

Complaint

IN THE MATTER OF

BUY-RITE SALES CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket C-2531. Complaint, Aug. 26, 1974—Decision, Aug. 26, 1974*

Consent order requiring a Union City, N. J., seller and distributor of swimming pools and swimming pool accessories, among other things to cease using deceptive sales plans; disparaging merchandise offered for sale; misrepresenting prices and/or savings available to customers; failing to maintain adequate records to substantiate savings claims; failing to disclose to consumers, in connection with the extension of consumer credit such information as is required by Regulation Z of the Truth in Lending Act; failing to include on the face of instruments of indebtedness a notice that all rights and defenses of purchasers are preserved upon sale to third parties.

Appearances

For the Commission: *John A. Crowley and Eileen Lerman.*
For the respondents: *Morton Kramer, Friedman & Friedman, Jersey City, N.J.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Buy-Rite Sales Corporation, a corporation, and Thomas Payne and Robert D. Blackburn, Jr., individually and as officers of said corporation, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Buy-Rite Sales Corporation 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 380 Mountain Road, Union City, N. J.

Respondents Thomas Payne and Robert D. Blackburn, Jr. are individuals and officers of said corporation. They formulate, direct and control the 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 advertising, offering for sale, sale and distribution of swimming pools and swimming pool accessories. In the course and conduct of their business as aforesaid, respondents negotiate to third parties conditional sales contracts, promissory notes or other instruments of indebtedness executed in connection with credit purchase agreements.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two above 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 cause advertisements designed to secure leads to potential purchasers of swimming pools to be placed in various newspapers and other publications. The respondents are responsible for the content of said advertisements.

PAR. 4. In the further course and conduct of their business as aforesaid, respondents sell and distribute the aforementioned swimming pools and swimming pool accessories by causing said swimming pools and accessories to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States. There is now, and has been, at all times mentioned herein, a substantial and continuous course of trade in said swimming pools and swimming pool accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents and their salesmen or representatives have made statements and representations in advertising and promotional material inserted in newspapers and other periodicals of general interstate circulation.

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

Sensational PRE-SEASON OFFER
 \$589 COMPLETELY INSTALLED NEW 1972 SWIMMING POOL
 22' x 13' Outside Dimension 18' x 12' Swim Area 42" Depth

Sensational PRE-SEASON OFFER
 New 1972 Swimming Pool \$589 COMPLETELY INSTALLED
 8 Other Great Pools to choose from

PAR. 6. In the further course and conduct of their business as aforesaid, and for the purpose of inducing the purchase and installation of

their swimming pools and accessories, respondents and their salesmen or representatives have made, and are now making oral statements and representations to potential purchasers to the effect that their pools will be properly installed and completed by a date certain, that their pools will be used for the purpose of advertising respondents' pools, that respondents' 18' x 32' pool has been advertised in a national magazine at a much higher price than respondents' price, and that potential customers are being offered a special or reduced price.

PAR. 7. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. The offers set out in their advertisements are bona fide offers to sell swimming pools and accessories of the kind therein described and at the prices, and on the terms and conditions therein stated.
2. Their advertised offer of a 22' x 13' swimming pool for \$589 is a special offer made only during the "pre-season" period.
3. Their advertised price of \$589 for a 22' x 13' swimming pool is the only expenditure which a purchaser need make in order to have his pool completely installed.
4. Their swimming pools will be installed by competent, reliable and dependable personnel in a safe, workmanlike manner.
5. The pools will be installed, and usable by a specified date.
6. After the installation of respondents' swimming pool is completed, the purchaser's pool will be used for demonstration and advertising purposes by respondents, and, as a result of agreeing to allow their pools to be used as models, purchasers will be granted reduced prices or will receive allowances, discounts, commissions or referral fees.
7. Respondents' 18' x 32' swimming pool has been advertised in a nationally distributed magazine at a price of \$4995 and, therefore, respondents' customers are being offered a bargain or special price for said pool which would effect a savings amounting to the difference between the nationally advertised price and the price at which the product is being sold.

