

The aforesaid duty to disclose the corrective statement shall continue until respondent has expended on Listerine advertising a sum equal to the average annual Listerine advertising budget for the period of April 1962 to March 1972.

## PART IV

*It is further ordered*, That the allegations of Paragraphs Nine and Ten of the complaint be, and they hereby are, *dismissed*.

## PART V

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

*It is further ordered*, That respondent notify the Commission at least thirty (30) days prior to any proposed change in its structure 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 this order.

*It is further ordered*, That respondent shall, within sixty (60) days after the effective date of this order, file with the Commission a written report, setting forth in detail the manner and form of its compliance with this order.

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IN THE MATTER OF

## MAGNETIC VIDEO CORPORATION, ET AL.

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

*Docket C-2767. Complaint, Dec. 12, 1975 — Decision, Dec. 12, 1975*

Consent order requiring a Farmington Hills, Mich., manufacturer and distributor of various tape products, including compilations of hits and sound alike recordings, among other things to cease using any advertisement or promotional material which misrepresents that any tape product has been recorded by the original artist(s). Further, respondents must either disclose the name of the actual recording artist or print a warning advising prospective purchasers that the product "is not an original artist recording."

*Appearances*

For the Commission: *Paul K. Trause*.

For the respondents: *Charles Tathem, Merrill, Tathem & Rosati*,  
Detroit, Mich.

#### 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 Magnetic Video Corporation, a corporation, and Andre Blay, individually and as an officer 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. For the purposes of this proceeding, the following definitions shall apply:

**Original Artist:** The original artist is the person who originally recorded and made popular the song(s) or album in question, or with whom the public generally identifies the song(s) in question.

**Sound Alike Recording:** A sound alike recording is a recording of a hit song(s) or a hit album recorded by one other than the original artist and performed in the style and manner of the original artist.

**Compilation of Hits:** A compilation of hits is a tape product featuring a variety of songs originally recorded and made popular by various artists.

**Tape Products:** Tape products include tape cartridges or tape cassettes; or, insofar as Magnetic Video Corporation produces or distributes them, phonograph records.

PAR. 2. Respondent Magnetic Video Corporation is a corporation organized, existing, and doing business under and by virtue of the Laws of the State of Michigan, with its office and principal place of business located at 24380 Indoplex Circle, Farmington Hills, Mich.

Respondent Andre Blay is an individual and an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the manufacture and distribution of various tape products, including compilations of hits and sound alike recordings.

PAR. 4. In the course and conduct of their business as aforesaid, respondents now cause, and for sometime last past have caused, their products when sold to be shipped from their place of business located in the State of Michigan 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. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their sound alike tape products, respondents have caused, and are now causing:

(A) Certain labels to be used on the aforesaid tape products employing the name of the original artist.

Typical of these labels, but not all inclusive thereof, are the following:

The Carole King/Gilbert O'Sullivan Sound-Alike Collection

\* \* \* \* \*

The Sounds of Neil Diamond

\* \* \* \* \*

The Hits of Simon & Garfunkle

\* \* \* \* \*

Performed in the Donna Fargo Style

\* \* \* \* \*

(B) Certain labels to be used on the aforesaid tape products bearing the likeness of the original artist, or depicting drawings similar to those appearing on the album cover of the original recording.

(C) Certain labels to be used on the aforesaid tape products which state that the album contains a compilation of hit songs.

Typical of these labels, but not all inclusive thereof, are the following:

The Best Non-Stop Hits of 1973  
"Summer Breeze"

\* \* \* \* \*

Solid Gold Hits of 1973,

Volumes I and II

\* \* \* \* \*

Grammy Hits of 1973

\* \* \* \* \*

(D) Certain statements and representations to appear in promotional literature, including catalogues and point-of-sale material, and in advertisements inserted in newspapers, on television and radio, to prospective purchasers and to purchasers thereof with respect to the nature of the aforesaid tape products.

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

Charm Tapes, over 150 current

hit tapes to choose from

\* \* \* \* \*

The Hits of Loretta Lynn

\* \* \* \* \*

The Hits of Andy Williams

\* \* \* \* \*

Carole King, Fantasy

\* \* \* \* \*

20 Hit Songs of 1973

All "Grammy" Award Finalists

\* \* \* \* \*

Performed in the Style that Made

the Songs and the Artists Famous

\* \* \* \* \*

PAR. 6. By and through the use of the aforesaid labels, catalogues, advertisements, and other promotional materials, and statements and representations of similar import and meaning, respondents have represented, and are now representing, directly or by implication, that the aforesaid tape products feature the original artists.

PAR. 7. In truth and in fact, the aforesaid tape products are not original artist recordings.

PAR. 8. By the aforesaid practices, respondents have placed, and are now placing, in the hands of distributors and retailers the means and instrumentalities by and through which the respondents may mislead

and deceive the public in the manner and as to the matters herein alleged.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts, 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 constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning 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 Cleveland 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 purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issued its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Magnetic Video Corporation is a corporation organized, existing, and doing business under and by virtue of the Laws of

the State of Michigan, with its office and principal place of business located at 24380 Indoplex Circle, Farmington Hills, Mich.

Respondent Andre Blay is an officer of said corporation. He formulates, directs, and controls the policies, acts, and practices of said corporation, and his address is the same as that of said corporation.

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

#### ORDER

*It is ordered,* That respondents Magnetic Video Corporation, a corporation, its successors and assigns, and its officers, and Andre Blay, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any other corporation, subsidiary, division, or other device in connection with the sale of tape products recorded by a person or persons other than the original artist(s), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any label, package, catalogue, or any form of advertising, promotional material or point of sale material which:

(a) Contains any likeness of an original artist(s);

(b) Contains any illustration similar to that on the album cover or tape label used in the original artist(s) recording;

(c) Implies, in any manner, that the tape product has been recorded by an original artist(s).

2. Offering for sale, selling, or distributing any tape product recorded by one other than the original artist(s), unless the tape product's package or label contains either the name(s) of the actual artist(s) or a clear and conspicuous disclosure which reads:

**THIS IS NOT AN ORIGINAL ARTIST RECORDING.**

(a) If the legend "THIS IS NOT AN ORIGINAL ARTIST RECORDING" is employed, that legend shall appear on the front and spine of the tape product's label in capital letters and in boldface type set in type of at least the following sizes:

Front of the package — 12-point type

Spine of the package — 8-point type

(b) If the name(s) of the actual artist(s) is(are) used in conjunction with the name(s) of the original artist(s), the name(s) of the actual artist(s) shall appear in capital letters and in boldface type on the same surface of the tape product as the name(s) of the original artist(s) appear(s). The name(s) of the actual artist(s) shall be printed in type

which is at least the same size as the type size employed for the name(s) of the original artist(s).

(c) If the name(s) of the actual artist(s) is(are) not used in conjunction with the name(s) of the original artist(s), the disclosure shall comply with the requirements of Paragraph 2(a).

(d) The disclosure employed shall be a separate element of the label set in contrasting type on a solid-color background and shall not include any part of any picture design, illustration or other text; *Provided*, That if the name(s) of the original artist(s) is(are) used, the name of the actual artist(s) may be placed directly under or adjacent to the name(s) of the original artist(s).

3. Offering for sale, selling, or distributing any sound alike tape product, the title of which does not either name the actual artist or clearly disclose that the tape product is a sound alike recording, by incorporating the words, "Sounds like" or "Sound alike," or words of similar import and meaning.

4. Advertising any tape product not recorded by the original artist(s), unless respondents, in all advertisements of such tape products, either disclose clearly and conspicuously the name(s) of the actual artist(s) for each such recording, or make one clear and conspicuous disclosure which reads:

THIS IS NOT AN ORIGINAL ARTIST RECORDING

For the purposes of this section of the order, the term "advertisement" shall mean all advertising in newspapers, magazines, and other printed periodicals; advertisements appearing on television and radio, and catalogues.

(a) If the name of each actual artist is not clearly and conspicuously disclosed, respondents shall set forth the disclosure, "This Is Not An Original Artist Recording," in all printed advertisements, in capital letters and in boldface type, set in type of at least the following sizes:

Advertisements of a trim size larger than 144 square inches ———  
24-point type

Advertisements of a trim size larger than 65 square inches but not  
larger than 143 square inches ——— 14-point type

Advertisements of a trim size larger than 36 square inches but not  
larger than 64 square inches ——— 12-point type

Advertisements of a trim size not larger than 35 square inches ———  
— 10-point type

The disclosure shall comply with the requirements of paragraph 2(c) of this order.

(b) In all radio and television advertisements, the disclosure shall at least be made orally. There must be no less than one half-second pause both before and after the disclosure.

*It is further ordered,* That respondents may continue to distribute tape products presently in inventory with labels and packaging not bearing the disclosures required by this order; *Provided,* That respondents shall affix to each and every tape product a label which contains a clear and conspicuous disclosure which reads, "NOT AN ORIGINAL ARTIST RECORDING."

(a) The disclosure shall be in boldface capital letters, set in at least 14-point type;

(b) The disclosure shall be set in black type on a bright-red background;

(c) The disclosure shall appear as a separate element, and shall not include any part of any picture, design, illustration, or other text.

*It is further ordered,* That respondents shall, for a period of seven years, deliver a copy of this order to all retailers or distributors known to respondents who purchase respondents' tape products from respondents.

*It is further ordered,* That a copy of this order be delivered to all present and future personnel of respondents engaged in the design and creation of any packaging or labels for respondents' tape products, and that respondents shall secure from each such person a signed statement acknowledging receipt of said order.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in 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 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 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  
COLWELL & CO., ET AL.

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

*Docket C-2768. Complaint, Dec. 15, 1975 — Decision, Dec. 15, 1975*

Consent order requiring a Denver, Colo., real estate company, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

*Appearances*

For the Commission: *Tommie W. Wakefield.*

For the respondents: *John Madden, Brownstein, Hyatt, Farber & Madden, Denver, Colo.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Colwell & Co., a corporation, and Thomas F. Colwell and Phillip F. Foster, individually and as directors of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the implementing regulation 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 its charges in that respect as follows:

PARAGRAPH 1. Respondent Colwell & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado with its principal office and place of business located at 789 Sherman St., Suite 640, Denver, Colo.

Respondents Thomas F. Colwell and Phillip F. Foster are directors of the corporate respondent. Respondent Thomas F. Colwell formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Respondent Phillip F. Foster formulates, directs and controls the acts and practices of one of the autonomous branch offices of the corporate respondent which participated in 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 and sale of housing to the general public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of their business as aforesaid and in connection with credit sales have caused, and are causing, to be published, advertisements, as "credit sale" and "advertisement" are defined in Section 226.2 of Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of other than open end credit.

PAR. 5. Respondents, in certain of the above-mentioned advertisements, have stated and are stating the amount of downpayment (in dollars or as a percentage of the sale price) or the amount of an installment payment without also stating, as required by Section 226.10(d)(2) of Regulation Z, all the following terms:

- (a) the cash price; [the amount of the loan;]
- (b) the amount of the downpayment required or that no downpayment is required, as applicable;
- (c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and
- (d) the amount of the finance charge expressed as an annual percentage rate.

PAR. 6. Respondents, in certain of these advertisements, have stated, and are stating, the rate of a finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, and have not expressed said rate as an "annual percentage rate," using the term "annual percentage rate," as "annual percentage rate" is defined in Section 226.2 of Regulation Z, in violation of Section 226.10(d)(1) of Regulation Z.

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.

#### 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 Kansas City Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated said Acts, 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 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent Colwell & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 789 Sherman St., Suite 640, city of Denver, State of Colorado.

Respondents Thomas F. Colwell and Phillip F. Foster are directors of said corporation. Respondent Thomas F. Colwell formulates, directs and controls the acts and practices of the corporate respondent. Respondent Phillip F. Foster formulates, directs and controls the acts and practices of one of the autonomous branch offices of the corporate respondent. Their address is the same as that of said corporation.

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

#### ORDER

*It is ordered,* That respondents Colwell & Co., a corporation, its successors and assigns, its officers, and Thomas F. Colwell and Phillip F. Foster, individually and as directors of said corporation, and respondents' agents, representatives, salesmen and employees, directly or through any corporation, subsidiary, division or other device, in connection with any advertisement to aid, promote or assist, directly or

indirectly, any arrangement or extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any installment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

(a) the cash price; (the amount of the loan;)

(b) the amount of the downpayment required or that no downpayment is required, as applicable;

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

(d) the amount of the finance charge expressed as an annual percentage rate.

2. Stating in any advertisement the rate of a finance charge unless said rate is expressed as an annual percentage rate, using the term "annual percentage rate," as "finance charge" and "annual percentage rate" are defined in Section 226.2 and as required by Section 226.10(d)(1) of Regulation Z.

3. Failing, in any advertisement, to make all disclosures as required by Section 226.10 in the manner prescribed by Sections 226.6, 226.8 and 226.10 of Regulation Z.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in any 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 the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

*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.

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IN THE MATTER OF  
VAN SCHAACK & COMPANY

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

*Docket C-2769. Complaint, Dec. 15, 1975-Decision, Dec. 15, 1975*

Consent order requiring a Denver, Colo., mortgage company, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

*Appearances*

For the Commission: *Tommie W. Wakefield.*

For the respondent: *Davis, Graham & Stubbs, Denver, Colo.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Van Schaack & Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, and the implementing regulation 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 its charges in that respect as follows:

PARAGRAPH 1. Respondent Van Schaack & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 624 17th St., Denver, Colo.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, mortgaging, offering for sale and sale of new and used housing to the general public.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends or arranges for the extension

of consumer credit or offers to extend or arrange for the extension of such credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course of business as aforesaid and in connection with credit sales, has caused, and is causing, to be published, advertisements, as "credit sale" and "advertisement" are defined in Section 226.2 of Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of other than open end credit.

PAR. 5. Respondent, in certain of these advertisements has stated, and is stating, the amount of the downpayment (in dollars or as a percentage of the sales price) or that no downpayment is required or the amount of an instalment payment 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):

- (a) the cash price; (the amount of the loan;)
- (b) the amount of the downpayment required or that no downpayment is required, as applicable;
- (c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and
- (d) the amount of the finance charge expressed as an annual percentage rate.

PAR. 6. Respondent, in other advertisements, has stated, and is stating, the rate of a finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, and has not expressed said rate as an annual percentage rate, using the term "annual percentage rate," as "annual percentage rate" is defined in Section 226.2 of Regulation Z, in violation of Section 226.10(d)(1) of Regulation Z.

PAR. 7. Subsequent to July 1, 1969, respondent, in the ordinary course of business as aforesaid, and in connection with credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, has caused, and is causing, its customers to enter into consumer credit contracts for first mortgage loans. In some instances, respondent has and is providing its customers with disclosure statements, in connection with first mortgage loans, which do not accurately disclose the "annual percentage rate" to the nearest quarter of one percent, as required by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

PAR. 8. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section

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Decision and Order

108 thereof, respondent has thereby violated the Federal Trade Commission Act.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Kansas City Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 respondent has violated said Acts, 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 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent Van Schaack & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 624 17th St., city of Denver, State of Colorado.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

*It is ordered,* That respondent Van Schaack & Company, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any

extension or arrangement for the extension of consumer credit, or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any instalment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of instalments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

(a) the cash price; (the amount of the loan;)

(b) the amount of the downpayment required or that no downpayment is required, as applicable;

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

(d) the amount of the finance charge expressed as an annual percentage rate.

2. Stating in any advertisement the rate of a finance charge unless said rate is expressed as an annual percentage rate, using the term "annual percentage rate," as "finance charge" and "annual percentage rate" are defined in Section 226.2 and as required by Section 226.10(d)(1) of Regulation Z.

3. Failing, in any consumer credit transaction, to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent as prescribed by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

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

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

*It is further ordered,* That the respondent herein shall within sixty

(60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF  
THE GREAT ATLANTIC & PACIFIC TEA COMPANY,  
INC., ET AL.

*Docket 8866. Order, Dec. 19, 1975*

Granting of motion by A&P Company to file reply to complaint counsel's opposition to motion for leave to lodge documents in the record.

Granting of motion by A&P Company for leave to lodge certain documents into the record.

*Appearances*

For the Commission: *John J. Mathias, Edwin R. Soeffing and Andrew G. Stone.*

For the respondents: *Ira J. Dembrow, Cahill, Gordon, Sonnett, Reindel & Ohl, New York City for The Great Atlantic & Pacific Tea Company, Inc. Sidley & Austin, Chicago, Ill. and Walter W. Kocher, New York City for Borden, Inc.*

ORDER GRANTING REQUEST TO FILE REPLY AND GRANTING  
MOTION FOR LEAVE TO LODGE DOCUMENTS INTO RECORD

Respondent The Great Atlantic & Pacific Tea Company has filed a motion seeking leave to lodge in the record of this case two documents which were not entered during trial and which it claims are of relevance to the proceeding.

As a rule this is not a procedure of which we approve, since the time for presentation of evidence is at trial where it can be challenged by the other side and considered by the administrative law judge. Here, however, it appears that only a small quantity of documentation is involved, the authenticity of the tendered exhibits is not questioned, and their introduction will not impede the orderly progress of this proceeding. While we intimate no view respecting the claims made by the parties as to the significance of these documents, we will allow their lodging upon the record.

Therefore,

*It is ordered,* That the request of respondent The Great Atlantic & Pacific Tea Company, Inc., for permission to file a reply to complaint

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counsel's Opposition to Motion for Leave to Lodge be, and it hereby is, granted.

*It is further ordered*, That the motion of respondent The Great Atlantic & Pacific Tea Company, Inc., for leave to lodge certain documents into the record of this case be, and it hereby is, granted.

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IN THE MATTER OF

PEACOCK BUICK, INC., ET AL.

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

*Docket 8976. Complaint, July 1, 1974—Final Order, Dec. 19, 1975*

Order requiring a Falls Church, Va., new and used car dealer, among other things to cease misrepresenting used vehicles as new; failing to disclose previous use and advertising used as new; misrepresenting terms and conditions of purchase; and failing to disclose specific handling and service charges.

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 Peacock Buick, Inc., a corporation, and Dr. Norman Bernstein and Michael B. Peacock, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Peacock Buick, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 1001 W. Broad St., in the city of Falls Church, Commonwealth of Virginia.

Respondents Dr. Norman Bernstein and Michael B. Peacock are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including those hereinafter set forth. Their business address is the same as that of the corporate respondent.

The respondents cooperate and act 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, and sale to the public of new and used motor vehicles and in the servicing and repair thereof.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said motor vehicles to be sold to purchasers thereof located in various States of the United States and the District of Columbia, including the Commonwealth of Virginia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said motor vehicles in commerce, as "commerce" is defined in the Federal Trade Commission Act. Also in the course and conduct of their business, respondents have caused, and now cause, customers' notes, contracts, payments, checks, credit reports, title registrations, correspondence and other documents relating to payment of the purchase price for respondents' motor vehicles to be transmitted by various means, including but not limited to, the United States mails, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their motor vehicles, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical and illustrative of the statements and representations in said advertisements, published in August and September of 1970, disseminated as aforesaid, but not all inclusive thereof, are the following:

\* \* \* SAVE EVEN MORE NEW '70 OPELS BIG SELECTION AT CLOSE-OUT  
DISCOUNTS \$200-\$600 OFF! \* \* \*

\* \* \* 1970 BUICKS SAVE UP TO \$1600 OFF! \* \* \*

\* \* \* PEACOCK the NUMBER 1 OPEL DEALER IN THE U.S.A \* \* \*

PAR. 5. By and through the use of the above-quoted statements and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication:

1. That the motor vehicles described or referred to in said advertisements are new;
2. Peacock Buick, Inc. sells more Opel motor vehicles than any other Opel dealer in the U.S.A.

PAR. 6. In truth and in fact:

1. The motor vehicles described or referred to in said advertisements, in many instances, are not new. To the contrary, they have been

driven substantially in excess of the limited use necessary in moving or road testing a new vehicle prior to its delivery to the ultimate purchaser.

