

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders
IN THE MATTER OF

PEOPLES DRUG STORES, INC.

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

Docket C-2773. Complaint, Jan. 5, 1976—Decision, Jan. 5, 1976

Consent order requiring an Alexandria, Va., drugstore chain, among other things to cease making, carrying out, or enforcing anticompetitive shopping center lease agreements.

Appearances

For the Commission: *Eugene R. Webb, James D. Tangires, Jerry W. Boykin and Gary M. Laden.*

For the respondents: *Robert A. Hammond, III, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (15 U.S.C. §41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating the following:

PARAGRAPH 1. For the purpose of this complaint the following definitions shall apply:

(a) The terms "respondent" and "Peoples" refer to Peoples Drug Stores, Inc., a corporation, its subsidiaries, their officers, agents, representatives and employees.

(b) The term "shopping center" refers to a group of retail outlets planned, developed and managed as a unit in relation to a trade area which the development is intended to serve, containing 200,000 square feet or more of floor area designed for retail occupancy and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

(c) The term "tenant" refers to any occupant or potential occupant of

retail space in a shopping center, whether as lessee or owner of such space.

(d) The term "drug store" refers to an establishment engaged in the retail sale of prescription drugs and patent medicines and usually is designated by the trade as a drug store. A drug store may carry a number of other lines including, cosmetics, toiletries, tobacco and novelty merchandise, and may operate a soda fountain or lunch counter.

(e) The term "exclusive covenants" refers to terms in a lease which provide that respondent shall be or shall have the right to be, the only drug store in a shopping center.

(f) The term "rights of first refusal" refers to terms in a lease which provide that respondent shall have the unconditional right to reject or accept the opportunity to operate an additional drug store in a shopping center where respondent already operates a drug store.

PAR. 2. Respondent is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 6315 Bren Mar Dr., Alexandria, Virginia. Until October of 1974, respondent's principal place of business was located in the District of Columbia. Peoples is engaged in the operation of a chain of drug stores through wholly-owned subsidiaries, which are each named Peoples Service Drug Stores, Inc., except for a subsidiary in West Virginia which is named Peoples Drug Stores, Inc. These subsidiaries are each incorporated in one of the following States: Maryland, Virginia, Pennsylvania, North Carolina, West Virginia and Ohio.

PAR. 3. (a) In fiscal 1973, Peoples was one of the largest drugstore chains in the Eastern United States with sales in excess of \$241 million and 262 stores. Sites in shopping centers represent a substantial share of the company's total sales volume.

(b) In fiscal 1972, approximately fifty percent (50%) of Peoples' drug stores were located in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA). These stores accounted for approximately thirty percent (30%) of the drug store sales in the Washington, D.C. SMSA. Peoples operates drug stores in thirteen (13) of the largest shopping centers as well as a large number of other shopping centers in the Washington, D.C. SMSA. A substantial amount of Peoples retail sales in the Washington, D.C. SMSA are derived from shopping center stores.

PAR. 4. (a) In the course and conduct of its business, respondent has engaged and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases for resale a great variety of consumer products from a large number of suppliers located throughout the United States. Respondent causes these

products, when purchased by it, to be transported from the place of manufacture or purchase to its business establishments located in the District of Columbia, Virginia, West Virginia, Pennsylvania, North Carolina, Ohio and other States. Such products have been and are advertised and offered for sale by respondent in newspapers circulated among and between the several States of the Nation and the District of Columbia.

(b) In the course of establishing its stores in shopping centers in the District of Columbia and in the States of Virginia, Maryland, West Virginia, Pennsylvania, North Carolina and Ohio, respondent has negotiated and executed lease agreements with developers. In the course of negotiating and executing these leases, exchanges of information and communications have occurred between respondent in the District of Columbia and developers in other States. Respondent has also used the United States mails in enforcing or otherwise acting with respect to its lease rights.

PAR. 5. Except to the extent that competition has been hindered, frustrated and eliminated as set forth in this complaint, respondent, in the course and conduct of its business of offering for sale and selling pharmaceutical products, food products, prescription drugs, household goods and apparel has been and is in substantial competition with other corporations, individuals and partnerships in the retail sale of the same or comparable brands of merchandise carried and sold by respondent.

PAR. 6. (a) In recent years, Peoples has entered into a substantial number of lease agreements with shopping center developers for the establishment of its drug stores in shopping centers. During the course of negotiating such leases, the developers have acceded to respondent's demands for exclusive covenants to protect it from actual and potential competition.