PAR. 8. In truth and in fact:

1. The offers set out in respondents' advertisements are not bona fide offers to sell swimming pools and accessories of the kind therein described and at the prices or on the terms and conditions therein stated, but are made for the purpose of obtaining leads to persons interested in the purchase thereof. After obtaining such leads, individual respondents Thomas Payne or Robert D. Black-

burn, Jr. or respondents' salesmen or representatives call upon such persons but make no effort to sell the advertised products at the advertised prices but instead disparage the advertised products in such a manner as to discourage their purchase and attempt to sell and frequently do sell different and more expensive swimming pools.

2. The advertised offer of a 22' x 13' swimming pool for \$589 is not a special offer made only during the "pre-season" period. Said pool is advertised regularly at the represented price and on the terms and conditions therein stated.

3. The advertised price of \$589 for a 22' x 13' swimming pool is not the only expenditure which a purchaser must make in order to have his pool completely installed. Said purchaser must bear the cost of ground preparation before installation can begin.

4. The installation of respondents' swimming pools is not, in many cases, performed by competent personnel in a safe, workman-like manner.

5. Respondents, in a substantial number of instances, have failed to complete installation of individual pools by the promised due date.

6. After the installation of respondents' swimming pool is completed, the purchaser's pool will not, in a substantial number of instances, be used for demonstration or advertising purposes by respondents. As a result of allowing, or agreeing to allow their pools to be used as models, purchasers are not granted reduced prices, nor do they receive allowances, discounts, commissions or referral fees.

7. Respondents have not intended and do not intend to sell their 18' x 32' swimming pool at the advertised price of \$4995, but use this price to mislead potential customers into the belief that they are receiving a special or discount price. In fact, respondents do not have regular selling prices, but the prices at which respondents' swimming pools and accessories are sold vary from purchaser to purchaser depending upon the resistance of the particular purchaser.

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

PAR. 9. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their swimming pools and swimming pool accessories, respondents and their

salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

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

PAR. 10. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been, and are now, in competition, in commerce, with corporations, firms and individuals in the sale of swimming pools and swimming pool accessories of the same general kind and nature as those sold by respondents.

PAR. 11. 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' swimming pools and swimming pool accessories by reason of said erroneous and mistaken belief.

PAR. 12. 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 regulation 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. 13. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange and for some time last past have regularly arranged, 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. 14. 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

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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 do not provide these customers with any other consumer credit cost disclosures.

PAR. 15. By and through the use of the contract set forth in Paragraph Fourteen, respondents have:

Failed to disclose the annual rate of the finance charge expressed as an "annual percentage rate," as required by Section 226.8(b) (2) of Regulation Z.

PAR. 16. By and through the use of the contract, as set forth in Paragraph Fourteen, respondents retain or acquire a security interest in real property which is or is expected to be used as the principal residence of the customer. The customer thereby has the right to rescind the transaction, as provided in Section 226.9(a) of Regulation Z. Having consummated a rescindable credit transaction, respondents have:

Failed, in some instances, to provide customers who have the right to rescind with copies of the prescribed notice of the right to rescind, as required by Section 226.9(b) of Regulation Z.

PAR. 17. 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.

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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 Truth in Lending Act, and the implementing regulation promulgated thereunder, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue together with a proposed form of order; and

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

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

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

1. Respondent Buy-Rite Sales Corporation 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 380 Mountain Road, Union City, N. J.

Respondents Thomas Payne and Robert D. Blackburn, Jr., are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation. The address of respondent Thomas Payne is 198 Exmore Avenue, Port St. Lucie, Fla. The address of respondent Robert D. Blackburn, Jr. is 486 Liberty Avenue, Jersey City, N. J.

2. Respondents have been served with notice of the Commission's determination to issue its complaint charging them with violation of Section 5 of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulation promulgated thereunder, and with a copy of the complaint the Commission intends to issue, together with a form of order the Commission believes warranted in the circumstances.

ORDER

PART I

It is ordered, That respondents Buy-Rite Sales Corporation, a corporation, its successors and assigns, and Thomas Payne and Robert D. Blackburn, Jr., individually and as officers of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of swimming pools or swimming pool accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

swimming pools or any other merchandise or service from respondents.