2. At the time of the advertisement, Peacock Buick, Inc. did not sell more Opel motor vehicles than any other dealer and, therefore, was not the Number I Opel Dealer in the U.S.A.

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 as aforesaid, and for the purpose of inducing the purchase of their said motor vehicles, respondents, directly or through their representatives and employees, have engaged in other deceptive acts and practices. Typical and illustrative, but not all inclusive, of such deceptive acts and practices are the following:

1. Respondents represented to customers that driver education motor vehicles used in high schools in the Metropolitan Washington, D.C. Area were new and/or factory official motor vehicles; by such representations, respondents misled and deceived purchasers as to the actual prior use of said driver-education motor vehicles.

2. Respondents represented to customers that preferred financial institutions have rejected their applications for credit. In many instances, the preferred financial institutions had not rejected customers' applications for credit, and in some instances, had no record of said applications being offered.

3. Respondents represented to customers that area banks would not accept customers' applications for credit unless credit life or credit accident and health insurance was first obtained. In most instances, area banks do not require that customers obtain credit life or credit accident and health insurance as a prerequisite for accepting the customers' applications for credit.

Therefore, respondents' statements and representations, and their failure to reveal in their advertisements and during their sales presentations, the material facts as to the nature and extent of such previous use of said motor vehicles, are unfair, false, misleading and deceptive.

PAR. 8. In the further course and conduct of their aforesaid business, respondents have engaged in the following acts and practices in connection with the sale of their said motor vehicles:

1. A \$25 dealer handling and service charge is added to the price of respondents' used motor vehicles; the first indication that such a charge is being made, in many instances, occurs at the time the buyer receives a copy of the sales invoice and the conditional sales contract. The

purchaser, in many said instances, believes that the motor vehicle will be delivered in satisfactory condition and appearance without the imposition of additional charges. The dealer handling and service charge becomes an undisclosed cost that should have been made known prior to the consummation of the sale.

2. Respondents have repaired or repainted, or have caused to be repaired or repainted, damaged cars; said repairs or repainting hide damage that may adversely affect a vehicle's performance and life expectancy. Respondents have failed to disclose to prospective purchasers and purchasers of respondents' motor vehicles that said damage has been hidden by repairs or repainting.

Therefore, respondents' failure to disclose such material facts, prior to the time of sale, was, and is, unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale, service and repair of new and used motor vehicles of the same general kind and nature as that sold, serviced and repaired by respondents.

PAR. 10. The use by the respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices and the failure to disclose material facts, as aforesaid, 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 complete and into the purchase of substantial quantities of respondents' motor vehicles and services by reason of said erroneous and mistaken belief. Respondents' aforesaid acts and practices unfairly cause the purchasing public to assume debts and obligations and to make payments of money which they might otherwise not have incurred.

PAR. 11. The acts and practices of the 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 or deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE  
LAW JUDGE

JULY 8, 1975

*Appearances*

For the Commission: *Jerry W. Boykin, Michael E. K. Mpras, Michael Dershowitz and Frank H. Addonizio.*

For the respondents: *Basil J. Mezines and Gerard E. Mitchell, Stein, Mitchell & Mezines, Wash., D.C.*

## PRELIMINARY STATEMENT

On July 1, 1974, the Commission issued a complaint charging the respondents, Peacock Buick, Inc. (Peacock), a corporation, and Dr. Norman Bernstein and Michael B. Peacock, individually and as officers of the corporation with having violated Section 5 of the Federal Trade Commission Act (15 U.S.C. §45).

The charges, in summary, were that the respondents had advertised or represented unfairly, falsely, misleadingly and deceptively:

- (1) That "not new" cars were new;
- (2) in that they had failed to disclose material facts regarding used cars they advertised and sold;
- (3) that Peacock was the "Number 1" Opel dealer in the USA when it was not;
- (4) that, contrary to fact, autos used in high school driver education training were new or factory official motor vehicles;
- (5) that preferred financial institutions had rejected auto purchasers' applications for credit when they had not;
- (6) that area banks would not accept auto purchasers' applications for credit unless credit life or credit accident and health insurance was obtained but that banks had no such requirement;
- (7) that without a proper disclosure having been made, a \$25 handling or service charge was and is added to the amount the customer agreed to pay for the vehicle purchased; and
- (8) that vehicles had been repaired or repainted (a) to hide damage that might affect their performance and life expectancy, and (b) to influence the buyers' decision to make the purchase without disclosing that repairs had been made and repainting done.

On Nov. 5, 1974, respondents' motion for a more definite statement was denied and an answer dated December 1974, was filed. In the answer, respondents admitted that they are in commerce in competition with corporations, firms and individuals in the sale, servicing, and repair of new and used motor vehicles (Peacock Answer, p. 5, par. 9).

Respondents denied engaging in the practices charged to be violative of Section 5 of the F.T.C. Act.

Pursuant to Rule 3.31, counsel supporting the complaint filed, on Dec. 9, 1974, a request for admissions. Respondents filed an answer to the request on Dec. 19, 1974. By way of discovery, respondents moved, pursuant to the Commission's rules, for a subpoena calling for the production of all writings received by the Federal Trade Commission in response to questionnaires sent by representatives of the Commission to customers of the respondents. The request sought all exculpatory statements, written or oral, which were given by customers of the respondents to the Federal Trade Commission in response to its questionnaire. I denied the request by order dated Jan. 6, 1975, and respondents sought Commission review of that order pursuant to Commission Rule 3.23. An "Order Denying Application for Review of Ruling" was entered on Jan. 20, 1975.

The adjudicative hearings were held in Washington, D.C., from Mar. 17 thru 20, 1975. The record was closed for the reception of evidence on Apr. 15, 1975, after additional unsuccessful efforts were made, at my suggestion, to reach an agreed upon settlement and counsel decided they would not request oral argument on the terms of the order which was proposed when the complaint issued (Tr. 695).

Proposed findings, conclusions and orders together with briefs supporting their proposals were filed by counsel for both sides on May 15, 1975. Replies by each were filed on May 30, 1975.

The findings of fact made herein are based on a review of the allegations made in the complaint, respondents' answers, stipulations entered by counsel, written admissions by respondents, the evidentiary record and upon a reading of the transcript record of the testimony and consideration of the demeanor of the witnesses at the hearings. In addition, the proposed findings of fact, conclusions and orders, together with reasons and briefs in support thereof filed by both sides have been given careful consideration. To the extent not adopted by this decision in the form proposed or in substance, they are rejected as not supported by the record or as immaterial.

For the convenience of the Commission and other readers of this initial decision, the findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony, evidence and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence considered in arriving at such findings. The following abbreviations have been used for this purpose:

CCPF—Complaint Counsel's Proposed Findings of Fact, Conclusions of Law and Order.

RPF—Respondents' Proposed Findings of Fact, Conclusions of Law and Order.

CX—Commission's Exhibit, followed by number of exhibit being referenced.

RX—Respondents' Exhibit, followed by number of exhibit being referenced.

Tr.—Transcript preceded by the name of the witness and followed by the page number.

## FINDINGS OF FACT

### RESPONDENTS' IDENTITIES

Peacock Buick, Inc. is a corporation organized under the laws of the Commonwealth of Virginia, engaged in the sale of Buick and Opel automobiles. Its principal office and place of business is located at 8590 Leesburg Pike, McLean, Va. (Admitted, Peacock Answer, p. 1).

Dr. Norman Bernstein and Mr. Michael B. Peacock, Dr. Bernstein's son (Bernstein, Tr. 687), are officers of the corporate respondent, *i.e.*, president and vice-president, respectively (Peacock, Tr. 52; RPF p. 6, par. 9). Dr. Bernstein and Mr. Peacock formulate, direct and control the acts and practices of the corporate respondent (Admitted as to Dr. Bernstein, Peacock Answer, p. 2; as to Mr. Peacock, Peacock Admissions Nos. 30 and 32; Criste, Tr. 47-48; Gould, Tr. 303; Bernstein, Tr. 688).

### RESPONDENTS' BUSINESS

Respondents are now, and for approximately thirteen years have been, engaged in the advertising, offering for sale and sale to the public of new and used motor vehicles and in their servicing and repair (Admitted, Peacock Answer, p. 2; RPF p. 5, par. 6).

Respondents sell approximately 2,000 new cars and 400 to 500 used cars each year. Generally the company retails the best of these or about 20 percent of the used cars it takes in trade for new cars. The balance are sold at wholesale (Bernstein, Tr. 168).

Respondents sell the motor vehicles from their place of business in McLean, Va., to purchasers located in various States of the United States, the District of Columbia, and the Commonwealth of Virginia. They maintain and at all times relevant hereto have maintained a substantial course of trade in the motor vehicles they sell and repair, in commerce, as "commerce" is defined in the Federal Trade Commission Act (Admitted, Answer, p. 2). Also in the course and conduct of their business, respondents have caused, and continue to cause, customers' notes, contracts, payments, checks, credit reports, title registrations,

correspondence and other documents relating to payment of the purchase price of respondents' motor vehicles to be transmitted by various means, including but not limited to, the United States mails, in commerce, as "commerce" is defined in the Federal Trade Commission Act (Admitted, Answer, p. 2).

#### RESPONDENTS' ADVERTISING AND REPRESENTATIONS

In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their motor vehicles, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act (Admitted, Answer, p. 2).

##### 1. *New and Used Cars*

Typical and illustrative of statements and representations in Peacock's advertisements in 1970 and 1971 are the following:

\* \* \* SAVE EVEN MORE NEW '70 OPELS BIG SELECTIONS AT CLOSE-OUT DISCOUNTS \$200-\$600 OFF! \* \* \* (CXs 11-13).

\* \* \* 1970 BUICKS SAVE UP TO \$1600 OFF! \* \* \* (CX 4)

\* \* \* PEACOCK THE NUMBER 1 OPEL DEALER IN THE USA \* \* \* (CX 17-18)

Respondents did not falsely represent used cars to be new when they were sold to retail purchasers (Harris, Tr. 196-198; Dace, Tr. 649). One witness, a college graduate with a master's degree, testified to the contrary; but documentary evidence of the transaction, signed by her, clearly shows that the auto was used (Schmidt, Tr. 249-250; RXs 35, 36). In purchasing an automobile, customers were not pressured to hurry through the transaction (Schmidt, Tr. 260).

If the vehicle was not new, *e.g.*, a company official car, demonstrator, or if it was a used vehicle such as a trade-in, it was and is respondents' policy that such fact would be disclosed (Peacock, Tr. 106; Garrison, Tr. 289; Montgomery, Tr. 326; Graber, Tr. 362; McKay, Tr. 382).

The purchaser of a car that was not "new" invariably signed documents both at the time the order was placed and prior to taking delivery, which reflected that the vehicle had been used (RX 35 and 36); however, material facts as to the nature of the prior use were not always disclosed, *e.g.*, car rental not disclosed (Montgomery, Tr. 325; Funkhauser, Tr. 412).

Respondents did not represent to customers that driver education

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motor vehicles used in high schools in the Metropolitan Washington, D.C. Area were new or factory official motor vehicles; however, they did not always disclose to customers that some of the vehicles they sold had been used in a driver education program (Huntley, Tr. 335; Bernstein, Tr. 181; Meador, Tr. 392). On occasion such a disclosure was made (Chandley, Tr. 349; Splendorio, Tr. 418). Records of the sales of such vehicles reflect that they were sold as "used" automobiles (CX 27A, 27B; RX 35, RX 36; CX 83A; CX 38D; CX 100).  
If an unused portion of a manufacturer's warranty remained, it was provided to the buyer (Huntley, Tr. 333; Graber, Tr. 362).

*2. Discounts*

Respondents' representations in advertisements, such as those described above, that the motor vehicles offered were new and that discounts of from \$200 to \$1600 off the list price were available, were true (Answer, p. 3; Peacock, Tr. 59; Gould, Tr. 305; Bernstein, Tr. 154, 692; Dace, Tr. 649).

*3. No. 1 Opel Dealer*

The challenged representation by Peacock "\* \* \* Number 1 Opel Dealer in the USA" (Complaint, par. 6, p. 2) had a reasonable basis in fact. Amongst the top twenty dealers, Peacock sold the largest number of Opels in the U.S. in July 1970 (RX 14) and in the first quarter of 1971 (Peacock, Tr. 93; CX 86; RXs 32 and 33). The representation was discontinued when respondents learned that they no longer were No. 1 (Peacock, Tr. 135; Bernstein, Tr. 675, 676). Respondents have not advertised their standing in Opel sales for approximately four years because they are no longer among the top ten Opel dealers (Bernstein, Tr. 676).

*4. Financing of Autos*

Respondents did not and do not make false representations to customers regarding acceptance or rejection of the customers' applications for credit by lending institutions. They did and do make a judgment as to which lending institutions probably would extend credit (Peacock, Tr. 112) and apprise customers as to the identity of those institutions to whom formal applications for credit are submitted and of the result (Spear, Tr. 520-521; RX 11).  
They also, to avoid establishment of a record that a formal application by the individual had been rejected, made and make informal inquiries of lending institutions without disclosing the potential borrower's identity in order to ascertain the lender's attitude

toward a loan to the individual on the basis of general information as to his or her credit worthiness (Spear, Tr. 514-516).

Respondents did and do attempt to arrange customers' financing of the motor vehicles sold but did not and do not disclose the material fact to the customers that it is in Peacock's financial interest to arrange for the financing with lending institutions (Peacock, Tr. 111; Mathis, Tr. 315).

There is inadequate evidence in the record to establish what constitutes a "preferred" financial institution (Complaint, par. 7, p. 2). One witness who said that she preferred to finance with General Motors Acceptance Corporation (GMAC) testified a salesman for an auto dealership in Baltimore, Md., with which she cancelled her order, had told her GMAC had approved her credit application (Schmidt, Tr. 269). The manager of the GMAC office serving Peacock Buick, however, testified he had no written record of an application on file (Latta, Tr. 286-287; CX 22L). Respondents' credit manager testified that the witness was a marginal credit risk due to her scant credit experience and newness to the Metropolitan Washington, D.C. Area and to her job and that he ascertained by telephone call that submittal of an application for credit to GMAC for a person with that credit background would be a useless act (Spear, Tr. 519, 523-524).

#### *5. Credit Accident, Health and Life Insurance*

Respondents' salesmen did represent orally that area banks would not accept customers' applications for credit unless credit life or credit accident and health insurance were first obtained (Lanpher, Tr. 366-367); however, the standard installment sales contract issued to each customer reflected and reflects that credit life or credit accident and health insurance was and is optional (RX 37; Spear, Tr. 516; Bernstein, Tr. 683).

Respondents did attempt to sell credit life, accident and health insurance to customers who financed their motor vehicles through Peacock (Peacock, Tr. 70, 109; Mathis, Tr. 314; Graber, Tr. 360). They had customers sign a form acknowledging that it was optional (Peacock, Tr. 70, CX 80E). Respondents did not and do not disclose to auto buyers the material fact that it was or is in Peacock's financial interest to include the sale of such insurance in the financing arrangements made with lending institutions (Peacock, Tr. 111).

#### *6. Handling and Service Charge*

Respondents did not disclose the material fact to customers at the time they contracted to purchase the motor vehicle that there would be

a handling and service charge (usually \$25) added to the purchase price of used motor vehicles (Peacock Admissions 50 and 51). The \$25 or lesser charge was and is added to the sales invoice (CX 24A) and conditional sales contract which the customer receives when he arrives at respondents' place of business to take delivery of the motor vehicle (Peacock Admission 51; Peacock, Tr. 74; Lanpher, Tr. 365; Glasser, Tr. 668).

Peacock salesmen and representatives do not orally disclose the dealer handling and service charge, usually \$25, during the sales negotiations. It is only after the consummation of the transaction, when delivery is taken and various documents received that written notice of such charge is given to purchasers. Even at that point, the charge is not pointed out and if by chance a purchaser does notice it, there is little opportunity to either eliminate it or to reconsider the purchase (CCPF, 52-53).

#### *7. Damaged and Repaired Autos*

Respondents have not repaired or repainted damaged cars which repairs and repainting "\* \* \* hide damage that may affect a vehicle's performance and life expectancy" (complaint, par. 8 p. 2, first sentence.). Cars requiring such extensive repairs are not sold at retail by respondents (Peacock, Tr. 67; Bernstein, Tr. 161, 162, 168, 170, 172, 684-686).

Although several witnesses testified they had mechanical difficulties with their cars (Meador, Tr. 395; Splendorio, Tr. 421), the connection between those difficulties and the prior use of the car and whether the damage affected its performance and life expectancy was not convincingly established.

Patrick Goss, complaint counsel's expert witness, testified that the cars purchased by four customers suffered damage which affected their life expectancy and performance (Goss, Tr. 438, 442-445). However, Mr. Goss himself had no opportunity to observe the condition of these cars either before or after repairs were made (RPF, p. 30). Mr. Goss' conclusion that the repairs were improperly done was based on his assumption that there were obvious indications that repairs had been done (Goss, Tr. 466). According to Mr. Goss himself, if repair work is not visible and it has been done by a good repair shop, such work should not affect a car's life expectancy or performance (Goss, Tr. 474) (RPF, pp. 30-31). Men who supervised the repairs and saw the vehicles testified that the cars had suffered superficial damage only and that the repairing and repainting was done to new car standards (Lamb, Tr. 580-588; Bannister, Tr. 604-614).

Respondents have not disclosed and do not disclose the material fact

to prospective purchasers or actual purchasers that damage has been repaired or that repainting has been done (Garrison, Tr. 294; Chandley, Tr. 349; Meador, Tr. 392-393; Bernstein, Tr. 158, 161, 685, 686). In the instances regarding which evidence was adduced, the damage was not convincingly shown to be so severe that it probably would adversely affect the vehicle's performance and life expectancy even though the repair invoice for the most severe damage indicated that it cost more than \$350 to repair. The face amounts on the invoices related to the repair of such vehicles, varied from a low of \$19.20 (RX 38) to a high of \$368.50 (RX 42) with most of them costing less than \$150 (RXs 39-41, 44-46).

#### VIOLATIONS OF SECTION 5 OF THE F.T.C. ACT

The use by the respondents' salesmen-employees of the unfair, false, misleading and deceptive statements, representations, acts and practices regarding the need for credit life or accident and health insurance before credit could be obtained and the failure to disclose material facts in timely fashion, *e.g.*, the \$25 or less handling and service charge, as aforesaid, has had and now has the capacity and tendency to mislead members of the purchasing public (1) into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and (2) into the purchase of substantial quantities of respondents' motor vehicles and services by reason of said erroneous and mistaken belief.

Respondents failed to disclose the material facts adequately in some instances or at all in other instances, that:

(1) It was and is in Peacock's financial interest to arrange for the financing of purchasers' automobiles.

(2) It was and is in Peacock's financial interest to include the sale of credit life, accident and health insurance to purchasers who finance their motor vehicles through Peacock.

(3) A handling or service charge, usually \$25, would be added to the purchase price of used motor vehicles.

(4) Damaged automobiles have been repaired and repainted prior to sale to the purchaser.

Respondents' aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices regarding the need for credit life or accident and health insurance before credit could be obtained and the failure to disclose material facts as indicated, unfairly cause the purchasing public to assume debts and obligations and to make payments of money which they might otherwise not have incurred (CCPF, pp. 53-54).

Respondents at all times pertinent hereto have been, and are now, in

substantial competition, in commerce, with corporations, firms and individuals in the sale, servicing and repair of new and used motor vehicles of the same general kind and nature as are sold, serviced and repaired by respondents (Admitted, Answer p. 5). As a result, the aforesaid activities unfairly deprive respondents' competitors of trade they might have enjoyed or enjoy but for respondents' violations of Section 5 of the Federal Trade Commission Act. The competitor is prejudiced when business that would have come to him is diverted to another whose methods are less scrupulous in the conduct of his business. *Federal Trade Commission v. Algoma Lumber Co., et al.*, 291 U.S. 67, 78 (1934).

