period of thirty (30) years or more.
6. The offer of respondents' siding, set forth in its advertising, was being made under a revolutionary new plan that would modernize a prospective customer's home and at the same time allow that prospective customer to receive up to \$300 in cash.
7. Homes of prospective purchasers have been specially selected as model homes for the installation of respondents' products; after installation, such homes would be used for demonstration and advertising purposes by respondents; and, that as a result of

allowing their homes to be used as models, purchasers would receive allowances, discounts, or commissions.

8. Purchasers of respondents' siding installations will receive enough commissions, from referrals of other prospective purchasers, to obtain their installation at little or no cost.

9. Prospective purchasers of respondents' siding will receive a free gift if they allow one of respondents' representatives to call on them in their home.

10. Respondents will perform all of the services and provide all of the materials as agreed to, both orally and in writing, by the parties.

PAR. 6. In truth and in fact:

1. The offer to sell respondents' materials is not for a limited time only, but is an offer regularly available to the public.

2. Respondent's siding materials are not being offered for sale at special or reduced prices, and savings are not thereby afforded respondents' customers because of a reduction from respondents' regular selling price, but the price at which respondents' products are sold varies from customer to customer depending on the resistance of the prospective purchaser.

3. All purchasers of respondents' residential siding materials will not realize a fifty (50%) percent savings in their air-conditioning and heating bills. Few, if any, will achieve such savings.

4. Residential siding materials sold by respondents will require repair.

5. Respondents' residential siding materials and installations are not unconditionally guaranteed in every respect without conditions or limitations for a period of thirty (30) years. Such guarantee as may be provided is subject to numerous terms, conditions and limitations.

6. The offer set forth by respondents is not a revolutionary new plan, nor would a prospective customer, who purchased respondents' siding, necessarily receive up to \$300 in cash.

7. Homes of prospective purchasers are not specifically selected as model homes for the installations of respondents' products; after installations, such homes are not used for demonstration or advertising purposes by respondents; and purchasers, as a result of allowing their homes to be used as models, are not granted reduced prices nor do they receive allowances, discounts, or commissions.

8. Few, if any, purchasers of respondents' residential siding installation receive enough referral commissions to obtain their installation at little or no cost and respondents seldom, if ever, pay allowances or commissions on referral sales.

9. Prospective purchasers of respondents' siding have not received a free gift in all of the instances that it has been promised to them.

10. Respondents have, in several instances, failed to provide the materials and perform the services as agreed to, both orally and in writing, by the parties.

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

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

1. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured through the use of the unfair, false, misleading and deceptive statements and representations set out in Paragraphs Four and Five above, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, may cut off various personal defenses, otherwise available to the obligor, arising out of respondents' failure to perform or out of other unfair, false, misleading or deceptive acts and practices on the part of respondents.

2. In a substantial number of instances, through the use of the unfair, false, misleading and deceptive statements and representations set out in Paragraphs Four and Five above, respondents have been able to induce customers into signing a contract with the respondents on the respondents' initial contact with the customer. In such a situation, it is highly improbable that the customer was able to seek out advice or make an independent decision on whether or not he should enter into the contract and therefore, had to rely heavily on the advice and information given to him by respondents.

Therefore, the acts and practices as set forth in Paragraph

Seven hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and now are in substantial competition, in commerce, with corporations, firms, and individuals in the sale of residential siding materials and other products of the same general kind and nature as that sold by respondents.

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

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

COUNT II

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

PAR. 11. In the course and conduct of their business as aforesaid, respondents regularly extend, and for some time last past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 12. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with credit sales as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused and are causing their customers to execute retail installment contracts, hereinafter referred to as contracts Form A and Form B.

PAR. 13. By and through the use of both contracts, Form A and Form B, respondents in a number of instances:

1. Have failed to disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as required by Section 226.8(b) (1) of Regulation Z.

2. Have failed to state the due dates or period of payments scheduled to repay the indebtedness, and the sum of such payments, using the term, "total of payments," as required by Section 226.8(b) (3) of Regulation Z.

3. Have failed to give a clear identification of the property to which any security interest relates or if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify, as required by Section 226.8(b) (5) of Regulation Z.