2. Advertising or offering merchandise for sale for the purpose of obtaining leads or prospects for the purchase of other or different merchandise when the advertised merchandise is inadequate to perform the functions for which it is offered and respondents do not maintain a reasonably adequate and readily available stock of said advertised merchandise.

3. Disparaging any product, merchandise or service which is offered for sale.

4. Representing, directly or by implication, that any product, merchandise or service is offered for sale when such offer is not a bona fide offer to sell such product, merchandise or service.

5. Representing, directly or by implication, that any price for products, merchandise or services sold by respondents is a special, pre-season or sale price, when such price does not constitute a significant reduction from an established selling price at which such products, merchandise or services have been sold in substantial quantities by respondents in the recent, regular course of their business.

6. (a) Representing, in any manner, that by purchasing any of said swimming pools or other products or merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such swimming pools or other products or merchandise have been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of business.

(b) Representing, in any manner, that by purchasing any of said swimming pools or other products or merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said swimming pools or other products or merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said swimming pools or other products or merchandise at the compared price or some higher price.

(c) Representing, in any manner, that by purchasing any of said swimming pools or other products or merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable swimming pools or other products or merchandise,

unless substantial sales of swimming pools or other products or merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade areas which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with products or merchandise of like grade and quality.

7. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' swimming pools or other products or merchandise.

8. Failing to maintain adequate records (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5, 6(a)-(c) and 7 of this order are based, and (b) from which the validity of any savings claim, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5, 6(a)-(c) and 7 of this order may be determined.

9. Failing to disclose the fact that the quoted price for a swimming pool does not include the cost of ground preparation.

10. Misrepresenting, in any manner, that the pool of any of respondents' purchasers or prospective purchasers will be used for any type of advertising or demonstration purpose or as a model pool or that as a result of such use, respondents' purchasers or prospective purchasers will be granted reduced prices or will receive discounts, referral fees or allowances of any type.

11. Misrepresenting, in any manner, that any swimming pool installation will be completed by a specified date.

12. Failing to incorporate the following statement on the face of all contracts executed by respondents' customers with such conspicuousness and clarity as is likely to be observed, read and understood by the purchaser:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

13. Negotiating to a third party, a conditional sales contract, promissory note or other instrument of indebtedness executed in

connection with the purchase of a swimming pool, or any other products or merchandise unless said conditional sales contract, promissory note or other instrument of indebtedness bears a legend to the effect that the third party assignee receives such conditional sales contract, promissory note or other instrument of indebtedness subject to all defenses which the debtor may have against the assignor, where such defense arise from conduct of the assignor which violates the Federal Trade Commission Act or any other law administered by the Federal Trade Commission.

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

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

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

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

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

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

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

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

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

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

(Date)

(Buyer's Signature)

* * * * *

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

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

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

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

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

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

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

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

PART II

It is further ordered, That respondents Buy-Rite Sales Corporation, a corporation, its successors and assigns, and Thomas Payne and Robert D. Blackburn, Jr., individually and as officers of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, or under any other name, in connection with any consumer credit sale of swimming pools or any other products or merchandise as "consumer credit" and "credit sale" 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 disclose the annual rate of the finance charge expressed as an "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z.

2. Failing, in any transaction in which a security interest is or will be retained or acquired in any real property which is used or is

expected to be used as the principal residence of the customer, to provide each customer with notice of the right to rescind as required by Section 226.9(a), in the manner and form specified in Section 226.9(b) of Regulation Z.

3. Failing, in any consumer credit transaction, 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, 226.8, 226.9 and 226.10 of Regulation Z.

PART III

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 change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That respondents distribute a copy of this order to all operating divisions of said corporation and also distribute a copy of this order to all personnel, agents or representatives concerned with the promotion, sale and distribution of swimming pools or other products or merchandise and secure from each such person a signed statement acknowledging receipt of said order.

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

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

IN THE MATTER OF

SILHOUETTE NATIONAL HEALTH SPAS, INC., ET AL.