## DISCUSSION

### COMMISSION JURISDICTION

Respondents have at all times relevant hereto been engaged in interstate commerce within the intent and meaning of Sections 4 and 5 of the Federal Trade Commission Act. There is ample evidence in the admissions by the respondents in the record that they advertised and otherwise engaged in commerce as that term is defined in the Federal Trade Commission Act.

### INDIVIDUAL ACCOUNTABILITY OF DR. BERNSTEIN AND MR. PEACOCK

In appropriate circumstances the individual respondents, Dr. Norman Bernstein and Mr. Michael B. Peacock, could be held individually responsible and subject to a cease and desist order for the improper corporate acts and practices of the corporate respondent Peacock Buick, Inc. The Commission's authority in this respect is clear. It is well settled that the Commission may properly name officers, directors, and sole stockholders of corporate respondents in their official as well as their individual capacities in order to prevent the evasion of F.T.C. orders. *Federal Trade Commission v. Standard Education Society, et al.*, 86 F.2d 692 (2d Cir. 1936) *reversed on other grounds*, 302 U.S. 112, 120 (1937); *Rayex Corporation v. Federal Trade Commission*, 317 F.2d 290, 295 (2d Cir. 1963); *Abel Allan Goodman v. Federal Trade Commission*, 244 F.2d 584, 585 (9th Cir. 1957); *Standard Distributors, Inc., et al. v. Federal Trade Commission*, 211 F.2d 7, 14-15 (2d Cir. 1954) (CCPF, p. 8). As the individuals ultimately responsible for every aspect of the firm's operations, both Dr. Bernstein and Mr. Peacock are accountable for the illegal acts and practices found herein. In *John A. Guziak v. Federal Trade Commission*, 361 F.2d 700, 704 (8th Cir. 1966), the court held that an individual who was the motivating and

controlling force behind the corporation was responsible for its activities and that he should be enjoined from engaging in similar activities in the future.

Since Peacock Buick is a relatively small, family owned and operated business and corrective action (Bernstein, Tr. 148-149, 153-154, 174-177) was taken when purchasers' complaints were called to their attention, I do not believe subjecting them to a Federal Trade Commission order to cease and desist as individuals or in their capacity as corporate officials is called for in this case. To subject them to such an order would be a good example of "administrative over-kill." I do not wish to create any such example in this case or to stigmatize them on the basis of the evidentiary record in this matter. Their testimony at the hearings was straightforward, not evasive and not contrary to fact. See *Pati-Port, Inc., et al. v. Federal Trade Commission*, 313 F.2d 103, 104 (4th Cir. 1963).

#### ORAL MISREPRESENTATIONS

Oral misrepresentations made by a respondent's agents or representatives, *i.e.*, the auto salesmen here, have long been held to be in violation of the Federal Trade Commission Act. *International Art Company v. Federal Trade Commission*, 109 F.2d 393 (1940); *Perma-Maid Co., Inc. v. Federal Trade Commission*, 121 F.2d 282 (1941); *Parke, Austin & Lipscomb, Inc., et al. v. Federal Trade Commission*, 142 F.2d 437 (1944); *Consumers Home Equipment Co., et al. v. Federal Trade Commission*, 164 F.2d 972 (1947); *National Trade Publications Service, Inc., et al. v. Federal Trade Commission*, 300 F.2d 790 (1962) (CCPF, p. 41).

#### FAILURE TO DISCLOSE MATERIAL FACTS

It is an unfair, false, misleading and deceptive act and practice to fail to disclose, prior to the time of sale, relevant and material facts where such information might be important to the prospective customer in making his choice as to whether to make a purchase. *Federal Trade Commission v. Colgate-Palmolive Co., et al.*, 380 U.S. 374 (1965); *Spiegel, Inc. v. Federal Trade Commission*, 494 F.2d 59, 62 (7th Cir. 1974). See also, *In the Matter of Main Line Lumber and Millwork Company, et al.*, 56 F.T.C. 17 (1959), where the Commission prohibited respondent from stating prices for certain appliances, when there were, in fact, extra costs that purchasers would be required to pay separately and at a later date (CCPF, p. 52).

Both Congress and the courts have clearly established a policy calling for disclosure of information so that consumers can be better informed

and compare the costs of competing products (*e.g.*, Fair Packaging and Labeling Act, 80 Stat. 1296, 15 U.S.C. §1451, *et seq.*, Truth in Lending Act, Pub. Law 90-321, 15 U.S.C. §1601, *et seq.*, *Leon A. Tashof v. Federal Trade Commission*, 437 F.2d 707 (D.C. Cir. 1970); *Montgomery Ward & Co., Inc. v. Federal Trade Commission*, 379 F.2d 666 (7th Cir. 1967); *Spiegel, Inc., supra*) (CCPF, p. 52).

The Commission has the authority to require disclosure of material facts when a respondent advertises misleadingly due to a failure to reveal facts material in the light of the representations made. *All-State Industries of North Carolina, Inc., et al. v. Federal Trade Commission*, 423 F.2d 423 (4th Cir. 1970); *Joseph L. Portwood Co., et al. v. Federal Trade Commission*, 418 F.2d 419, 424 (10th Cir. 1969); *Leon A. Tashof v. Federal Trade Commission, supra*, n. 37 (D.C. Cir. 1970); *Ward Laboratories, Inc., et al. v. Federal Trade Commission*, 276 F.2d 952, 954 (2d Cir. 1960), *cert. denied*, 364 U.S. 827.

There is ample precedent for the proposition that the Commission may require affirmative disclosures where necessary to prevent deception. Thus, the failure to disclose material facts, which if known to prospective purchasers would influence their decision as to whether to purchase, is an unfair trade practice in violation of Section 5. *Haskelite Mfg. Corporation v. Federal Trade Commission*, 127 F.2d 765 (7th Cir. 1942); *L. Heller & Son, Inc., et al. v. Federal Trade Commission*, 191 F.2d 954 (7th Cir. 1951); *Federal Trade Commission v. Colgate-Palmolive Co., et al., supra*; *The J. B. Williams Company, Inc., et al. v. Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967); *S.S.S. Company, Inc., et al. v. Federal Trade Commission*, 416 F.2d 226, 231 (6th Cir., 1969). The Commission may utilize its accumulated expertise to determine what facts are material to consumers and whether such information has been withheld. *Pfizer Inc.*, F.T.C. Dkt. 8819, 81 F.T.C. 23 (1972). In my view, purchasers should be specifically informed when a seller of an auto gains financially, *i.e.*, receives a "kickback," when he arranges for the financing of the auto or sells credit health, life or accident insurance.

It is not a violation of a respondent's First Amendment rights to require affirmative disclosure of material facts. They are free to advertise; but they are prohibited from making false and misleading statements—*e.g.*, failing to disclose material facts—which they have no constitutional right to disseminate. *The Regina Corporation v. Federal Trade Commission*, 322 F.2d 765, 770 (3d Cir. 1963); *S.S.S. Company, Inc., et al. v. Federal Trade Commission, supra*.

## CONCLUSIONS

The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondents.

The respondents at all times relevant hereto have been engaged in interstate commerce within the intent and meaning of Sections 4 and 5 of the Federal Trade Commission Act.

The complaint in this matter sets forth a cause of action which is in the public interest to pursue.

The acts and practices of the respondent as found above under the caption "Violations of Section 5 of the F.T.C. Act" (pp. 11-13) were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair or deceptive acts and practices in or affecting commerce, and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

## THE REMEDY

The Commission is vested with broad discretion in determining the type of order necessary to insure discontinuance of the unlawful practices found and may require affirmative disclosure of any material facts, which if known to the prospective customer, might affect his choice of whether to do business with a respondent. The Commission is not limited to the exact nature of the specific violations in devising suitable order provisions to protect the public interest. *Federal Trade Commission v. Colgate-Palmolive Co., et al.*, 380 U.S. 374, 392 (1965); *Federal Trade Commission v. National Lead Co., et al.*, 352 U.S. 419, 428-430 (1957); *Federal Trade Commission v. Rubberoid Co.*, 343 U.S. 470, 473 (1952).

The Commission's broad discretion only is limited by the requirement that the remedy must be reasonably related to the unlawful practices found. *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 613 (1946); *Niresk Industries, Inc., et al. v. Federal Trade Commission*, 278 F.2d 337 (7th Cir. 1960), *cert. denied*, 364 U.S. 883.

The Commission may order both affirmative acts and affirmative disclosures by respondent in order to bring an end to and to prevent a recurrence of illegal acts and practices. *Federal Trade Commission v. Colgate-Palmolive, supra*; *American Cyanamid Company v. Federal Trade Commission* 363 F.2d 757 (6th Cir. 1966), 401 F.2d 574 (6th Cir. 1968), *cert. denied*, 394 U.S. 920 (1969).

The central purpose of Section 5 of the Federal Trade Commission Act is to abolish the rule of *caveat emptor, i.e.*, let the buyer beware, which for a great many years had governed business transactions

between vendors and purchasers. *Federal Trade Commission v. Sterling Drug, Inc., et al.*, 317 F.2d 669, 674 (2d Cir. 1963).

The Commission's duty, as eloquently expressed by Judge Learned Hand, is to "discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop." *Federal Trade Commission v. Standard Education Society*, 86 F.2d 692, 696 (2d Cir. 1936), *reversed on other grounds*, 302 U.S. 112 (1937).

It is well established that the Commission's authority in issuing cease and desist orders is not limited to issuing prohibitory injunctions, but extends to orders in the nature of mandatory injunctions compelling the performance of specific acts. Several examples of such orders upheld by the courts are those requiring affirmative disclosures in advertising. *The J. B. Williams Co., Inc., et al. v. Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967); requiring licensing of a patent used illegally, *American Cyanamid Co. v. Federal Trade Commission, supra*; and requiring divestiture in antitrust cases grounded solely upon Section 5 of the Federal Trade Commission Act rather than Section 7 of the Clayton Act; *L. G. Balfour Co., et al. v. Federal Trade Commission*, 442 F.2d 1 (7th Cir. 1971); *Golden Grain Macaroni Company v. Federal Trade Commission*, 472 F.2d 882 (9th Cir. 1972), *cert. denied*, 412 U.S. 467 (1973), (CCPF, p. 55).

An indication of the scope of the Commission's authority in fashioning appropriate orders is found in *All-State Industries of North Carolina, Inc., et al. v. Federal Trade Commission*, 423 F.2d 423 (4th Cir. 1970), *cert. denied*, 400 U.S. 828 (1970). There, the Court of Appeals upheld a Commission order requiring petitioners to disclose orally prior to sale, and in writing on any instrument of indebtedness, that such instrument, at the company's option and without notice, could be assigned to a finance company against whom purchasers' claims or defenses might not be available. And, in *Arthur Murray Studio of Washington, Inc., et al. v. Federal Trade Commission*, 458 F.2d 622 (5th Cir. 1972), the Fifth Circuit Court of Appeals upheld a Commission order requiring petitioners to post in a prominent place in each place of business a copy of the cease and desist order, with the notice that any customer or prospective customer may receive a copy on request (CCPF, pp. 55-56).

## THE ORDER HERE

In fashioning the order in this proceeding, which varies from the "Notice of Order"\* contained in the complaint, I have taken into account (1) the violations of law which the record establishes, consisting of conduct which the Commission has declared over the years to be unlawful, (2) the fact that this order must be designed to protect the public which includes the unthinking, the inadequately educated and the credulous (see *Charles of the Ritz Dist. Corporation v. Federal Trade Commission*, 143 F.2d 676, 679 (2d Cir. 1944)), and (3) subject to the reasonable-relationship-of-remedy-to-unlawful-practices-found precept adverted to above, the fact that "\* \* \* once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor." *United States v. E. I. du Pont de Nemours [ Co., et al.*, 366 U.S. 316, 334 (1961).

The order now calls for disclosure of material facts which might influence a purchaser's decision to buy and also calls for a report to the Commission only when the corporate respondent leaves or enters the field of auto retailing. These provisions have been added to the "Notice Order" attached to the complaint as issued.

In connection with the differences between the "Notice Order" of the complaint and the order in this initial decision, the last paragraph of the Notice (p. 7) reads, in pertinent part, as follows:

If however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to Peacock Buick, Inc., a corporation, and Dr. Norman Bernstein and Michael B. Peacock, individually and as officers of said corporation might be inadequate to fully protect the consuming public, or to protect competitive conditions within the motor vehicle retailing industry, the Commission may order such other relief as it finds necessary or appropriate.

I believe some other relief to be appropriate. To this end, provisions calling for disclosure of the nature of known prior use were extended. Also, (1) the fact that repairs costing more than \$50 have been made to cars offered for sale, and (2) the fact that it is in Peacock's financial interest to arrange financing, and credit life, health and accident insurance are to be affirmatively disclosed. The "Notice Order" provision (p. 11, par. (e)) applicable to Dr. Bernstein and Mr. Peacock in their corporate and individual capacities has been deleted.

## ORDER

*It is ordered*, That respondent Peacock Buick, Inc., a corporation, its successors and assigns and its officers, agents, representatives and

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\* Not published in the F.T.C. Volumes of Decisions.

employees directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution, service and repair of new and used motor vehicles, or any other products or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to disclose orally, and in print on any purchase order the customer signs, in a type size at least the same as that comprising the bulk of the text, the nature or extent of previous use or condition of any new or used vehicle displayed, offered for sale or sold, which previous use or condition resulted from a sale or lease of the vehicle respondent negotiated or of which he has knowledge, *e.g.*, student driver training, auto rental, personal use.

2. Offering for sale or selling any motor vehicle of the current or previous model year which has been damaged and repaired at a dealer's cost in excess of \$50.00 without disclosing, both orally and on any purchase order the customer signs in type size at least the same as that comprising the bulk of the text, the nature of the damage sustained by the vehicle and the dealer cost to repair it.

3. Representing, contrary to fact, orally or in writing, directly or by implication, that customers, as a prerequisite for obtaining customer credit, must obtain credit life or credit accident and health insurance before a particular lending institution will extend credit; or misrepresenting, in any manner, the conditions or restrictions under which consumer credit will be extended.

4. Failing to disclose, orally and on the application for financing, in a type size at least the same size as that comprising the bulk of the text, that area lending institutions which finance customers' purchases compensate respondent for loans it arranges for such purchasers.

5. Failing to disclose, both orally and on the application the customer signs for credit life and/or credit accident and health insurance coverage, in a type size at least the same size as that comprising the bulk of the text, that such insurance is optional and that, if purchased through the respondent that the insurer compensates the respondent.

6. Failing to disclose, both orally and on any purchase order the customer signs, in a type size at least the same size as that comprising the bulk of the text, the precise amount of handling and service charges which will be added to the cost of respondent's used motor vehicles.

*It is further ordered:*

(a) That respondent shall forthwith distribute a copy of this order to each of its operating divisions;

(b) That respondent shall deliver a copy of this order to cease and

desist to all present and future personnel engaged in the offering for sale, or sale, of any motor vehicle, and in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person; and

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

#### OPINION OF THE COMMISSION

BY DIXON, *Commissioner*:

Complaint in this matter was issued July 1, 1974, charging respondents Peacock Buick, Dr. Norman Bernstein, and Michael B. Peacock with unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) in connection with the sale of new and used automobiles. Among the charges were that respondents (1) advertised used cars as new; (2) represented to customers that automobiles previously used for driver education were in fact new or had been used only by factory officials; (3) misrepresented that credit life insurance was required in order to obtain automobile financing; (4) misrepresented that area lending institutions had rejected applications for credit when such was not the case; (5) failed to disclose to prospective purchasers that automobiles had been materially damaged and repaired prior to purchase; (6) failed to disclose the existence of a \$25 service charge on the purchase of used cars when quoting the price of those cars; and (7) represented that Peacock Buick was the "No. 1 Opel Dealer in the United States" when such was not the case.

Hearings were held before an administrative law judge (ALJ) who prepared an initial decision which dismissed certain counts and sustained others including, in respondents' view, some which were not in the complaint to begin with. The ALJ recommended an order diverging in significant respects from the notice order originally proposed by the Commission. As the law judge himself foresaw (Tr. 693-94), his solomonic approach has placated neither side, both of whom

have filed appeals challenging each conclusion of the initial decision which favors the other. While it is tempting to conclude that a result which displeases two antagonists so thoroughly must have much to commend it, our own review of the record reveals the need for substantial modification of the ALJ's conclusions. Slavish, unreasoned adherence to a notice order is not a virtue, and we applaud, as a general matter, the law judge's independent analysis of the appropriate relief. We have concluded, however, that certain of his recommendations are inappropriate in light of the facts before us. In addition, the Commission would have benefited from a more extensive analysis by the judge of the record evidence which he considered in drawing his conclusions. Our own review and disposition of contested issues follows:

#### I. ADVERTISING USED CARS AS NEW

The complaint charged that respondents had employed media advertising which represented that new cars were for sale at various discounts, when in fact the cars to which those advertisements referred were in some cases used. Illustrative of the challenged advertisements were: 1970 Opels; Close-Out Sale; \$200-\$600 Off! (CX 7)<sup>1</sup> Save Even More! New '70 Opels At Final Close-Out; Discounts! \$200-\$600 Off (CX 13) 1970 Buicks Save Up to \$1600 Off! (CX 4; I.D. p. 6[p. 1539, herein])

Both sides recognize that the above advertisements, run during the latter part of 1970, should be construed to offer *new* cars at the indicated discounts. This is self-evident with respect to advertisements that refer explicitly to "new" cars. With respect to those that advertised merely "1970" cars, at a time when 1971 model year cars had come on the market, the reasonable expectation of many consumers would be that 1970 cars not advertised as "used" were in fact "new"<sup>2</sup> and thus an advertisement for late model used cars should include an affirmative designation that they are used.

The record reflects some confusion on the part of counsel as to what proof was necessary to prove or disprove the complaint allegations. In our view, an advertisement such as "1970 Opels; \$200-\$600 Off" represents that the consumer upon going to the dealer will find there a significant number of new, 1970 Opels, including some at discounts of

<sup>1</sup> The following abbreviations are used herein: I.D. p.—Initial Decision (Page No.) Tr.—Transcript of Testimony (Page No.) CX—Complaint Counsel's Exhibit (No.) RX—Respondents' Exhibit (No.) RA—Respondents' Answer to Requests for Admissions (No.)

<sup>2</sup> The complaint defined a car as no longer being new once it has been "used in any manner other than the limited use necessary in moving or road testing a new vehicle prior to delivery of such vehicle to the customer."

\$600. The fact that the dealer may also have available late model used cars at similar discounts from new list price<sup>3</sup> does not render the advertising false, assuming no effort is made to convince the consumer upon arrival that the late model used cars are in fact the new cars promised in the advertisement, and assuming that the new cars are, in fact, not being used merely as "bait" to induce the purchase of a larger number of more plentiful or attractive used cars.

At trial, respondent Peacock testified that the advertisements challenged referred solely to new cars (Tr. 59), and respondent Bernstein averred that when those advertisements were run respondents did have available for sale new cars at the indicated discounts (Tr. 680-82).

Complaint counsel relied entirely for their case upon a response to an order to file a Special Report, served upon respondents by the Commission. Question 13 of that report read:

State for each year whether your firm utilized price reduction figures in the advertising of its automobiles; for example, advertising automobiles from \$200 to \$2000 Off. If so, were current model used cars offered for sale under such advertisements? If so, did the larger of the two price reduction figures, *i.e.*, \$2000 Off, refer to current model used cars? (CX 1(c))

The response of Peacock Buick, filed by its secretary under oath was:

Yes, our firm has used price reduction figures in our advertising of automobiles, and current model used cars were offered for sale at these times, and the larger of the price reduction figures did refer to current model used cars. (CX 2)

Obviously, this response should give pause. Clearly it is false and misleading to offer "1970 Opels, \$200-\$600 Off" or "Buicks Up to \$1600 Off" when, in fact, those Opels at \$600 off or those Buicks at \$1600 off are not new. As noted before, however, individual respondents in sworn testimony asserted that in fact new cars were available for sale at the higher advertised discounts, and the law judge believed them.