4. Have failed to use the terms "cash downpayment" and "total downpayment" and have failed to give the corresponding disclosures with those terms, as required by Section 226.8(c) (2) of Regulation Z.

5. Have failed to use the term, "amount financed," and to give the corresponding disclosure with that term, as required by Section 226.8(c) (7) of Regulation Z.

6. Have failed to use the term, "deferred payment price," and to give the corresponding disclosure with that term, as required by Section 226.8(c) (8) (ii) of Regulation Z.

PAR. 14. By and through the use of contract Form A, respondents have given notice to their customers that a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, has been or will be retained or acquired by the respondents in the real property which is expected to be used as the principal residence of the customer. Respondents' retention or acquisition of a security interest in said real property gives their customers, who are extended consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the right to rescind the transaction until midnight of the third business day following the date of consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

By and through the use of the aforementioned contract Form A, respondents, in a number of instances:

1. Have failed to provide the "Notice of Opportunity to Rescind" to the customer on one side of a separate statement which identifies the transaction to which it relates, as required by Section 226.9(b) of Regulation Z.

2. Have failed to set out the "Effect of Rescission," Section 226.9(d) of Regulation Z in the manner and form required by Section 226.9(b) of Regulation Z.

3. Have failed to furnish two (2) copies of the above referred-to notice to the customers, as required by Section 226.9(b) of Regulation Z.

PAR. 15. By and through the use of contract Form B, respondents have agreed to deliver to the owner of the property receiving the home improvements, the requisite lien waivers, to the end that no lien may attach to the owner's property by virtue of the work and materials to be furnished under the contract Form B.

Respondents have not delivered the above referred-to lien waivers to their customers in a number of instances where delivery of such waivers was contracted for by the parties. In these instances, the security interests which have been or will be retained or acquired, have, therefore, not been effectively waived.

Respondents therefore remain obligated to make the proper disclosures and otherwise act in accordance with Section 226.9 of Regulation Z.

In the instances referred to above, where the respondents have failed to deliver the necessary lien waivers, they have also failed to make the proper disclosures and to otherwise act in accordance with Section 226.9 of Regulation Z.

PAR. 16. Respondents have caused the following additional information and clause to appear in their contract Form B under "customer acknowledgement:"

That agreement is non-cancellable, and that in case of cancellation, the contractor shall be entitled to 30% of the total amount of this agreement to recover delivery and credit expenses, or the total amount of this agreement if he has commenced work.

By and through the use of the above-quoted additional information and clause, respondents have and are representing to their customers that they are liable for damages in the event that these customers exercise their right to rescind, thereby violating Section 226.9(d) of Regulation Z. And, said additional information has been stated, utilized, or placed by the respondents so as to mis-

lead, or confuse the customer and contradicts, obscures, and detracts attention from the information required by Regulation Z to be disclosed, thereby violating Section 226.6(c) of Regulation Z.

PAR. 17. Respondents have caused the following additional information and clauses to appear in their contracts Form A and Form B under "customer acknowledgement:"

That this agreement contains all agreements between the owner and contractor and no other agreements oral or written will be binding on contractor.

That this agreement becomes binding on purchaser immediately, but does not become binding upon contractor until same is countersigned by credit manager.

Said additional information has been stated, utilized, or placed by the respondents so as to mislead or confuse the customer and contradicts, obscures, and detracts attention from the information required by Regulation Z to be disclosed, thereby violating Section 226.6(c) of Regulation Z.

PAR. 18. Pursuant to Section 105 of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act, and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY DAVID H. ALLARD, ADMINISTRATIVE LAW JUDGE

FEBRUARY 13, 1973

PRELIMINARY STATEMENT

This proceeding was commenced with the issuance of a complaint on February 14, 1972, charging the corporate respondents, Certified Building Products, Inc., Certified Improvements Company, and Michael P. Thiret and Jack Bitman, individually and as officers of said corporations, and Claude Thiret, individually and as general manager of said corporations, with violations of Section 5 of the Federal Trade Commission Act by committing unfair methods of competition and unfair and deceptive acts and practices in commerce and violating the Truth in Lending Act and the implementing regulations promulgated thereunder.

By order issued June 15, 1972, the matter was withdrawn from adjudication by the Commission. By order issued October 10, 1972, the Commission rejected the proposed consent order and re-