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

Docket C-2532. Complaint, Aug. 26, 1974—Decision, Aug. 26, 1974

Consent order requiring an Indianapolis, Ind., operator of physical fitness and/or health salons, among other things to cease misrepresenting the efficacy of its facilities in weight reduction without regard to dietary considerations; the availability of memberships; their size; the extent, terms and conditions of special offers; and availability of facilities. Further, respondent is required to allow patrons to terminate programs within five business days and obtain a refund by delivering a letter from their physicians, stating that participation would be hazardous to their health.

Appearances

For the Commission: *William M. Rice, Jr.*

For the respondents: *William P. Wooden, Wooden, Stark, McLaughlin & Sterner*, Indianapolis, Ind., and *Donald Tunnell, Yarling, Winter, Tunnell, Robinson & Lamb*, Indianapolis, Ind.

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 Silhouette National Health Spas, Inc., a corporation, and Donald E. Gilman, individually and as an officer 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 Silhouette National Health Spas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 7124 N. Tacoma Avenue, in the city of Indianapolis, State of Ind.

Respondent Donald E. Gilman is an individual and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is 7124 N. Tacoma Avenue, Indianapolis, Ind.

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

PAR. 3. In the course and conduct of its business as aforesaid, respondents have caused, and do now cause, advertisements for said health salons to appear in media of interstate circulation, including the Indianapolis Star and the Indianapolis News, and on television broadcasts of interstate transmission, all of which are designed and intended to induce persons to purchase said memberships and related services.

Accordingly, all of said respondents have maintained, and do now maintain, a course and conduct of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, many times in the ordinary course of 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 their memberships and related services, respondents have made and are now making numerous statements and representations in advertisements inserted in newspapers of general circulation and by means of television broadcasts and promotional material, with respect to the price of said memberships and related services for the benefits and facilities available for those who purchase a membership.

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

LOSE 10-20-30 lbs. Or More the Easy, Fun, Way.

* * * * *

Come in for a free consultation.

* * * * *

ENROLL NOW!!!

Pay only \$1.25 PER VISIT (on a course basis).

* * * * *

Your Membership Honored in over 900 Spas World Wide.

* * * * *

60% OFF Regular Course Rate.

* * * * *

You save 50% on the regular price.

* * * * *

During this limited time offer . . . pay only \$1.25 per visit on a course basis!

* * * * *

Separate facilities for men and women.

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Representative and illustrative, albeit neither verbatim nor all inclusive, of oral statements made in some instances to prospective purchasers by respondents and their sales representatives and agents, are the following:

Lifetime memberships will be available only for a limited period of time.

* * * * *

You can receive six months of free membership for a limited time, when you purchase a two year membership program.

* * * * *

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 their sales representatives and agents, respondents have represented in some instances and are now representing, directly or by implication, that:

1. Patrons can lose from ten (10) to thirty (30) pounds in a one month period at respondents' salons or can attain other stated changes in weight in specified periods of time, usually without dieting, regardless of age.
2. Purchasers may purchase a membership in one of respondents' physical fitness and/or health salons for one dollar and twenty-five cents (\$1.25) per visit on a full course basis.
3. Respondents are part of a nationwide chain of physical fitness and/or health salons in most major cities of the United States.
4. The prices of memberships and services which are being offered are discount prices or special prices available for a limited time period.
5. Respondents' facilities are open to both men and women every day of the week.
6. A certain number of free months of membership are available with the purchase of certain programs, for a limited period of time.

PAR. 7. In truth and in fact:

1. All patrons cannot lose from ten (10) to thirty (30) pounds in a one month period, nor are all stated changes in weight possible in specified periods of time, regardless of dietary restrictions.
2. Purchasers may not purchase memberships in one of respondents' physical fitness and/or health salons for one dollar and twenty-five cents (\$1.25) per visit, for less than twenty-four (24) months. The minimum membership available to respondents' patrons is for one year.
3. Respondents are not part of a nationwide chain of reducing salons with facilities in most major cities of the United States. Respondents are members of associations which honor respondents' members' memberships to some extent.