If it were respondents' burden to show by a preponderance of the evidence that they did not advertise falsely, their response to the 6(b) questionnaire might well lead us to conclude they had failed to carry it. Here, however, it was complaint counsel's burden to prove the falsity of specific challenged claims. In the face of a clear conflict in testimony, we believe it was incumbent upon counsel to go further in their proof than mere reliance on the 6(b) questionnaire, which did not after all refer by its terms to the particular claims challenged in the complaint. Some further evidence as to whether or not respondents did, in fact,

<sup>3</sup> During the period covered by the complaint allegations it appears that some kinds of Opels were in short supply, and thus respondents were able to sell certain late model used cars for the same discount from list price as they offered on some new cars.

have new cars available at the higher advertised discounts would have been germane. So would be evidence to indicate that customers drawn by the new car ads to the Peacock lots were immediately shown those used cars to which the ads allegedly referred. The record, however, is barren of evidence which would help to resolve the conflict between testimony and questionnaire. Instead, complaint counsel appear willing to concede that Peacock may indeed have had available for sale new cars at the advertised discounts, but argue only that the ads also "referred" to used cars. Under the circumstances we must conclude that the available evidence preponderates in neither direction and the ALJ's dismissal of the false advertising count is affirmed.

## II. ORAL MISREPRESENTATIONS

While we do not conclude that respondents represented used cars as new in their media advertising, we believe that complaint counsel have demonstrated by a preponderance of the evidence that in some instances respondents' sales representatives did expressly misrepresent, and failed to disclose, prior use of late model used cars in oral presentations to consumers.<sup>4</sup>

Mr. James Huntley testified that he was shown an Opel 1900 Coupe bearing a new car sticker (CX 99) and was told by a salesman that it had previously been used by a factory official. (Tr. 330-31) Mr. Huntley testified that he received the impression that the car was a "new car that had been used by the company during that period of time." (Tr. 332) Mr. Huntley's testimony was uncontradicted, and we find no reason to disbelieve it.<sup>5</sup> In fact, the car he was shown had been previously used for driver education by the Fairfax County School Board (Tr. 334; CX 33-A).

Mrs. Violet Funkhauser testified that her salesman informed her that a car she sought to purchase was a "demonstrator." The car had in fact been used as a rental car by Budget Rent-A-Car prior to sale by Peacock. (Tr. 411; CX 37A) The salesman who had sold the car to Mrs. Funkhauser denied that he would have made the misrepresentation to

<sup>4</sup> The ALJ concluded that respondents had failed to disclose the prior status of late model used cars, but that there had been no affirmative misrepresentations of prior status. (I.D. p. 71 p. 1539, herein.) Unfortunately, the initial decision contains almost no evaluation of consumer testimony relating directly to affirmative misrepresentations. The facts that it was not respondents' general policy to misrepresent, and that in many cases there may have been no misrepresentations, do not in themselves negate direct testimony that in particular cases misrepresentations did occur. See *Basic Books, Inc. v. Federal Trade Commission*, 276 F.2d 718, 720-21 (7th Cir. 1960). Our evaluation of this testimony leads us to differ with the ALJ.

<sup>5</sup> Respondents point out that the financing agreement which Mr. Huntley signed indicated that his car was "used," as did agreements signed by other witnesses. Obviously this subsequent disclosure, to which witnesses did not always pay particular attention, could not cure prior misrepresentation. Moreover, the simple disclosure, even if observed by a customer, would not be sufficient to dispel a misrepresentation as to the particular prior use, e.g., factory official vs. driver education.

which she testified, however he had no specific recollection of the transaction (Tr. 659-60; see also Tr. 322-23).

Mr. James F. Garrison testified that his salesman informed him that a car, in fact previously used as a demonstrator, had been used by a company official, or factory representative (Tr. 288-89). This testimony was uncontradicted.

Mr. Edward Meador testified that he was informed by a salesman that an automobile, in fact previously used for driver education, had been owned by a senior engineer with the Fairfax County Water Authority (Tr. 390). The salesman was called by respondents. While he denied that he had ever misrepresented the prior status of automobiles, his testimony does not reflect anywhere near the same detailed recollection of the transaction in question as did Mr. Meador's (Tr. 624, 626; 388-391).

Our review of the foregoing evidence eliminates the need for us to determine whether express misrepresentations occurred in the case of Diana Kaste Schmidt, who testified that she was led to believe that a driver education car which she purchased was in fact new (Tr. 234-40, 243, 278-280). The record indicates that the witness arrived at the dealership seeking a new car. When an appropriate model proved unavailable, she was shown a driver education car, located on the new car lot.

There is dispute in the record between the consumer and the salesman as to what the consumer was told regarding this car. The salesman testified that he informed the purchaser that the car was used, and did not represent that the car was "new." (Tr. 549) Whatever representations were made, it is apparent in viewing the testimony as a whole that the transaction was less than a model of candor and clarity, and the customer clearly left the dealership entirely unaware that she had purchased a car used for driver education. We believe the testimony of Ms. Schmidt and Mr. Dubin does illustrate how, absent a clear and early disclosure of the prior use of a late model car, deception can result from the setting in which a sale is made and the expectations of the buyer—whether intent to deceive exists or not.

Respondents object to the introduction by complaint counsel of evidence which they contend did not conform to the boundaries of the complaint. They also protest the law judge's finding that Peacock violated the law by failing to disclose the prior use of its late model used cars. Respondents contend that the complaint alleged only a very specific form of affirmative misrepresentation, and that findings relating to other misrepresentations, or to deceptive failure to disclose are unwarranted. We cannot agree. Paragraph Seven of the complaint read in relevant part:

In the further course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said motor vehicles, respondents, directly or through their representatives and employees, have engaged in other deceptive acts and practices. Typical and illustrative, but not all inclusive, of such deceptive acts and practices are the following:

1. Respondents represented to customers that driver education motor vehicles used in high schools in the Metropolitan Washington, D.C. Area were new and/or factory official motor vehicles; by such representations, respondents misled and deceived purchasers as to the actual prior use of said driver-education motor vehicles.

\* \* \* \* \*

Therefore, respondents' statements and representations, and their failure to reveal in their advertisements and during their sales presentations, the material facts as to the nature and extent of such previous use of said motor vehicles, are unfair, false, misleading and deceptive.

At the very least, we believe the complaint clearly placed respondents on notice that they were charged with violations in misrepresenting the prior use of driver education cars, and in failing to disclose affirmatively the prior use of those cars. The testimony of at least two of the witnesses described hereinabove, Messrs. Huntley and Meador, falls clearly within the confines of this most narrow construction of the complaint.<sup>6</sup> With respect to the evidence introduced regarding respondents' misrepresentations of the prior status of rental automobiles and demonstrators we believe this is clearly relevant to a showing that the misrepresentation and nondisclosure of prior use alleged by the complaint was not an isolated occurrence, and that an order provision would be appropriate. While the complaint language clearly obligated complaint counsel to introduce evidence with respect to misrepresentation or nondisclosure of the status of driver education cars, which they did, we think that read in conjunction with the notice order it adequately apprised respondents that other evidence might be introduced bearing on the general issue of nondisclosure or misrepresentation of prior use. Certainly respondents have shown no way in which they were injured by the introduction of testimony concerning rental cars and demonstrators; to the extent possible they cross-examined tenaciously and introduced rebuttal witnesses.

In sum, while we think that record evidence relating only to driver education cars was sufficient to sustain the allegations of the complaint, and to justify the order provisions, we do not believe it was improper for the administrative law judge or the Commission to rely on evidence

<sup>6</sup> While Mr. Meador testified that he was informed that his car had been previously used by a Fairfax County official (as opposed to the example of a factory official used in the complaint), we cannot see any significance in this variance, particularly inasmuch as respondents had every opportunity to rebut Mr. Meador's testimony, and introduced a witness in an effort to do so.

pertaining to rental cars and demonstrators in reaching conclusions as to the necessity for an order.

We have entered order language basically paralleling paragraphs 1-4 and 6 of the notice order (paragraphs I(1)-I(5) of the order herein). These prohibit misrepresentations that used cars are new, and misrepresentations of the prior use of used cars. The order provisions also require affirmative disclosure in advertising and on the lot of the prior use of late model used cars, *e.g.*, driver education car, rental car, demonstrator. Such affirmative disclosure is necessary for two reasons: (1) to prevent any recurrence of past misrepresentation of the prior use of automobiles, and (2) to remedy the deceptive failure to disclose prior use of late model used cars.

Much of the deception and confusion which resulted in the cases of some consumers could have been readily cured had respondents simply made a clear affirmative disclosure of the prior use of their used cars, rather than waiting for consumers to guess or ask the right question. A sales agent may be under general instructions not to misrepresent, or, indeed, to disclose affirmatively the prior use of vehicles, but such general directives have a way of paling in the face of a hesitant buyer or a shortage of popular models. There is no chance for a salesperson to take liberties with the facts when they are clearly spelled out at the point of initial buyer contact with the car. Conspicuous designation of cars as "driver education," "rental," and the like is necessary to avoid the deception that has occurred here, and it is well established that the Commission may require the relief necessary to ensure that past violations are not repeated, *e.g.*, *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 708 (1948); *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608 (1946); *Haskelite Mfg. Co. v. Federal Trade Commission*, 127 F.2d 765 (7th Cir. 1942).

In addition, we think it is clear that even in the absence of affirmative misrepresentations, it is misleading for the seller of late model used cars to fail to reveal the particularized uses to which they have been put. The record indicates beyond doubt that many consumers have a strong aversion to automobiles which have been used in certain ways, for example, driver education and multidriver rental. Rightly or wrongly, some consumers believe that such prior use substantially impairs the value of a car, perhaps by heightening the chances that it has been driven abusively. As one witness replied when asked his reaction to the discovery that his car had been used for driver education, "The image that conjures up in my mind is one of gears being stripped \* \* \*." (Tr. 392; see also Tr. 248, 325, 335, 412).

When a late model used car is sold at close to list price, as were those involved here, the assumption likely to be made by some purchasers is

that, absent disclosure to the contrary, such car has *not* previously been used in a way that might substantially impair its value. In such circumstances, failure to disclose a disfavored prior use may tend to mislead, and is, therefore, prohibited by Section 5. See, e.g., *Brite Mfg. Co. v. Federal Trade Commission*, 347 F.2d 477 (D.C. Cir. 1965); *Kerran v. Federal Trade Commission*, 265 F.2d 246, 248 (10th Cir. 1959), *cert. denied* sub nom.; *Double Eagle Refining Co. v. Federal Trade Commission*, 361 U.S. 818; *L. Heller and Son, Inc. v. Federal Trade Commission*, 191 F.2d 954, 956, (7th Cir. 1951). For this reason as well, we believe that an order requiring disclosure of the prior use of late model used cars is appropriate.<sup>7</sup>

### III. REPRESENTATIONS THAT CREDIT LIFE INSURANCE IS MANDATORY

The complaint alleged that respondents represented to their customers that area lending institutions required the customers to accept credit life insurance, when, in fact, they did not. The effect of such a misrepresentation may be that a consumer ends up paying \$150 or more for a product he or she would not choose to purchase in the absence of the misrepresentation. The administrative law judge found that the complaint allegations had been sustained, and we agree.

It was respondents' practice to present consumers with a filled-in contract, ready for signature. At times this contract might include a charge for credit life insurance entered without the customer's knowledge or prior approval (Tr. 69, 517). While individual respondents testified that it was not their policy to force consumers to accept credit life insurance, or to misrepresent the necessity for it, customer testimony does indicate that in some instances consumers were told by respondents' salesmen that they would have difficulty obtaining, or could not obtain, financing without accepting credit life insurance (Tr. 360-61, 367, 375). In other cases there was apparently no explicit misrepresentation, however considerable pressure was placed upon customers to accept credit life insurance (Tr. 315-19). Credit life insurance was in fact not required by area lending institutions as a prerequisite for financing (RA 48).

Respondents argue that the contracts which consumers signed indicated that credit life insurance was not required for financing, and this disclosure obviated the possibility of any deception. We disagree. It is clear from consumer testimony that oral deception was employed in

<sup>7</sup> Respondents claim that they already make such disclosures, as illustrated by RX 29, showing a car in the showroom with a large sign proclaiming "Rental Car" on top. This form of conspicuous disclosure is certainly commendable, however, in view of lapses which led to the complaint, we believe that an order requiring affirmative disclosure in all cases is required.

some instances to cause consumers to ignore the warning on their sales agreement and accept credit insurance, despite a preference to avoid it. The fact that in certain instances consumers were able, after considerable exertion, to obtain deletion of the credit life requirement is also not a defense to the prior deception and high pressure selling which occurred and which led to the necessity for a battle in the first place.<sup>8</sup>

In addition to the general relief prescribed by the notice order, the administrative law judge recommended an order provision which would require respondents to disclose the fact that they profit from the sale of credit life insurance. Testimony indicated that Peacock Buick received 50 percent of the premiums from credit life insurance sold to customers (Tr. 530). The administrative law judge appears to have concluded that respondents committed a separate violation by failing to disclose this fact. We do not agree that, standing by itself, respondents' failure to disclose their pecuniary interest in the sale of credit life insurance was deceptive. Moreover, it was not alleged as a violation in the complaint. Under the circumstances we will omit this portion of the law judge's recommended order.<sup>9</sup>

#### IV. MISREPRESENTATION THAT CREDIT APPLICATION HAS BEEN REJECTED BY PREFERRED LENDING INSTITUTION

The complaint alleged that respondents misrepresented to individuals that area lending institutions had rejected credit applications for automobile financing. The harm in such a practice is that it may enable a vendor to divert a customer from the customer's preferred lender to a more expensive source of funds. A vendor's motive for engaging in this practice may be that he can earn an extra profit if he is allowed to arrange financing with a lender with whom he deals customarily, instead of one preferred by the borrower.

At trial complaint counsel introduced a witness who testified that she sought financing from GMAC and was informed that her application for credit had been turned down (Tr. 242). Thereafter she agreed to

<sup>8</sup> We also reject respondents' argument that the Commission lacks jurisdiction to regulate their misrepresentations regarding the necessity of credit life insurance because of the *McCarran-Ferguson Act*, 15 U.S.C. §§1011-1015. A statement by a seller regarding the need for insurance in order to obtain financing is not part of the "business of insurance" as that term is used in the Act. Moreover, the practice in question is apparently not subject to regulation by the Commonwealth of Virginia, in which respondents do business, 15 U.S.C. §1012.

<sup>9</sup> There may well be circumstances in which the disclosure of financial interest is a necessary element of relief for related misrepresentations. For instance, in the case at bar it appears that when salesmen did not flatly misrepresent the need for credit life insurance they did advocate its purchase with a zeal borne in part no doubt by the profit to be made. The precise point at which zealous advocacy becomes unacceptable pressure and deception is often hard to determine, and the best way to solve the problem may well be simply to arm consumers with the information necessary to evaluate a sales pitch with the requisite skepticism. This may involve disclosure that the vendor has a financial interest, something that might not be apparent to the consumer in the case of credit insurance. On the record before us, however, we believe that a prohibition of explicit and implicit misrepresentations, as well as oral and written disclosure of the non-necessity of insurance should be sufficient to prevent recurrence of the violation.

financing with a bank suggested by respondents at an annual percentage rate of 13.94 percent. A witness from GMAC testified that the company had received no formal credit application on behalf of the consumer (Tr. 286-87). In defense, respondents introduced testimony to demonstrate that it was their practice on occasion to solicit informal credit opinions from lenders, by providing the details of a prospective borrower's financial status without giving the borrower's name (Tr. 515-16). Respondents' witness testified that he had followed this practice in the case of complaint counsel's witness. The judge apparently believed this testimony and rejected the complaint charge.

Complaint counsel argue that respondents' position is inherently contradictory, and not credible. Respondents' witness sought to explain Peacock's practice of seeking formal credit checks in terms of solicitude for the borrower's credit record, which respondents professed to fear might be damaged if a formal application was rejected. We agree with complaint counsel that this justification is suspect in view of the fact that respondents did submit formal credit applications to some area lenders, without an advance check, and some of these applications were rejected. On the other hand, it nonetheless seems quite plausible to us that an automobile dealer would follow the procedures outlined by respondents' finance manager, that is, seeking informal advice in some instances merely because it may be cheaper and faster to make a telephone check of some lenders when a number are to be contacted.

Of course, respondents' procedure is subject to abuse. Facts conveyed orally may be presented selectively to a customer's preferred lender to elicit a rejection, and the entire process may thereby be biased in favor of the selection of the seller's favored loan institution. There was, however, no pattern of this sort suggested by complaint counsel's evidence, which involved the experience of only one consumer. On balance we must conclude that this allegation of the complaint was not proven by a preponderance of the evidence.<sup>10</sup> We have deleted that portion of the ALJ's recommended order which would require respondents to disclose their pecuniary interest in financing arrangements, for the same reasons noted in Section III of this opinion, *infra*.

#### V. FAILURE TO DISCLOSE DAMAGE TO USED AUTOMOBILES

The complaint alleged that respondents repaired or repainted damaged cars to hide damage that might adversely affect a vehicle's

<sup>10</sup> We note, however, that it would seem a sound practice for respondents to inform consumers in instances in which "rejection" of a credit application has been based merely on a telephone check. As is evident from the record, some consumers might well prefer to have a formal application submitted in such cases, and allowing this option would prevent the appearance of deception which was created by the procedures here.

performance and life expectancy, and that respondents did not disclose such damage to prospective purchasers. The complaint clearly alleged a violation of law, but the violation alleged was not proven at trial.

Complaint counsel called an automotive expert who testified that in his opinion respondents may indeed have sold used cars which had been previously damaged in a way that could affect future performance or durability. (Tr. 439) Complaint counsel's witness, however, relied entirely on inferences drawn from repair invoices. In defense, respondents introduced witnesses from the body shops which had repaired the automobiles in question (Tr. 586, 601). They testified that the repairs had been performed to new car specifications and that the damage repaired would not affect the performance or life expectancy of the cars. Further testimony indicated that it was respondents' practice to wholesale a substantial fraction of used cars which came into their possession, including those cars that were damaged in ways that could impair performance or life expectancy (I.D. p. 10[p. 1542, herein]). The administrative law judge weighed the conflicting testimony and concluded that complaint counsel had failed to prove that respondents sold cars previously damaged in ways that might impair performance or life expectancy. Complaint counsel do not appear to challenge this finding of the administrative law judge on appeal, and we see no reason to disturb it.

Despite the foregoing, the administrative law judge ordered respondents to disclose to consumers any damage in excess of \$50 to an automobile which respondents had caused to be repaired, or of which they were otherwise aware. The judge concluded that failure to disclose prior damage to an automobile, even if it did not affect performance, constituted a violation of Section 5.

We agree with the law judge that there are circumstances in which the failure to disclose prior damage to an automobile may be deceptive, even when it does not impair performance or life expectancy, but we do not believe that the judge's proposed remedy is appropriate given the facts of this case. It is clear from the record that consumers do care about the prior repair record of an automobile they are purchasing. Even damage which does not, in the view of experts, affect the performance or life expectancy of an automobile, may nonetheless affect the willingness of a consumer to buy the automobile which has sustained it. Indeed, several witnesses in the instant case testified that their own purchasing decisions would have been altered had they been aware of damage sustained by the used cars they were purchasing (Tr. 392-93, 294, 335, 351, 381, 420). To the extent that consumers may believe, or expect, that automobile dealers will not sell them late model low mileage used cars without disclosing that they have incurred

substantial damage, the failure to do so is obviously misleading, and in violation of Section 5.

At the same time, it is also clear that some sorts of minor repairs made to automobiles may well not prove material to consumer purchasing decisions, disclosure of them is not expected, and, therefore, nondisclosure is not a deception. It is also clear that a resolution of this issue has substantial implications for the sale of new cars. Respondent Peacock testified that due to mishaps during delivery, it was necessary for respondents to make minor repairs to perhaps 50 percent of the new cars they received (Tr. 573). The order proposed by the ALJ would presumably cover these cars, to the extent that damage exceeded \$50, as well as the late model used cars which were the subject of the trial.

While we share the law judge's concern for a very genuine industrywide problem, we do not believe that evidence presented at this trial is sufficient to permit a precise definition of the deceptive practice or the formulation of an appropriate remedy. Moreover, the violation which the law judge proposes to remedy was not clearly pleaded in the complaint. Under these circumstances we believe that a resolution should await a more comprehensive record, generated with the aid of respondents who are on more precise notice as to the nature of the violation under attack.<sup>11</sup>

#### VI. FAILURE TO DISCLOSE SERVICE CHARGE

It was respondents' practice to add a handling and service charge, usually \$25, to the purchase price of used motor vehicles. (R.A. 50-51; CX 19-27) This charge was not disclosed to purchasers during sales negotiations over the price of the used car. (Tr. 74-75) Generally the service charge would simply appear on the sales invoice and conditional sales contract which the customer received when he or she arrived at respondents' place of business to take delivery of the vehicle (I.D. p. 10[p. 1542, herein]).

The ALJ found this practice in violation of Section 5. We entirely agree. Price is perhaps the most material factor in a consumer's decision to purchase a car, new or used. Failure to disclose a "service charge" when a price is quoted is in essence a misrepresentation of the price. The fact that the service charge is eventually disclosed, at the time the consumer arrives to finalize the deal, does not eliminate the harmful effects of the prior deception. It is a matter of common sense and experience that having engaged in an initial round of bargaining

<sup>11</sup> It should be noted that the language contained in the notice order issued with the complaint, and the language contained in the consent order in *Lustine Chevrolet*, Dkt. 8974 (Nov. 25, 1975 [86 F.T.C. 1196]) would merely require disclosure of damage to the extent it affects performance or life expectancy. This order provision could not be justified on the record before us.

over the purchase of an automobile, having reached a tentative agreement, and having returned to the dealership for the final signing of papers, many consumers will find themselves reluctant to back out, even if certain material changes are made in the terms which might have affected purchasing decisions had they been known earlier. Addition of a "service charge" at this late stage in a deal has the effect, whatever respondents may have intended, of exploiting this vulnerable position of a buyer who has already invested considerable effort in a transaction and for that reason is not likely to change his or her mind, even when the price ends up somewhat higher than expected. The practice is clearly deceptive and injurious.<sup>12</sup>

Complaint counsel object to the order entered by the administrative law judge, which required oral and written disclosure of the service charge but omitted the notice order's requirements that such disclosure occur prior to the signing of the completed retail order for a used car, and its requirement that such disclosure occur in all advertising of used cars. We agree with respondents that the notice order is unduly broad to the extent it may be construed to require mention of the service charge in advertisements for used cars which do not quote prices. We have modified the order language to require written and oral notification of service charges prior to the signing of a completed retail order, and in all advertisements for automobiles which mention price.<sup>13</sup> We note that nothing in this provision prevents respondents from including the overhead costs covered by their "service charge" in the total retail price they quote to consumers for their cars, just as all other components of overhead are included in the quoted price.

#### VII. "NO. 1 OPEL DEALER IN THE UNITED STATES"

Respondents agreed that Peacock's claim of "No. 1 Opel Dealer in the United States" should be construed to represent that Peacock had sold more Opels than any other dealer during the applicable period. (Tr. 63) A claim of this sort may be a powerful selling tool, since some consumers believe they can obtain better selection of cars, better prices, or better service at the largest dealer. (Tr. 125-26, 235-36) The record indicates that respondents advertised in September 1971 that

<sup>12</sup> Respondent Peacock testified that if a customer protested, the service charge would be dropped. (Tr. 73) If true, this obviously does not excuse the prior deception, or eliminate its harm, since some consumers under the circumstances are not likely to protest, while others may not even notice the addition. (Tr. 365-66) Respondents also argue that this practice was common among area car dealers at the time of complaint. This clearly is no defense. Moreover, the Commission has obtained consent orders from several automobile dealers in the Washington, D.C. Metropolitan area proscribing the post-bargain addition of undisclosed service charges; e.g., *Lustine Chevrolet*, Dkt. 8974 (Nov. 25, 1975 [86 F.T.C. 1196]), and *Rosenthal Chevrolet*, Dkt. 8975 (Sept. 30, 1975 [86 F.T.C. 777]).

<sup>13</sup> We have broadened the order to apply to the sale of new cars as well as used. There can be no justification for "low-balling" in the sale of any car, and this broadening is necessary to prevent recurrence of the practice in a different guise.

Peacock Buick was the No. 1 Opel Dealer in the United States. (CX 17, 18) At the time of the advertisement the claim was untrue, since the last month in which Peacock had been first in sales was March 1971. (CX 84-95; Tr. 213-14)

Testimony further indicated that sales figures were compiled monthly by the Buick Motor Division, indicating the top 20 Opel dealer rankings. These documents were available to any Opel dealer upon request. (Tr. 130) Respondents apparently did not check monthly to determine whether they retained their ranking, but instead waited for notification from Buick. In September 1971 they were notified by the Buick Motor Division that the Federal Trade Commission was investigating their advertising claims, and that they were not number 1. (Tr. 675-76, 689) Thereafter they ceased this claim.

The ALJ found no violation, reasoning that respondents had believed in good faith that they were number 1 up until the time they ceased their false advertising.

We do not agree with the judge's conclusion. Respondents publicized a claim which was untrue and deceptive at the time it was made. This alone constituted a violation even though respondents may have had no intention to mislead. *Gimbel Brothers, Inc. v. FTC*, 116 F.2d 578, 579 (2nd Cir. 1941). The ALJ appears to have concluded that respondents had a "reasonable basis" for their advertisements, and that their falsity was thereby excused. As a matter of law this is simply incorrect. *National Dynamics Corp., et al.*, 82 F.T.C. 488, 553 (1973), *aff'd, remanded as to order*, 492 F.2d 1333 (2nd Cir.), *cert. denied*, 419 U.S. 993 (1974).

Moreover, with respect to the reasonableness of respondents' continued reliance on the March dealer rankings, we cannot view the matter quite so charitably as the ALJ. It was obvious from respondents' own experience prior to March 1971 that relative dealer rankings were subject to periodic change. They further knew, or should have known, that new rankings were compiled approximately once each month, and that the truth of their September 1971 claims could, therefore, have been easily verified by a call to the Buick Motor Division (Tr. 130-31). It is the duty of each advertiser, and not the Federal Trade Commission, to ensure that advertising claims are truthful when they are made. In this case we believe it was respondents' obligation to seek the most recent reasonably available evidence bearing on their claim before they continued to make it. To allow advertisers to rely, for a reasonable basis, on outmoded data can

only encourage deception. We will enter the notice order provision pertaining to misrepresentations of dealer size (Par. I(9) of order).<sup>14</sup>

#### VIII. LIABILITY OF INDIVIDUAL RESPONDENTS

The administrative law judge excluded the individual respondents from the coverage of his recommended order. Peacock is a small family owned business and it is not contested that the individual respondents, president and vice-president of the corporation, formulated, directed, and controlled the acts and practices of the corporation during the time covered by the complaint (I.D. p. 5[p. 1538 herein]; RA 30-32; Tr. 47-48, 303).

With respect to the particular violations found by the Commission, the individual respondents clearly played a significant role. They were fully responsible for Peacock's advertising and for its policies with respect to imposition of a service charge on used cars. While it appears that Messrs. Peacock and Bernstein instructed their sales personnel not to misrepresent the prior use of used cars, they did acquiesce in the non-disclosure of prior use which occurred in a number of cases.

The administrative law judge recommended no order against individual respondents because in his view their testimony was "straightforward" and "not evasive" and they had attempted to settle complaints when presented with them. The law judge concluded it would be inappropriate to "stigmatize" the individuals with liability and refused to commit what he deemed "administrative over-kill." (I.D. p. 14[p. 1545, herein])

In reaching his conclusions we believe the ALJ gave too great weight to factors that are of slight relevance, while neglecting considerations of greater import. Respondents may take pride in those portions of the record which reflect favorably upon their character and business practices. In evaluating the propriety of individual liability, however, the Commission's duty is not to determine whether respondents are "good guys" or "bad guys" and act on that basis. What is relevant is whether individual liability may be necessary to prevent recurrence of the particular violations for which named individuals have been responsible. Here, the corporate respondent is small and under total control of the individuals. Were they to constitute a new dealership that did not qualify technically as a "successor corporation" to Peacock, an order against Peacock alone would be of no effect. Under these circumstances we believe that imposition of individual liability is

<sup>14</sup> Respondents point out that the complaint challenged their misrepresentation of status in September 1970, rather than September 1971, the year to which the proof related. The complaint did, however, allege a continuing misrepresentation and respondents were apprised some months before the commencement of hearings that proof would be introduced relating to representations in September 1971. They had every opportunity to defend the charges with respect to September 1971, and we can detect no injury whatsoever from this mechanical defect in the complaint.

necessary and in accord with extensive prior precedent and Commission practice, e.g., *Standard Educators, Inc., et al. v. Federal Trade Commission*, 475 F.2d 401 (D.C. Cir. 1973); *Standard Distributors, Inc., et al. v. Federal Trade Commission*, 211 F.2d 7, 14-15 (2nd Cir. 1954); *Coran Bros. Corp., et al.*, 72 F.T.C. 1, 24-25 (1957).

An appropriate order is appended.

#### FINAL ORDER

This matter having been heard by the Commission upon the cross-appeals of complaint counsel and respondents' counsel from the initial decision and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying opinion, having granted in part and denied in part both appeals:

*It is ordered*, That the initial decision of the administrative law judge be, and it hereby is, adopted as the Findings of Fact and Conclusions of Law of the Commission to the extent not inconsistent with the accompanying Opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying opinion.

*It is further ordered*, That the following order to cease and desist be, and it hereby is, entered:

#### ORDER

*It is ordered*, That respondents Peacock Buick, Inc., a corporation, its successors and assigns and its officers, and Dr. Norman Bernstein and Michael B. Peacock, individually and as officers of said corporation, and respondents' 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, service and repair of new and used motor vehicles, or any other products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

#### I

1. Representing, orally or in writing, directly or by implication, that any vehicle is new when it has been used in any manner, other than the limited use necessary in moving or road testing a new vehicle prior to delivery of such vehicle to the customer.

2. Offering for sale or selling any vehicle of the current or previous model year, which has been used in any manner, other than the limited

use referred to in paragraph 1 above, without orally disclosing, prior to any sales presentation, the nature of such previous use of said vehicle, *e.g.*, "student driver training car, rental car, demonstrator."

3. Advertising any vehicle of the current or previous model year which has been used in any manner, other than the limited use referred to in paragraph 1 above, without clearly and conspicuously disclosing in any and all advertising thereof the nature of such previous use of said vehicle, *e.g.*, "student driver training car, rental car, demonstrator."

4. Displaying, offering for sale or selling any vehicle of the current or the previous model year which has been used in any manner, other than the limited use referred to in paragraph 1 above, without clearly and conspicuously disclosing by decal or sticker affixed to the inside of the side window containing the manufacturer's suggested retail price or "Monroney sticker," or if space is not available thereon, in close proximity thereto, so as to be clearly visible, the nature of such previous use of said vehicle. Said decal or sticker shall also contain the following statement: "FOR EXACT MILEAGE, SEE ODOMETER." If no "Monroney sticker" is affixed to a vehicle subject to this paragraph, the prescribed decal or sticker shall be affixed to the right rear window.

5. Misrepresenting, orally or in writing, directly or by implication, the nature or extent of previous use or condition of any vehicle displayed, offered for sale or sold.

6. Representing, orally or in writing, directly or by implication, that customers, as a prerequisite for obtaining consumer credit, must obtain credit life or credit accident and health insurance; misrepresenting, in any manner, the conditions or restrictions under which consumer credit will be extended.

7. Failing to disclose orally prior to the time of the signing of any authorization for insurance coverage, and before the cost of credit life and/or credit accident and health insurance is computed and included within any disclosure statement or retail motor vehicle installment contract, that such insurance is optional; failing to disclose in writing, on the application each customer signs for credit life and/or credit accident and health insurance coverage, in a type size at least the same size as that comprising the bulk of the text, that such insurance is optional.

8. Failing to disclose, both orally and in writing, prior to the signing of the completed retail order for a motor vehicle, and in any and all advertising of such vehicles which mentions the price of a vehicle, the precise amount of any handling and service charges which will be added to the cost of the motor vehicle.

9. Representing, orally or in writing, directly or by implication, that respondent Peacock Buick, Inc., is the number 1 Opel dealer in the

United States, or using words of similar import, unless it does occupy such sales position as of the date referred to in such representation, or if no date is stated, at the time of the aforesaid representation as verified by the most recently prepared manufacturer's delivery records; misrepresenting in any manner the size, status or sales position of respondents' dealership.

## II

*It is further ordered:*

1. That respondents forthwith distribute a copy of this order to each of their operating divisions;
2. That respondents deliver a copy of this order to cease and desist to all present and future personnel engaged in the offering for sale, or sale of any motor vehicle, and in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person;
3. 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;
4. That each individual respondent promptly notify the Commission of each change in his business or employment status, including discontinuance of his present business or employment, and each affiliation with a new business or employment for a period of ten (10) years after the effective date of this order. Such notice shall include the address of the business or employment with which each respondent is newly affiliated and a description of the business or employment, as well as a description of the respondent's duties and responsibilities in that business or employment.

*It is further ordered,* That respondents shall, within sixty (60) days after the effective date of the order served upon them, file with the Commission a report, in writing, signed by respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF  
SIMEON MANAGEMENT CORPORATION, ET AL.

*Docket 8996. Order, Dec. 19, 1975*

Affidavit of respondent Darrel P. Simpson treated as motion to reopen default decision, and matter remanded to administrative law judge for a hearing and determination of the motion.

*Appearances*

For the Commission: *Alfred Lindeman and Paul D. Hodge.*

For the respondents: *Marvin Gross, Grayson & Gross, Inc.*, Los Angeles, Calif. for Simeon Management Corporation and Simeons Weight Clinics Foundation. *Pro se* for Medical Weight Loss, Inc. *Robert M. Aran* for Darrel P. Simpson. *David L. Cunningham*, Sausalito, Calif. for Bariatric Medical Clinics Management Corporation. *Leo Shaw*, San Diego, Calif. for Harvey J. Lobelson. *Josef D. Cooper, Cooper and Scarpulla*, San Francisco, Calif. for C.M. Norcal, Inc., HCG Weight Clinics Foundation, Peter J. Marengo, III and Joseph Costa.

ORDER REMANDING MATTER TO ADMINISTRATIVE LAW JUDGE  
AS TO ONE RESPONDENT

On Jan. 7, 1975, the administrative law judge filed an initial decision as to three respondents, J. William Byrd, Medical Weight Loss, Inc., and Darrel P. Simpson. The decision was predicated on their failure to answer the complaint.<sup>1</sup> By letters to Charles A. Tobin dated Feb. 25, 1975, and Mar. 13, 1975, counsel for respondent Simpson asserted that Mr. Simpson had not been served with the complaint and that, at the time he was served with the Jan. 7, 1975 initial decision, he was unaware of the contents of the complaint.

On Oct. 7, 1975, the Commission denied Mr. Simpson's request without prejudice to the submission of a motion supported by an affidavit by Mr. Simpson. Mr. Simpson has now filed an affidavit and upon consideration of the affidavits of Mr. Simpson and Alfred Lindeman, Esq., complaint counsel,

*It is ordered*, That the aforesaid affidavit of Darrel P. Simpson be treated as a motion to reopen the default decision entered in this matter;

*It is further ordered*, That this matter be remanded to the administrative law judge as to respondent Simpson for a hearing and determination of the aforesaid motion.

<sup>1</sup> The law judge filed an initial decision as to the remaining respondents on June 18, 1975. The Commission heard oral argument on respondents' and complaint counsel's cross-appeals on Oct. 9, 1975.

Order

86 F.T.C.

IN THE MATTER OF  
PORTER & DIETSCH, INC., ET AL.

*Docket 9047. Order, Dec. 19, 1975*

Denial of motion for issuance of supplementary corrective news release.

*Appearances*

For the Commission: *Dean A. Fournier, Alan H. Melnicoe and William H. Patton.*

For the respondents: *Albert A. Carretta, Browne, Beveridge, DeGrandi and Kline, Wash., D.C. for Porter & Dietsch. For Pay N'Save Corporation, pro se.*

ORDER DENYING MOTION FOR ISSUANCE OF SUPPLEMENTARY  
CORRECTIVE NEWS RELEASE

This matter is before us on the motion of respondents Porter & Dietsch, Inc., William H. Fraser, Kelly Ketting Furth, Inc., and Joseph Furth, requesting the issuance of a "supplementary corrective news release." The administrative law judge certified the motion to the Commission on Dec. 4, 1975, together with his recommendation that the motion be denied.

The news release published by the Office of Public Information on Aug. 27, 1975, failed to include the usual caveat that the Commission issues a complaint when it "has reason to believe" that the law has been violated and a proceeding is in the public interest, and that the issuance of a complaint simply marks the beginning of a formal proceeding in which the allegations will be ruled upon after a public hearing. On Oct. 7, 1975, the Commission issued an order [86 F.T.C. 896] granting respondents' prior motion seeking the issuance of a corrective news release. The corrective release issued on Oct. 14, 1975.

Respondents now claim that the corrective release was insufficient and that still another release should issue. They ask that the supplementary release include, *inter alia*, a more elaborate caveat and state that the news release issued by the Seattle Regional Office on Aug. 27, 1975, improperly listed the names of eight drug chains other than respondent Pay N' Save selling the "X-11 Reducing Plan."

Respondents' rights were not violated by the press releases issued on Aug. 27, 1975 and Oct. 14, 1975. Accordingly,

*It is ordered*, That the aforesaid motion be, and it hereby is, denied.

IN THE MATTER OF  
STANDARD OIL COMPANY (INDIANA), ET AL.  
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7, OF THE  
CLAYTON ACT

*Docket C-2770. Complaint, Dec. 19, 1975—Decision, Dec. 19, 1975*

Consent order requiring a Chicago, Ill., petroleum refiner, among other things to guarantee access for at least 20 years by independent refiners to crude oil reserves that respondent is purchasing from Pasco, Inc., in Wyoming. The order further requires Pasco and Studebaker-Worthington which owns over 55 percent of Pasco, to seek Commission approval prior to selling any of the remaining Pasco assets including its Sinclair, Wyo. refinery.

*Appearances*

For the Commission: *Steven A. Newborn and James W. Olson.*

For the respondents: *William R. Jentes, Kirkland & Ellis, Chicago, Ill. for Standard Oil Company (Indiana) and Amoco Production Company, John B. Hartigan, New York City for Studebaker-Worthington, Inc. and R. Bruce MacWhorter, Shearman & Sterling, New York City for Pasco, Inc.*

COMPLAINT

The Federal Trade Commission having reason to believe that Standard Oil Company (Indiana), a corporation subject to the jurisdiction of the Commission, acting through its subsidiary, Amoco Production Company, a corporation subject to the jurisdiction of the Commission, has acquired assets of Pasco, Inc., a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18), and has, with Studebaker-Worthington, Inc., and Pasco, Inc., corporations subject to the jurisdiction of the Commission, violated Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. §21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), stating its charges as follows:

I. *Respondents*

A. Respondent, Standard Oil Company (Indiana) (hereinafter "Standard"), is a corporation chartered, existing, and doing business under and by virtue of the laws of the State of Indiana, with its corporate offices located at 200 E. Randolph Dr., Chicago, Ill.

B. Standard, through its subsidiaries, is engaged worldwide in crude oil and natural gas exploration, production, purchasing, and transportation, and in manufacturing, transporting, and marketing petroleum products, chemicals, plastics, and fertilizers, and has interests in minerals and real estate.

C. In 1974, Standard had total revenues of approximately \$10.2 billion, a net income of \$970 million and approximately \$8.9 billion in assets, making it the 13th largest industrial corporation in sales and the 12th largest in assets. Standard is the nation's sixth largest petroleum company in assets and ranks fourth domestically in crude oil production, with approximately 5 percent of the nation's total.

D. Standard is a leading company in crude oil production, transportation, and refining, and in the marketing of refined petroleum products in Petroleum Administration for Defense District IV (hereinafter District IV), comprised of the five Rocky Mountain States: Colorado, Idaho, Montana, Utah, and Wyoming.

E. Amoco Production Company (hereinafter "Amoco") is now, and was at the time of the acquisition hereinafter set forth, a corporation chartered, existing, and doing business under and by virtue of the State of Delaware, with its principal place of business located at 200 E. Randolph Drive, Chicago, Ill. Amoco, prior to and following the acquisition hereinafter set forth, was and is a wholly-owned subsidiary of Standard and was and is operated under the direction and control of Standard. Amoco, prior to and following the acquisition hereinafter set forth, carries out Standard's domestic exploration for and production of petroleum.

F. Respondent Studebaker-Worthington, Inc. (hereinafter "Studebaker"), is a corporation chartered, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate offices located at 530 Fifth Ave., New York, N.Y.

G. Studebaker, through its subsidiaries, is principally engaged in the manufacture and sale on a worldwide basis of consumer and consumer durable products, electrical, automotive, and petroleum products, industrial and power products consisting primarily of turbines, pumps, and compressors, and control and meter products.

H. In 1974, Studebaker had total revenues of approximately \$1.3 billion, a net income of approximately \$9.7 million, and approximately \$637 million in assets.

I. Respondent Pasco, Inc. (hereinafter "Pasco"), is a corporation chartered, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal executive office located at 530 Fifth Ave., New York, N.Y.

J. Pasco is a 55.5 percent owned subsidiary of Studebaker.

K. In 1972, Pasco purchased certain former Sinclair Oil Company properties from Atlantic Richfield, including interests in production, a refinery, pipelines, and retail gasoline outlets. These petroleum operations are Pasco's sole business.

L. In 1974, Pasco had total revenues of approximately \$210 million and a net income of approximately \$13 million.

M. In 1974, in District IV, Pasco was one of only two fully integrated petroleum companies which did not rank in the top 20 nationally in crude production. Pasco ranked 11th in crude production, 9th in gasoline marketing, and 8th in crude pipelines in District IV.

N. At all times relevant herein, Standard, Amoco, Studebaker, and Pasco sold and shipped their products in interstate commerce throughout the United States and were and are now engaged in commerce as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

## II. *The Acquisition*

O. On Apr. 4, 1975, an offer was made by Standard for certain crude oil producing properties of Pasco; and by May 1, 1975, an agreement had been conditionally reached whereby Pasco was to sell seven oil and gas fields, which constitute all of Pasco's currently producing properties, and two gas processing plants to Standard for approximately \$225 million.

P. Pursuant to the sales contract, Standard agrees to dedicate to the Sinclair refinery 75 million barrels of crude oil or the entire production of the acquired properties until 1983, whichever is later.

## III. *Trade and Commerce*

Q. The relevant geographic market is District IV.

R. The relevant product market is the production and sale of crude oil. Shares in the relevant market may be determined by examining either current production or reserves.

S. Prior to the aforesaid acquisition, Standard and Pasco were substantial and actual competitors in the production and sale of crude oil.

## IV. *Effects of the Acquisition*

T. The effects of the aforesaid acquisition may be to substantially lessen competition or to tend to create a monopoly in the production and sale of crude oil in District IV, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18); and the effect of the agreement by which Studebaker, through its subsidiary Pasco, and

Standard, through its subsidiary Amoco, undertook to eliminate the actual competition between Pasco and Amoco may be to unreasonably restrain trade and to hinder or have a dangerous tendency to hinder competition unduly, thereby constituting an unfair act and practice in commerce, in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45). These effects may occur in the following ways, among others:

1. Substantial actual competition between Standard and Pasco will be eliminated;
2. The restraining influence of Pasco as a substantial, independent, fully integrated competitor will be eliminated;
3. Concentration in the production of crude oil will be increased to the detriment of actual, as well as potential, competition.
4. Additional mergers and acquisitions in the relevant market may be encouraged;
5. The combination of Standard and Pasco may so increase Standard's production and sales capability in the relevant market as to provide it with a decisive competitive advantage in the relevant market to the detriment of actual and potential competition.
6. Refiners of crude oil may be denied the benefits of price competition between Standard and Pasco;
7. Competitors of Standard in the refining of crude oil may be foreclosed from access to the crude oil presently produced by Pasco; and
8. A Pasco dependent on Standard for crude oil may be less willing to sell refined petroleum products to independent retail marketers who compete with Standard.

#### V. *The Violation Charged*

U. The acquisition by Amoco, acting under the direction and control of Standard, of certain crude oil producing properties of Pasco constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

V. The acquisition by Amoco, acting under the direction and control of Standard, of certain crude oil producing properties of Pasco constitutes an unfair method of competition in commerce and an unfair act or practice in commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

W. The sale by Pasco, acting under the direction and control of Studebaker, of certain crude oil producing properties to Amoco constitutes an unfair method of competition in commerce and an unfair act or practice in commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

## 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 Bureau of Competition 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, as amended (15 U.S.C. §45) and respondents Standard Oil Company (Indiana) and Amoco Production Company with violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18); and

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

"Amoco" shall mean respondent Amoco Production Company, a Delaware corporation.

"Pasco" shall mean respondent Pasco, Inc., a Delaware corporation.

"Studebaker" shall mean respondent Studebaker-Worthington, Inc., a Delaware corporation.

"District IV" shall mean Petroleum Administration for Defense District IV, which consists of the States of Colorado, Idaho, Montana, Utah, and Wyoming.

"Independent Refiner" shall mean a credit-worthy refiner in District IV, which is not (a) one of the 20 largest producers of crude oil and natural gas liquids in the United States measured in barrels of production; (b) one of the 20 largest petroleum refiners in the United States measured in terms of refining capacity; (c) a company which either produces over ten (10) percent of the total crude oil and natural gas liquids produced in District IV; or (d) a company which has over fifteen (15) percent of the total refining capacity in District IV.

"Sinclair Refinery" shall mean the refinery located in Sinclair, Wyo.

"Agreement of Sale and Purchase" shall mean the Agreement of Sale and Purchase between Pasco and Amoco, a copy of which will be filed with the Secretary of the Commission.

"Crude Oil Dedication Agreement" shall mean the Crude Oil Dedication Agreement between Pasco and Amoco, appended as Exhibit

D-1 (including Annex A) to the Agreement of Sale and Purchase and a copy of which will be filed with the Secretary of the Commission.

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents had committed the aforesaid violations, 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 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. Proposed respondent Standard Oil Company (Indiana), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 200 E. Randolph Dr., Chicago, Ill.

2. Proposed respondent Amoco Production Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 200 E. Randolph Dr., Chicago, Ill.

3. Proposed respondent Pasco, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal executive office located at 530 Fifth Ave., New York, N.Y.

4. Proposed respondent Studebaker-Worthington, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 530 Fifth Ave., New York, N.Y.

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

#### ORDER

For purposes of this order, the following definitions shall apply:

"Standard" shall mean respondent Standard Oil Company, an Indiana corporation, its subsidiaries, and affiliates.

"Crude Oil Supply Agreement" shall mean an agreement in the form appended to this order as Exhibit A.

"Dedicated Oil" shall mean the crude oil which Amoco is required to sell Pasco or its assignees pursuant to the Crude Oil Dedication Agreement and this order and the crude oil, if any, which Amoco is required to sell Independent Refiners pursuant to this order.

"Recognized Poster" shall mean Continental Oil Company, Exxon

Company, U.S.A., Marathon Oil Company, and Union Oil Company of California as long as they post prices for and purchase Wyoming crude oil of like grade and gravity to the Dedicated Oil, and any other refiner or its affiliate (except Standard) which shall regularly post prices for and purchase at least 3,000 barrels per day of Wyoming crude oil of like grade and gravity or a volume comparable to the volume of Dedicated Oil when the production of such oil falls below 1,000 barrels per day.

"Pasco Downstream Assets" shall mean all assets of Pasco other than the assets sold to Amoco pursuant to the Agreement of Sale and Purchase.

All other terms used in this order which are defined in the Agreement of Sale and Purchase or in the Crude Oil Dedication Agreement shall have the same meanings in this order as in those Agreements.

All respondents shall be released from the provisions of this order if Pasco notifies the Commission in writing that the transactions contemplated by the Agreement of Sale and Purchase have not and will not be consummated and that Pasco does not contemplate selling any substantial portion of its assets to Amoco or Standard.

## I

*It is ordered,* That Amoco shall grant Pasco the exclusive right to purchase all of the Dedicated Oil in accordance with and subject to the Crude Oil Dedication Agreement until the later of (a) 7:00 a.m. Wyoming time on Jan. 1, 1983, or (b) the date on which the cumulative volume of net interest oil made available to Pasco pursuant to the Crude Oil Dedication Agreement reaches a total of 75 million barrels (less the interim net production produced from 7:00 a.m. Wyoming time on Jan. 1, 1975, to 7:00 a.m. Wyoming time on the date of the Crude Oil Dedication Agreement). In accordance with and subject to the Crude Oil Dedication Agreement, Pasco shall be entitled to assign the Crude Oil Dedication Agreement to any credit-worthy future owner of the Sinclair Refinery, and any assignee of the Crude Oil Dedication Agreement shall have a like right of assignment.

## II

*It is further ordered,* That upon the expiration of the dedication period referred to in Section I of this order, Amoco shall continue to make the Dedicated Oil available to Pasco or any assignee owner of the Sinclair Refinery so long as the owner continues to operate said refinery until the later of (a) 7:00 a.m. Wyoming time on Jan. 1, 1996, or (b) the date on which the cumulative volume of net interest oil

produced and made available to the owner of the Sinclair Refinery reaches 100 million barrels (less the interim net production produced from 7:00 a.m. Wyoming time on Jan. 1, 1975, to 7:00 a.m. Wyoming time on the date of the Crude Oil Dedication Agreement). Amoco shall make the Dedicated Oil available during such additional dedication period in accordance with and subject to the Crude Oil Supply Agreement, which shall be entered into not less than thirty (30) days prior to the expiration of the initial dedication period, shall initially be for a period of five (5) years, and shall be subject to successive five-year renewals (not to exceed the additional dedication period), providing Amoco is given written notice of such renewal at least thirty (30) days prior to the expiration of the agreement. The price to be paid for the Dedicated Oil pursuant to the Crude Oil Supply Agreement shall be the highest of the prices posted by a Recognized Poster in effect at the time of delivery for Wyoming crude oil of like grade and gravity or, if the posting of prices in Wyoming is discontinued, the highest of the prices regularly offered for Wyoming crude oil of like grade and gravity by persons purchasing at least 3,000 barrels per day in Wyoming.

### III

*It is further ordered,* That in the event of a termination of the Crude Oil Dedication Agreement or the Crude Oil Supply Agreement with Pasco or its assignees prior to the expiration of the dedication periods referred to in Sections I and II of this order, Amoco shall make the Dedicated Oil available to Independent Refiners until the later of (a) 7:00 a.m. Wyoming time on Jan. 1, 1996, or (b) the date on which the cumulative volume of net interest oil produced and saved reaches a total of 100 million barrels (less the interim net production produced from 7:00 a.m. Wyoming time on Jan. 1, 1975, to 7:00 a.m. Wyoming time on the date of the Crude Oil Dedication Agreement), in accordance with the following procedures:

(A) Amoco shall give public notice of the termination of its obligations to the owner of the Sinclair Refinery within ten (10) days after the termination becomes effective, advising all Independent Refiners of the opportunity to purchase the Dedicated Oil in accordance with the terms of this order. Amoco shall give such public notice by inserting a paid advertisement on at least three (3) consecutive days in the Oil Daily or another publication or publications having nationwide circulation in the petroleum industry and shall give all Independent Refiners in District IV written notice of the availability of the Dedicated Oil during the same period.

(B) An Independent Refiner wishing to purchase the Dedicated Oil shall submit a written offer to Amoco expressing the refiner's

willingness to enter into the Crude Oil Supply Agreement for a period of five (5) years. As an alternative to submitting an individual offer, an Independent Refiner which is unable to refine all of the Dedicated Oil may submit a joint offer to purchase the Dedicated Oil with other Independent Refiners that are similarly situated. Any offer must be submitted within thirty (30) days after the date (hereafter the "Notice Date") on which the public notice by Amoco shall have been last published.

(C) In the event Amoco receives more than one timely offer for the Dedicated Oil from Independent Refiners at an equally high price, Amoco shall allow such refiners fifty (50) days after the notice date in which to make whatever allocation of the Dedicated Oil is agreeable to them. If the Independent Refiners are unable to do so, Amoco shall make the Dedicated Oil available to whichever Independent Refiner or group of such refiners offers, within seventy (70) days after the notice date, to pay the highest price for the Dedicated Oil.

(D) Within ninety (90) days after the notice date, Amoco shall enter into the Crude Oil Supply Agreement with the Independent Refiner or group of Independent Refiners offering the highest price. The Crude Oil Supply Agreement shall be subject to successive five-year renewals during the dedication period specified in this section, providing Amoco is given written notice of such renewal at least thirty (30) days prior to the expiration of the agreement. In the event the Crude Oil Supply Agreement is not renewed or is otherwise terminated prior to the expiration of the dedication period specified in this section, Amoco shall give notice of such termination in accordance with paragraph (A) of this section and shall again offer the Dedicated Oil to Independent Refiners in accordance with the procedures specified in this section.

(E) In the event Amoco shall receive a bona fide offer to purchase the Dedicated Oil at a price higher than that offered by an Independent Refiner or group of Independent Refiners, Amoco shall notify such refiner or refiners of the higher price offered and give such refiner or refiners ten (10) days within which to meet the higher price. If the Independent Refiner or group of Independent Refiners believes that the higher offer is not a bona fide offer, such refiner or refiners may request arbitration to determine the fair market value of the oil, provided that the Independent Refiner or group of Independent Refiners agrees to pay the fair market value when determined by the arbitrator and to pay the highest of the prices posted by a Recognized Poster in effect at the time of delivery for Wyoming crude oil of like grade and gravity pending such determination. The arbitrator shall be Arthur D. Little, Inc., unless it refuses or is unable to serve as arbitrator, in which event the arbitrator shall be appointed by the

person who is at the time the Senior Judge (in point of service) of the 7th Judicial District of the State of Wyoming. The decision of the arbitrator shall be reached in accordance with the rules of the American Arbitration Association, shall be final and conclusive, and shall take effect immediately when announced. The fair market value to be determined by the arbitrator shall in no event be less than the highest of the prices posted by a Recognized Poster for Wyoming crude oil of like grade and gravity.

(F) In the event no Independent Refiner or group of Independent Refiners shall agree pursuant to Paragraph (E) of this order to meet the highest price offered or to pay the fair market value for the Dedicated Oil, Amoco may sell the Dedicated Oil to the person offering the highest price for Wyoming crude oil of like grade and gravity. In the event no Independent Refiner or group of Independent Refiners shall offer to purchase the Dedicated Oil at the highest of the prices posted by a Recognized Poster, Amoco may sell the oil to anyone (including an affiliate), providing such person offers a price higher than the price offered by an Independent Refiner or group of Independent Refiners. Amoco shall sell the Dedicated Oil pursuant to this Paragraph in accordance with and subject to the Crude Oil Supply Agreement, which agreement shall not be subject to automatic renewal at its expiration. Amoco shall give notice of such expiration or of any termination in accordance with Paragraph (A) of this Section and shall again offer the Dedicated Oil to Independent Refiners in accordance with the procedures specified in this Section.

## IV

*It is further ordered,* That nothing in this order shall obligate Amoco to supply crude oil to any person in excess of Amoco's net interest oil and the royalty oil which is not taken in kind that are actually produced and saved from the properties described in Annex A to the Crude Oil Dedication Agreement. Nothing in this order shall affect Pasco's rights under the Crude Oil Dedication Agreement.

## V

*It is further ordered,* That in the event Amoco enters into an agreement with an Independent Refiner or group of Independent Refiners to supply Dedicated Oil pursuant to Section III of this order, Standard shall not interfere with the delivery of such oil or equivalent oil to the refinery of such refiner or refiners. At the request of the Independent Refiner or group of Independent Refiners, Standard shall bargain in good faith over the transport of the Dedicated Oil through

any then existing pipeline facilities owned by Standard and over an exchange of the Dedicated Oil for other crude oil owned by Amoco.

## VI

*It is further ordered,* That except for the assets described in the Agreement of Sale and Purchase, Standard shall not purchase or attempt to purchase any of the assets owned by Pasco or which may be sold by Pasco to others, without the prior approval of the Commission.

## VII

*It is further ordered,* That Standard shall not purchase or receive more than five (5) percent of the annual dollar value of the products which are refined from the Dedicated Oil by Pasco, its assignees, or any Independent Refiner or group of Independent Refiners; and Standard shall not control or attempt to control the sale of refined products by such persons to others. Nothing in this section shall preclude Standard from engaging in lawful competitive activity that may affect the sale of refined products by Pasco, any assignee, or any Independent Refiner.

## VIII

*It is further ordered,* That Pasco will not sell any of the Pasco Downstream Assets without obtaining the prior approval of the Federal Trade Commission; *Provided, however,* That such prior approval need not be obtained by Pasco for (a) any sale or exchange of crude oil or refined petroleum products in the normal course of business, or (b) casual sales of Pasco Downstream Assets not to exceed \$500,000 in total nor \$50,000 in any one instance.

## IX

*It is further ordered,* That if Studebaker acquires any of the Pasco Downstream Assets, it will not sell any such assets without obtaining the prior approval of the Federal Trade Commission; *Provided, however,* That such prior approval need not be obtained by Studebaker for (a) any sale or exchange of crude oil or refined petroleum products in the normal course of business, or (b) casual sales of Pasco Downstream Assets not to exceed \$500,000 in total for a period of three years after the date Studebaker first acquires any of Pasco's Downstream Assets, nor to exceed \$50,000 at any time in any one instance.

## X

*It is further ordered,* That Pasco shall bargain in good faith over the transport of the Dedicated Oil through any pipeline facilities owned by Pasco in the event Amoco enters into an agreement with an Independent Refiner or group of Independent Refiners to supply Dedicated Oil pursuant to Section III of this order. If Pasco sells any such pipeline facilities, Pasco will obtain from the buyer of the Pasco facilities a written undertaking to bargain in good faith over the transport of the Dedicated Oil through such facilities in the event Amoco enters into an agreement with an Independent Refiner or group of Independent Refiners to supply Dedicated Oil pursuant to Section III of this order.

## XI

*It is further ordered,* That if Studebaker purchases any of the Pasco Downstream Assets, it shall bargain in good faith over the transport of the Dedicated Oil through any of Pasco's present pipeline facilities then owned by Studebaker in the event that Amoco enters into an agreement with an Independent Refiner or group of Independent Refiners to supply Dedicated Oil pursuant to Section III of this order. If Studebaker sells any of Pasco's present pipeline facilities, it will obtain from the buyer of the pipeline facilities a written undertaking to bargain in good faith over the transport of the Dedicated Oil through such facilities in the event Amoco enters into an agreement with an Independent Refiner or group of Independent Refiners to supply Dedicated Oil pursuant to Section III of this order.

## XII

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

## XIII

*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 this order.

## XIV

*It is further ordered,* That the respondents Pasco and Studebaker shall, within sixty (60) days after service upon them of this order, and thereafter within five (5) days after the sale of any of Pasco's Downstream Assets, with the exception of sales in the normal course of business or casual sales as described in Sections VIII (a) and (b) and IX (a) and (b) 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 the order. In addition, the respondents Standard and Amoco shall, within sixty (60) days after service upon them of this order and thereafter annually and, in addition, within five (5) days after Amoco enters into any Crude Oil Supply Agreement pursuant to Sections II or III 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

## DiLIDO SHOPS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION AND TEXTILE FIBER  
PRODUCTS IDENTIFICATION ACTS

*Docket C-2771. Complaint, Dec. 22, 1975—Decision, Dec. 22, 1975*

Consent order requiring two related Miami, Fla., manufacturers of men's sport shirts, among other things to cease misbranding and mislabeling their textile fiber products, furnishing false guaranties and failing to maintain proper records of the products manufactured by them.

*Appearances*

For the Commission: *Truett Honeycutt.*

For the respondents: *Monroe Gelb, Gelb & Spatz, Miami, Fla.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that DiLido Shops, Inc., a corporation, and Go-Young, Inc., a corporation, doing business under their own names and as DiLido Fashions and Go-Young Fashions, and Solomon Jove and Bertha Jove, individually and as officers of said

corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it now appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent DiLido Shops, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its general offices and principal place of business located at 3050 N.W. 40th St., Miami, Fla. DiLido Shops, Inc., does business under its own name and as DiLido Fashions and Go-Young Fashions.

Respondent Go-Young, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its general offices and principal place of business located at 3050 N.W. 40th St., Miami, Fla. Go-Young, Inc., does business under its own name and as DiLido Fashions and Go-Young Fashions.

Respondents Solomon Jove and Bertha Jove are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including those hereinafter referred to. Their address is the same as that of the corporate respondents.

Respondents are engaged in the business of manufacturing men's sport shirts.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, offering for sale in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name and amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were men's sport shirts which contained substantially different amounts and types of fibers than as represented.

PAR. 4. Certain of said textile fiber products were misbranded by

respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's shirts, with labels which failed:

1. To disclose the true generic names of the fibers present; and
2. To disclose the percentage of such fibers by weight.

PAR. 5. Certain of said textile fiber products were misbranded by respondents in that fiber trademarks were placed on labels without the generic names of fibers appearing on such labels in immediate conjunction therewith, in violation of Rule 17(a) of the rules and regulations promulgated under the Textile Fiber Products Identification Act.

PAR. 6. Respondents have furnished false guaranties that certain of their textile fiber products were not misbranded or falsely or deceptively invoiced or advertised, in violation of Section 10(b) of the Textile Fiber Products Identification Act and Rule 38(d) of the rules and regulations promulgated thereunder, by representing in writing that they have a continuing guaranty on file with the Federal Trade Commission, when such is not a fact.

PAR. 7. Respondents have failed to maintain and preserve proper records showing the fiber content of textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the rules and regulations promulgated thereunder.

PAR. 8. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in or affecting commerce, within the intent and meaning of the Federal Trade Commission Act, as amended.

#### 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 Atlanta Regional Office proposed to submit 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, their attorney and counsel for the Commission having thereafter executed an agreement containing the consent order, with an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issues its complaint making the following jurisdictional findings, and enters the following order:

1. Respondent DiLido Shops, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its general offices and principal place of business located at 3050 N.W. 40th St., Miami, Fla. DiLido Shops, Inc., does business under its own name and as DiLido Fashions and Go-Young Fashions.

Respondent Go-Young, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its general offices and principal place of business located at 3050 N.W. 40th St., Miami, Fla. Go-Young, Inc., does business under its own name and as DiLido Fashions and Go-Young Fashions.

Respondents Solomon Jove and Bertha Jove are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents. Their address is the same as that of the corporate respondents.

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

#### ORDER

*It is ordered,* That respondents DiLido Shops, Inc., a corporation, and Go-Young, Inc., a corporation, doing business under their own names and as DiLido Fashions and Go-Young Fashions, their successors and assigns, and Solomon Jove and Bertha Jove, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or

other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or in the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in any other textile fiber product, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by:
  - a. falsely or deceptively stamping, tagging, labeling, invoicing or otherwise identifying such products as to the name or amount of the constituent fibers contained therein;
  - b. failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act;
  - c. using a fiber trademark on labels affixed to textile fiber products without the generic name of the fiber appearing in immediate conjunction therewith in type or lettering of equal size and conspicuousness.
2. Furnishing a false guaranty that any textile fiber product is not misbranded or falsely or deceptively invoiced or advertised under the provisions of the Textile Fiber Products Identification Act.
3. Failing to maintain and preserve proper records of fiber content of textile fiber products manufactured by respondents, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the rules and regulations promulgated thereunder.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, DiLido Shops, Inc., and Go-Young, Inc., 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 corporations 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 the respondent corporations shall

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forthwith distribute a copy of this order to each of their operating divisions.

*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.

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IN THE MATTER OF

MAIN STREET FURNITURE, INC., ET AL.

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

*Docket C-2772. Complaint, Dec. 23, 1975—Decision, Dec. 23, 1975*

Consent order requiring a South Bend, Ind., furniture retailer, among other things to cease using bait and switch tactics; making price and/or savings misrepresentations; misrepresenting guarantees, furniture and service nature and quality, time limitations on offers to sell, and foreign origin; making false pictorial representations; failing to disclose additional charges and material facts and failing to make credit cost disclosures required by Regulation Z of the Truth in Lending Act.

*Appearances*

For the Commission: *Richard A. Palewicz.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Acts, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Main Street Furniture, Inc., a corporation and Samuel Goldstein, Raymond Goldstein and Chester E. Brost, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation 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 its charges in that respect as follows:

PARAGRAPH 1. Respondent Main Street Furniture, 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 50510 U.S. 31 No., South Bend, Ind.

Respondents Samuel Goldstein, Raymond Goldstein, and Chester E. Brost 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 household furniture and appliances, and services in connection therewith to the general public.

#### COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegation in 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 aforesaid business, respondents have disseminated and caused the dissemination of certain advertisements concerning said products and services by various means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation, and in radio and television broadcasts of interstate circulation, for the purpose of inducing, and which was likely to induce, directly or indirectly, the purchase of said products and services; additionally, respondents own, operate and control a total of three (3) retail furniture stores located in the States of Indiana and Ohio.

PAR. 4. In the course and conduct of respondents' business and for the purpose of inducing the sale of their household furniture, appliances and services in connection therewith, respondents have made numerous statements and representations in newspaper advertisements, radio and television commercials and oral statements by salesmen to prospective customers.

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

**TRUCK LOAD SALE!**

**SAVINGS FANTASTIC \* \* \*  
SPECTACULAR VALUES**

**SPECIAL LIVING ROOM SALE \* \* \* HUNDREDS TO CHOOSE FROM-  
ALL PRICES REDUCED!**

**HUNDREDS OF BEDROOM SUITES ON SALE NOW! \* \* \* \$96 to \$388**

Complaint

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## SUPERB QUALITY

We guarantee everything and we SERVICE everything you buy from us

THESE FABULOUS OFFERS GOOD FOR ONE WEEK ONLY - - - -

SAVE UP TO \$100 AND MORE \* \* \*

ITALIAN!

FRENCH!

SPANISH!

WE NEVER SAY "NO!" TO CREDIT

EASY TERMS \* \* \*

Walnut finished

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing, directly or by implication that:

1. Respondents are making a bona fide offer to sell the advertised merchandise at the prices and on the terms and conditions stated in the advertisements.

2. By and through the use of the words, "SALE," "SAVINGS FANTASTIC," "SPECTACULAR VALUES," and other words of similar import and meaning not set out specifically herein, respondents' merchandise may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

3. By and through the use of the words, "HUNDREDS TO CHOOSE FROM," and other words of similar import and meaning not set out specifically herein, the advertised merchandise is available in 100 different sets from which the prospective purchaser may choose.

4. There are no charges in addition to the advertised purchase price of respondents' merchandise.

5. By and through the use of the words, "Superb Quality," and other words of similar import and meaning not specifically set out herein, the durability of the advertised merchandise exceeds reasonable requirements for normal everyday use for a reasonable period of time.

6. The advertised merchandise was guaranteed in every respect without conditions or limitations and would be continually serviced

without charge for an unlimited period of time after the delivery of the advertised merchandise to the homes of purchasers.

7. The advertised offer was being made only for a limited period of time.

8. Purchasers of the advertised merchandise are afforded savings of \$100 and more off the prices at which such merchandise is usually and customarily sold at retail.

9. By and through the use of the words, "ITALIAN," "FRENCH," "SPANISH," and other words of similar import and meaning not set out specifically herein, furniture sold by respondents is of a foreign origin.

10. By and through the use of the words, "We Never Say 'No!' To Credit" and "Easy Terms," purchasers of respondents' merchandise are never refused credit and are granted easy credit terms without regard to their financial status or ability to pay.

11. By and through the use of the words, "Walnut finished," and other words of similar import and meaning not set out specifically herein, furniture sold by respondents is of solid wood construction.

PAR. 6. In truth and in fact:

1. The offers set out in respondents' advertisements are not bona fide offers to sell the advertised merchandise at the prices or on the terms or conditions stated but are made for the purpose of obtaining leads to prospective purchasers. Respondents' salesmen, thereafter, disparage respondents' advertised merchandise and otherwise discourage the purchase thereof and attempt to sell and frequently do sell different and more expensive merchandise.

2. Respondents' merchandise is not being offered for sale at special or reduced prices, and savings are not thereby afforded to their purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices, but the prices at which respondents' merchandise are sold vary from purchaser to purchaser.

3. The advertised merchandise is not available in 100 different sets from which the prospective purchaser may choose. To the contrary, respondents have available only a very limited number of selections of the advertised merchandise.

4. Respondents make extra charges as applicable, such as service, finance and life insurance charges over and above the regular advertised price of their merchandise.

5. The advertised merchandise is not of a high quality or durability that exceeds reasonable requirements for normal everyday use for a reasonable period of time. In many instances, respondents sell advertised merchandise only under the express condition that such merchandise is not warranted for any particular use.

6. The advertised merchandise is not guaranteed by respondents and is not continuously serviced without charge for an unlimited period of time.

7. Respondents' advertised offer is not made for a limited period of time. The advertised merchandise is regularly advertised for the represented price or at another so-called reduced price over a period of time greater than the represented limitations.

8. Purchasers of respondents' merchandise advertised in conjunction with the phrase "Save Up To \$100 And More," or terms of similar comparable import or meaning, did not realize savings of the stated percentage amount from the actual prices at which the merchandise so advertised was sold or offered for sale in good faith for a reasonably substantial period of time in the recent regular course of respondents' business.

9. Merchandise advertised in conjunction with the words, "Italian," "French," or "Spanish," or terms of comparable import or meaning, is not of a foreign origin. The advertised merchandise is produced by domestic manufacturers.

10. Purchasers of respondents' merchandise are not granted easy credit terms by respondents, without regard to their financial status or ability to pay.

11. Merchandise advertised in conjunction with the use of the phrase, "walnut finished," or terms of similar comparable import or meaning, was not of solid wood construction. To the contrary, said phrase merely described the color of a stain finish applied to the exposed surfaces of the merchandise.

Therefore, the statements and representations 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 for the purpose of inducing the sale of their household furniture, respondents through the use of pictorial representations in various publications and T.V. commercials, represented directly or by implication that:

1. All of the furniture illustrated in the pictorial representation is being offered for sale at the advertised price.

2. All of the furniture illustrated in the pictorial representation is available for sale in unlimited quantities as a group.

3. Furniture illustrated in the pictorial representation may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

PAR. 8. In truth and in fact:

1. Respondents offer only part of the furniture in the pictorial

representation at the advertised price and make extra charges as applicable for remaining furniture items in the pictorial representation.

2. All of the furniture in the pictorial representation is not available for sale in unlimited quantities as a group. To the contrary, respondents have available only a very limited number of the advertised groups of furniture.

3. Furniture illustrated in the pictorial representation is not being offered for sale at special or reduced prices, and savings are not afforded to purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices, but the prices at which respondents' merchandise are sold vary from purchaser to purchaser.

Therefore, the representations set forth in Paragraph Seven hereinbefore, were, and are, false, misleading and deceptive.

PAR. 9. In the course and conduct of their business and for the purpose of inducing the sale of their furniture, respondents have maintained, and are now maintaining, in their salesrooms, floor models and displays of furniture being offered for sale, on the basis of which their customers select and order the furniture they purchase from respondents.

In this connection, respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the quality and durability of the furniture being offered for sale, the terms and conditions under which merchandise will be sold and delivered, and the services that will be provided by respondents.

Moreover, subsequent to making sales and deliveries, respondents and their employees have made, and are now making, numerous oral statements, representations and promises to their customers regarding the time and manner in which respondents will perform various adjustments, replacements and/or repairs.

PAR. 10. By and through the use of the floor models and furniture displays, together with the aforesaid oral statements, representations and promises made by respondents, their sales representatives and other employees, respondents have represented, and are now representing, directly or by implication, that:

1. Furniture sold by respondents will be delivered to the customer free from damages and defects.
2. Furniture which is delivered to purchasers with damages and/or defects will be repaired or replaced within a reasonable time.
3. Furniture which is delivered with damages and/or defects will be repaired or replaced to the satisfaction of the purchasers.
4. Furniture which is delivered to purchasers with damages and/or

defects will be repaired or replaced in accordance with promises made to the purchasers by respondents.

PAR. 11. In truth and in fact:

1. In many instances, furniture sold by respondents is delivered to purchasers with damages and/or defects.

2. In many instances, furniture which is delivered to purchasers with damages and/or defects is not repaired or replaced within a reasonable time.

3. In many instances, furniture which is delivered to purchasers with damages and/or defects is not repaired or replaced to the satisfaction of the purchasers.

4. In many instances, furniture which is delivered to purchasers with damages and/or defects is not repaired or replaced in accordance with promises made to the purchasers by respondents' employees.

Therefore, the aforesaid acts, practices, statements and representations regarding respondents' merchandise and services as set forth in Paragraphs Nine and Ten were, and are, false, misleading and deceptive.

PAR. 12. In the further course and conduct of their aforesaid business, and in connection with the representations set forth in Paragraphs, Four, Five, Seven, Nine and Ten above, respondents in offering their furniture for sale have failed to disclose material facts relating to the veneered construction or to the use of plastics with simulated wood appearance in the manufacture of their merchandise.

The aforesaid failure to disclose such material facts to purchasers has the tendency and capacity to mislead or deceive such persons with respect to the utility, construction, composition, durability, design and grade of household furniture sold by respondents.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

PAR. 13. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their furniture and appliances, respondents' salesmen or representatives have in many instances engaged in the following additional unfair, false, misleading and deceptive acts and practices:

1. They have obtained purchasers' signatures on blank retail installment contracts and other instruments by making false and misleading representations and deceptive statements, including false and deceptive representations with respect to the nature and effect thereof, to induce purchasers to sign such instruments.

2. Through the use of false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Twelve above, respondents or their representatives have been able to

induce their customers into signing a contract upon initial contact without giving the customers sufficient time to carefully consider the purchase and consequence thereof.

3. They have failed to disclose certain material facts to purchasers, including but not limited to the fact that, at respondents' option, conditional sales contracts, promissory notes or other instruments of indebtedness executed by such purchasers in connection with their credit purchase agreements may be discounted, negotiated or assigned to a finance company or other third party to whom the purchaser is thereafter indebted and against whom defenses may not be available.

Therefore, the acts and practices, as set forth in Paragraph Thirteen hereof, were, and are, false, misleading and deceptive.

PAR. 14. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and acts 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 complete, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 16. 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 or affecting commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

#### COUNT II

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 II as if fully set forth verbatim.

PAR. 17. In the course and conduct of their business, as aforesaid, respondents are engaging, and for some time last past have engaged, in the collection of debts allegedly due and owing to Main Street Furniture, Inc. pursuant to contracts or other agreements relating to the purchase of respondents' merchandise.

PAR. 18. In attempting to induce payments of purportedly due or delinquent accounts, respondents and their representatives or agents have sent through the United States mail dunning letters, notices and

similar instruments which contain false and misleading statements and representations.

Typical, but not all inclusive of such statements and representations are the following:

FINAL NOTICE TO RETAKE FURNITURE

You are hereby notified that unless you call Mr. ----- upon receipt of this notice, we will have no alternative but to start proceedings to RETAKE our furniture.

\* \* \* \* \*

FINAL NOTICE OF COURT ACTION

48 HOUR NOTICE

Take notice that unless payment is made within 48 hours from the date hereof, our LEGAL DEPARTMENT will file proceedings against you without further notice, because you have failed or neglected to comply with the terms of your contract.

LEGAL DEPARTMENT

\* \* \* \* \*

FINAL NOTICE BEFORE LEGAL ACTION YOU ARE HEREBY NOTIFIED THAT YOU HAVE 24 HOURS FROM THIS DATE TO CALL AT OUR STORE ANY PAY ON YOUR ACCOUNT. FAILURE TO DO SO WILL RESULT IN LEGAL ACTION AGAINST YOU.

LEGAL ACTION MEANS:

1. Court costs, attorney fees and other legal expenses will be charged to you, as provided by law, IN ADDITION to the complete amount of indebtedness to our store.

\* \* \* \* \*

\* \* \* This is definitely our FINAL NOTICE to you. Unless you pay your account WITHIN 24 HOURS YOU WILL HEAR FROM OUR ATTORNEY.

\* \* \* \* \*

Notice of Impending Legal Proceedings

\* \* \* A demand by proper authority is hereby made, and the debtor duly notified that he is about to be sued and his personal belongings attached by said Creditor in Court. And it is demanded that said debtor forthwith appear before the person of firm named below, and pay to said creditor either in money or duly accepted order, in such proportion of said earnings in accordance with the Statute in such made and provided.

Unless you comply with the above demand within 24 hours from date hereof, further proceedings will be had, and the above action prosecuted without further delay.

\* \* \* \* \*

NOTICE OF INTENT TO FILE SUIT—OBTAIN JUDGMENT AND GARNISHEE WAGES

\* \* \* You are hereby notified that unless you call at Main Street Furniture, 50510

U.S. 31N South Bend, Indiana, within 48 HOURS of this date and pay \$64.00 suit will be immediately filed, judgment obtained, property sold subject to execution, and wages garnisheed.

\* \* \* \* \*

SUMMONS

PAR. 19. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not specifically set forth herein, respondents have represented, directly or by implication, that:

1. Respondents have referred, are referring, or will refer delinquent accounts to attorneys.
2. Failure to pay the amount claimed as owing within a stated period of time will result in immediate legal action.
3. Failure to pay the amount claimed as owing within a period of time will result in attachment and garnishment proceedings against the property and wages of the debtor.
4. Failure to pay the amount claimed as owing after notice of intent to repossess will result in the repossession of the merchandise.
5. Once judgment is entered against a debtor, it is impossible for the debtor to avoid payment thereof.
6. Respondents' organization has or maintains a separate legal department with qualified employees serving in this department.
7. Some forms used by respondents imply in form and content they are official documents duly issued or approved by a court of law or other government agency.

PAR. 20. In truth and in fact:

1. Failure of an alleged debtor to remit money to respondents within time period(s) indicated does not in most instances result in the immediate reference of such matters to attorneys.
2. Failure of an alleged debtor to remit money to respondents within time period(s) indicated does not in most instances result in the immediate institution of legal action to effect payment.
3. Failure of an alleged debtor to remit money to respondents within time period(s) indicated does not in most instances result in the immediate institution of attachment or garnishment proceedings to effect payment.
4. Failure to pay the amount claimed as owing after notice of intent to repossess, will not result in the repossession of the merchandise.
5. It is possible to avoid payment of a judgment, once such is entered, in a matter involving a debt. For instance, resort to bankruptcy proceedings will often avoid the payment of at least part of a judgment. Also, the restrictions and exemptions placed on the

collection of judgments make it possible in some instances to avoid the payment of at least part of a judgment.

6. Respondents do not have a separate legal department with qualified employees serving in this department.

7. Forms used by respondents are not official documents issued or approved by a court of law or other government agency, but on the contrary are wholly private in origin.

Therefore, the statements and representations set forth in Paragraphs Nineteen and Twenty hereof were and are false, misleading and deceptive.

PAR. 21. In the ordinary course of their business as aforesaid, and in connection with the collection of debts arising from retail installment sales, respondents through their employees engage in fraudulent and unconscionable conduct in the repossession of furniture and appliances from delinquent accounts and in so doing, have represented directly or by implication, that:

1. The person making the repossession was a court constable who was acting in his official capacity and pursuant to lawful authority.

2. The repossession was being accomplished pursuant to a court order that was lawfully obtained from the local court in the area.

3. The document shown to the delinquent account at the time of the repossession was an official court order.

PAR. 22. In truth and in fact:

1. The person making the repossession was not a court constable that was acting in his official capacity and pursuant to lawful authority. To the contrary, the person making the repossession was merely a collection employee of respondents.

2. The repossession was not being accomplished pursuant to a court order that was lawfully obtained from the local court in the area.

3. The document shown to the delinquent account at the time of the repossession was not an official court order but was a simulated legal document that was made up by respondents for collection purposes.

Therefore, the statements and representations set forth in Paragraphs Twenty-One and Twenty-Two hereof were and are false, misleading and deceptive.

PAR. 23. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and to induce recipients thereof into the payment of alleged delinquent accounts by reason of the said erroneous and mistaken belief.

PAR. 24. The aforesaid acts and practices of respondents as herein

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

### COUNT III

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 III as if fully set forth verbatim.

PAR. 25. In the ordinary 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. 26. Subsequent to July 1, 1969, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing customers to execute a binding "Retail Installment Contract" hereinafter referred to as the "Installment Contract." Respondents do not provide these customers with any other credit cost disclosures.

By and through the use of the installment contracts, respondents:

1. Induced certain customers to sign installment contracts in blank form. Respondents have subsequently filled in the blank spaces and frequently failed to give those customers a completed copy, thereby failing to furnish those customers any cost or credit disclosures prior to the consummation of the contract as required by Section 226.8(a) of Regulation Z in the manner and form prescribed by Section 226.8(b) and (c) of Regulation Z.

2. Failed to meet the requirements of Section 226.8(b)(7) of Regulation Z as the contract provides for the right of payment of the full amount due and "under certain conditions" to obtain a partial refund of the finance charge, without further disclosing the "certain conditions" under which prepayment could be made and a partial refund of the finance charge be obtained.

3. Failed to accurately disclose the date on which the finance charge begins to accrue as prescribed by Section 226.8(b)(1) of Regulation Z.

4. Failed to accurately state the "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.

5. Failed to disclose the total of payments as prescribed by Section 226.8(b)(3) of Regulation Z.
6. Failed to accurately disclose the number, amount and due dates, or periods of payments, scheduled to repay the indebtedness, as prescribed by Section 226.8(b)(3) of Regulation Z.
7. Failed to state the "unpaid balance of cash price," as prescribed by Section 226.8(c)(3) of Regulation Z.
8. Failed to disclose the amount financed, as required by Section 226.8(c)(7) of Regulation Z.
9. Failed to disclose the "deferred payment price," as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.
10. Failed to include in the finance charge, charges or premiums for fire risk of loss insurance, written in connection with credit transactions when the customer was not given a clear, conspicuous, and specific written statement setting forth the cost of the insurance if obtained from or through respondents and stating that the customer may choose the person through which the insurance is to be obtained as prescribed by Section 226.4(a)(6) of Regulation Z.
11. Failed to include in the finance charge, charges or premiums for credit life, accident, health or loss of income insurance, written in connection with credit transactions when the customer has not given a specific dated and separately signed affirmative written indication of his desire for such coverage as prescribed by Section 226.4(a)(5)(ii) of Regulation Z.

PAR. 27. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constituted violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Truth in Lending Act and the implementing regulation promulgated thereunder; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for

settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted and executed consent agreement and placed such agreement 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent Main Street Furniture, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 50510 U.S. 31 No., South Bend, Ind.

Respondents Samuel Goldstein, Raymond Goldstein and Chester E. Brost are officers of said corporation. 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.

#### ORDER I

*It is ordered,* That respondents Main Street Furniture, Inc., a corporation, its successors and assigns, and its officers, and Samuel Goldstein, Raymond Goldstein and Chester E. Brost, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device in connection with the purchasing, advertising, offering for sale, sale and distribution of furniture and appliances, or any other products, in or affecting 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 sale of merchandise.

2. Making representations, directly or indirectly, orally or in writing, purporting to offer merchandise or services for sale when the purpose of the representation is not to sell the offered merchandise or

services but to obtain leads or prospects for the sale of other merchandise or services at higher prices.

3. Discouraging in any manner the purchase of any merchandise or services which are advertised or offered for sale.

4. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

a. the cost of publishing each advertisement including the preparation and dissemination thereof;

b. the volume of sales made of the advertised product or service at the advertised price; and

c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

5. Using the words "Sale," "Savings Fantastic," "Spectacular Values," or any other words of similar import or meaning not set forth specifically herein, unless the immediately preceding price at which bona fide sales have been made of the merchandise being offered for sale is disclosed or can be readily ascertained by disclosure of the stated dollar or percentage price and the price of said merchandise constitutes a recent reduction, in an amount not so insignificant as to be meaningless, from the immediately preceding price or unless a disclosure is made that such merchandise was offered for sale at the immediately preceding price in the recent regular course of respondents' business, and that no sales were made at that price or at any other price in the recent past.

6. (a) Representing, directly or indirectly, orally or in writing, that by purchasing any of respondents' merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless the former price is respondents' immediately preceding price for the advertised merchandise and bona fide sales have been made by respondents at that price in the recent past or unless a disclosure is made that said merchandise was offered for sale at the former price for a reasonably substantial period of time in the recent regular course of respondents' business and that no sales were made at that price or at any other price in the recent past.

(b) Representing, directly or indirectly, orally or in writing that by purchasing any of respondents' merchandise, customers are afforded savings between respondents' stated price and a compared price for said merchandise in respondents' trade area unless respondents' merchandise and the nature of the compared price are explicitly

identified in advertising and at the point of sale through the use of shelf tags or similar means and a substantial number of the principal retail outlets in the trade area regularly sell such merchandise at the compared price or some higher price in the regular course of their business.

(c) Representing, directly or indirectly, orally or in writing, that by purchasing any of respondents' merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise unless the compared value price is explicitly identified in advertising and at the point of sale through the use of shelf tags or similar means and respondents have in good faith conducted a market survey or obtained a similar representative sample of prices for comparable merchandise of like grade and quality in their trade area to establish that a substantial number of the principal retail outlets in the trade area regularly sell comparable merchandise of like grade and quality at the compared value price in the regular course of their business.

7. Failing to maintain and produce for inspection or copying, for a period of three years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraphs Five and Six of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

8. Representing, directly or indirectly, orally or in writing, that respondents have "HUNDREDS" or any other given number of furniture suites in stock unless respondents have the stated number of furniture suites available for immediate sale and delivery; or misrepresenting in any manner the colors, style, kind or quantity of furniture in stock and available for sale or delivery.

9. Failing to make full disclosure either in its advertising or at the time of sale and prior to consummation of the sale that in addition to the price quoted in respondents' advertising, certain other charges, as applicable, are made, such as, delivery, set up or assembly, service, and warranty charges.

10. Failing to disclose clearly and conspicuously within each advertisement for an advertised product each reservation, if any, as to suitability or durability of such advertised product for normal usage by the customers who may buy such product or service.

11. Representing, directly or indirectly, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondents promptly and fully perform all of their obligations

and requirements, directly or impliedly represented, under the terms of each such guarantee.

12. Representing, directly or by implication, that any of respondents' offers to sell merchandise are limited as to time or restricted or limited in any other manner, unless such represented limitations or restrictions are actually in force and in good faith adhered to.

13. Using the terms "Italian," "French" or "Spanish," or any other unqualified terms of similar import or meaning not set forth specifically herein, orally or in writing, to describe respondents' furniture when such furniture is of domestic origin, unless a clear and conspicuous disclosure is made in advertising and on the furniture that such furniture was manufactured in the United States by means of such statements as "Made in U.S.A." or "manufactured by" followed by the name and address of the domestic manufacturer.

14. Representing, directly or indirectly, orally or in writing, that purchasers of respondents' merchandise are granted easy or assured credit terms, by respondents; or misrepresenting in any manner, the amount, type, extent of any other facet of the credit terms respondents arrange or may arrange for their purchasers.

15. Representing, directly or indirectly, orally or in writing, that respondents' merchandise is "walnut finished," or using any other terms of comparable import or meaning not set forth specifically herein, to describe respondents' furniture, unless a clear and conspicuous disclosure is made in advertising and on the furniture that such terms are merely descriptive of the color and/or grain design or other simulated finish that is applied to the exposed surfaces of such furniture.

16. Using any wood names or any names that suggest wood, orally or in writing, to describe any materials simulating wood in respondents' furniture, unless a clear and conspicuous disclosure is made in advertising and on the furniture that such wood names are merely descriptive of the color and/or grain design or other simulated finish that is applied to the exposed surfaces of such furniture.

17. Using pictorial representations of two or more items of furniture in conjunction with a stated price when all of the furniture in the pictorial representations is not being offered at the stated price, unless a disclosure is made in immediate conjunction and with equal prominence that all of the illustrated furniture is not being offered at the stated price and that an additional charge is made for certain items that are clearly identified in the illustrations.

18. Offering merchandise for sale by means of any form of pictorial advertisement when such merchandise is not in stock and available in quantities sufficient to meet reasonably anticipated demands for sale to

the public at or below the advertised price for the period in which the prices are advertised to be effective.

19. Failing to inform, orally, all customers at the time of sale and provide in writing on the face of all order forms, sales contracts and invoices executed by customers, with such conspicuousness and clarity as is likely to be read and understood, that the customer has the right and option to cancel the contract and obtain a refund of all monies, by notifying respondents, in writing, within ten (10) days from the date of actual delivery of the merchandise, where furniture and/or appliances are delivered in a defective or damaged condition; *Provided, however,* That the provisions of Paragraphs 19 and 20 of the order shall not apply to merchandise sold "as is," conspicuously designated as such on order forms, sales contracts and invoices executed by the customers who have knowledge of damage to, or defects in, particular merchandise and have given written consent to purchasing same in its stated condition.

20. Failing to refund immediately all monies to customers who have requested contract cancellation in writing within ten (10) days from the date of actual delivery of defective or damaged merchandise; *Provided, however,* That, in lieu of making such a refund, respondents may, with the written consent of, and with no additional cost to the customer replace or repair defective or damaged merchandise, such replacement or repair to be fully, satisfactorily and promptly performed, in accordance with Paragraph 21 of this order I. In such a case, the customer who consents to accept replacement or repair in lieu of a refund, may cancel the contract with a refund of all monies by notification to respondents in writing within ten (10) days from the date of actual delivery or redelivery of any replacement or repaired merchandise that is itself defective or damaged.

21. Failing to make all refunds or to obtain the voluntary written consent of the customer for replacement or repair, as provided for in this order, within one (1) week of the receipt of the customer's request for cancellation; or to complete all repairs, pursuant to a written consent for repairs, within two (2) weeks from the date of such written consent, or to make full replacements, pursuant to a written consent for replacement, within thirty (30) days from the date of such written consent. In all other instances, where a customer has requested repairs or replacements, orally or in writing, within ten days following the delivery of defective, damaged or nonconforming merchandise, respondents shall investigate such complaints forthwith and complete repairs within three (3) weeks and replacements within forty (40) days of the receipt of such request.

22. Failing to notify the customer, orally and in writing, and at least five (5) business days prior to the scheduled completion date, that

respondents are unable to complete repairs or replacement within the time specified by this order and to cancel the contract with a full refund of all monies to the customer within one week, or in lieu thereof and at the option of the customer, to obtain the customer's voluntary written consent for an extension of the date set for completion, setting forth a date certain for completion, which shall be a date by which respondents actually expect to complete performance.

23. Failing to maintain and produce for inspection or copying, for a period of two (2) years, adequate records which disclose the facts pertaining to the receipt, handling and disposition of each and every communication from a customer, oral or written, requesting contract cancellation, refund, replacement or repair.

24. Failing to make a clear and conspicuous disclosure on furniture, or on a tag or label prominently attached thereto, that veneers, plastics or other materials having the appearance of wood, leather, slate or marble have been used in the manufacture of such merchandise; or failing to make a clear and conspicuous disclosure of any material facts relating to the true composition of furniture where materials or products that simulate other materials or products are used in the manufacture of such furniture.

25. Inducing or causing purchasers or prospective purchasers of respondents' products, installations or services to sign blank or partially filled in completion certificates or other legal instruments or documents; or misrepresenting, in any manner, the true nature or effect of such legal instruments or documents.

26. 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.

27. 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 boldface type of a minimum size of ten (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.

28. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services 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 boldface 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.

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 \_\_\_\_\_ (DATE).

I HEREBY CANCEL THIS TRANSACTION.

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(BUYER'S SIGNATURE)

29. 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.

30. 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.

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

32. Failing or refusing to honor any valid notice of cancellation by a buyer and within ten (10) business days after the receipt of such notice, to (a) refund all payments made under the contract of sale; (b) return any goods or property traded in, in substantially as good condition as when received by the seller; (c) 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.

33. 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.

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

35. Assigning, selling or otherwise transferring respondents' notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other document evidencing the indebtedness.

36. Failing to include the following statement clearly and conspicuously on the face of any note, contract or other instrument of indebtedness executed by or on behalf of respondents' customers:

#### 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.

#### ORDER II

*It is further ordered,* That respondents Main Street Furniture, Inc., a corporation, its successors and assigns, and its officers, and Samuel Goldstein, Raymond Goldstein and Chester E. Brost, individually and as officers of said corporation, and respondents' agents, representatives

and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the collection of, or attempt to collect, accounts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing or causing to be represented by any means, directly or indirectly, that respondents have instructed, are instructing, or will instruct an attorney to file suit against an alleged debtor unless the alleged debt is immediately paid in full or a specified amount is paid thereon unless the respondents have already instituted the aforesaid suit.

2. Representing by any means, directly or indirectly, that:

(a) legal action has been taken against the debtor; or

(b) legal action is being taken against the debtor; or

(c) legal action will be taken against the debtor unless the respondents have already instituted said legal action.

3. Representing by any means, directly or indirectly, that the post judgment rights of a creditor to attach property or garnish wages of a debtor are as specifically represented unless such is the fact in the jurisdiction in which collection is sought.

4. Informing a debtor of a creditor's right after judgment without disclosing at the same time that no judgment may be entered against the debtor unless the debtor has first been given notice and an opportunity to appear and defend himself in a court of law.

5. Representing, directly or indirectly, by any means to a debtor that it is impossible to escape a judgment.

6. Using fictitious job titles or organizational designations or descriptions by any means in connection with respondents' business or misrepresenting in any manner any departmentalization of respondents' business.

7. Using fictitious official titles or designations or descriptions by any means in connection with the repossession of furniture and/or appliances from delinquent accounts.

8. Representing by any means, directly or indirectly, that the repossession of furniture and/or appliances is being accomplished pursuant to a court order, unless a court order was lawfully obtained from the local court in the area and the delinquent account had first been given notice and an opportunity to appear and defend himself prior to the issuance of such court order; or misrepresenting, in any manner, respondents' repossession procedures.

9. Using any unofficial or unauthorized document which simulates or is represented by any means to be a document authorized, issued, or approved by a court of law or any other official or legally constituted or

authorized authority, or misrepresenting, in any manner, the source, authorization, or approval of any document.

10. Failing to give notification of the commencement of legal action by respondents against a customer by mailing a summons and complaint to such customer's last known address, and failing to obtain from the post office a certificate of such mailing. Such notice shall be in addition to any other notification or service required by law, practice or custom. Such summons and complaint to be sent by first class mail by respondents or their attorney with instructions on the face of the envelope "Do not forward. Address Correction Requested." In the event that such mail is returned as undeliverable by the post office or if the residence address of the defendant is unknown, the summons is to be mailed to the customer, care of the employer or place of employment of the customer if known, in a sealed envelope not indicating on the outside thereof, directly or indirectly by the return address or otherwise, that the communication is from an attorney or concerns an alleged debt.

#### ORDER III

*It is further ordered,* That respondents Main Street Furniture, Inc., a corporation, its successors and assigns, and its officers, and Samuel Goldstein, Raymond Goldstein and Chester E. Brost, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit, or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, or any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Failing to furnish to the customer, before the transaction is consummated, a duplicate of the instrument or other statement containing the disclosures required by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.
2. Failing to disclose the conditions entitling a customer to a partial refund of the finance charge as required by Section 226.8(b)(7) of Regulation Z.
3. Failing to accurately disclose the date on which the finance charge begins to accrue, as prescribed by Section 226.8(b)(1) of Regulation Z.
4. Failing to accurately state the "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.

5. Failing to disclose the "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.

6. Failing to accurately disclose the number, amount, and due dates, or periods of payment, scheduled to repay the indebtedness, as prescribed by Section 226.8(b)(3) of Regulation Z.

7. Failing to state the "unpaid balance of cash price," as prescribed by Section 226.8(c)(3) of Regulation Z.

8. Failing to disclose the "amount financed," as prescribed by Section 226.8(c)(7) of Regulation Z.

9. Failing to disclose the "deferred payment price," as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

10. Failing to itemize and include in the finance charge, for purposes of disclosure of the finance charge and computation of the annual percentage rate, any and all charges for risk of loss insurance unless the customer was given a clear, conspicuous and specific written indication of the cost of such insurance coverage from respondents and stating that the customer may choose the source through which the insurance is to be obtained as prescribed by Section 226.4(a)(6) of Regulation Z.

11. Failing to itemize and include in the finance charge, for purposes of disclosure of the finance charge and computation of the annual percentage rate, any and all charges or premiums for credit life, accident, or health insurance unless respondents have obtained a specific dated and separately signed affirmative written indication of the customer's desire for such insurance coverage as prescribed by Section 226.4(a)(5)(ii) of Regulation Z.

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

*It is further ordered,* That for a period of one year respondents post in a prominent place in each salesroom or other area wherein respondents sell furniture or other products and services a copy of this cease and desist order with a notice that any customer or prospective customer may receive a copy on demand.

*It is further ordered,* That respondents forthwith distribute a copy of this order to each of their operating divisions or departments.

*It is further ordered,* That respondents prominently display the following notice in two or more locations in that portion of respondents' business premises most frequented by prospective customers, and in each location where customers normally sign consumer credit documents or other binding instruments. Such notice shall be considered

prominently displayed only if so positioned as to be easily observed and read by the intended individuals:

NOTICE TO CREDIT CUSTOMERS

IF THE DEALER IS FINANCING OR ARRANGING THE FINANCING OF YOUR PURCHASE, YOU ARE ENTITLED TO CONSUMER CREDIT COST DISCLOSURES AS REQUIRED BY THE FEDERAL TRUTH IN LENDING ACT. THESE MUST BE PROVIDED TO YOU IN WRITING BEFORE YOU ARE ASKED TO SIGN ANY DOCUMENT OR OTHER PAPERS WHICH WOULD BIND YOU TO SUCH A PURCHASE.

This notice required by order of the Federal Trade Commission.

*It is further ordered,* That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by, the Federal Trade Commission.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any consumer credit transaction or in any aspect of preparation, creation or placing of advertising, and to all personnel of respondents responsible for the sale or offering for sale of all products covered by this order, and that respondents secure a signed statement acknowledging receipt of said order from each person.

*It is further ordered,* That respondents, for a period of one year from the effective date of this order, shall furnish each newspaper or other advertising medium which is utilized by the respondents to obtain leads for the sale of merchandise, or to advertise, promote, or sell merchandise, with a copy of the Commission's news release setting forth the terms of this order.

*It is further ordered,* That respondents notify the Commission at least 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 in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondents shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the

terms of this order; *Provided*, That if said respondents wish to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, they shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

*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 or employment in which they are engaged as well as a description of their 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.