Typical and illustrative of said exclusive covenants, but not all-inclusive thereof, are the following:

Landlord covenants and agrees that it shall not permit any other Tenant or occupant in the shopping center to fill prescriptions or to operate a drug store during the term of this Lease and any renewal thereof, or to operate any store whose primary purpose is the sale of vitamins, or drugs, or medicinal items* * *. (a) Landlord covenants that it shall not permit any other tenant or occupant within the Shopping Center, or any expansion thereof, to fill prescriptions or operate a drugstore* * *. (b) In the event any other tenant or occupant in the Shopping Center * * * fills prescriptions or operates a drug store, the Landlord agrees to take forthwith all necessary legal steps to prevent such use, and upon failure to do so Tenant shall be entitled * * * to take such steps in the Landlord's name and at the Landlord's expense, and to deduct from rent thereafter accruing the Tenant's reasonable outlays and advances in so doing.

(b) In other shopping center leases with shopping center developers, developers have acceded to respondent's demands for restrictive

provisions which give Peoples "rights of first refusal" on placement of another drug store in those shopping centers, thereby protecting respondent from actual and potential competition.

Typical and illustrative of said "rights of first refusal," but not all-inclusive thereof, is the following:

If Landlord elects to lease additional premises in the shopping center building, * * * for the purpose of conducting therein the principal business of a retail drug store. (sic) Landlord shall offer such premises to Tenant upon the same terms and conditions as contained in a bona fide offer made by a third party which is acceptable to Landlord. Upon receipt of such offer from Landlord, Tenant shall have thirty (30) days within which to accept said offer and then to enter a written Lease Agreement* * *.

(c) Additional restrictive provisions in Peoples' leases with shopping center developers further control, limit and restrict the types of goods and services which may be offered for sale by other tenants already within a shopping center where Peoples is a tenant.

Typical and illustrative of said restrictive provisions, but not all-inclusive thereof, are the following:

* * * With respect to the area leased to F. W. Woolworth, Landlord shall be required only to obtain a covenant from Woolworth that it will not fill prescriptions.

* * * Penn Fruit Company — shall not trade under the name "drug store" nor fill drug prescriptions in the Camp Hill Shopping Center so long as Peoples Service Drug Stores, Inc. maintains and operates a drug store in the Camp Hill Shopping Center* * *.

(d) The aforesaid restrictions have been enforced or acted upon by respondent and/or others to respondent's benefit.

PAR. 7. The aforesaid lease provisions and the rights, powers and privileges thereby conferred on respondent as set forth in Paragraph Six, have had and continue to have the tendency to restrain trade and commerce. Included among the effects of such restraints are the following:

- (a) Excluding actual and potential competitors;
- (b) Restricting, hindering and coercing shopping center developers in their choice of potential tenants in shopping centers;
- (c) Restricting, hindering and coercing other tenants from selling certain products or offering certain services which are sold or offered by respondent; and
- (d) Denying the public the benefits of free competition.

PAR. 8. In the further course and conduct of its operation of drug stores in shopping centers, respondent has communicated with shopping center developers to effectuate the exclusion of other tenants from shopping centers who sell goods and services also sold by respondent. Respondent has also communicated with shopping center developers to preclude other tenants already doing business in

shopping centers in which respondent also operates a drug store, from selling some of the same goods and services also sold by respondent. Such communications have had and continue to have the tendency to exclude actual and potential competitors, restrict, hinder and coerce shopping center developers in their choice of potential tenants in shopping centers, restrict, hinder and coerce other tenants from selling or offering for sale certain products and services which are sold or offered for sale by respondent and deny the public the benefits of free competition.

PAR. 9. The aforesaid lease provisions, respondent's acts, practices and methods of competition in connection therewith, and the adverse competitive effects resulting therefrom constitute unfair methods of competition 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 respondent named in the caption hereof, and the respondent having been furnished with a copy of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney 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 complaint to issue herein, 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 it had reason to believe that the respondent has 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Peoples Drug Stores, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State

of Maryland, with its principal office and place of business located at 6315 Bren Mar Dr., Alexandria, Virginia.

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

I

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

(a) The terms "respondent" and "Peoples" refer to Peoples Drug Stores, Inc., a corporation, its successors, assigns, subsidiaries, divisions and any other device, their officers, agents, representatives and employees.

(b) The term "shopping center" refers to a group of retail outlets planned, developed and managed as a unit in relation to a trade area which the development is intended to serve, containing 200,000 square feet or more of floor area designed for retail occupancy and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

(c) The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center, whether as lessee or owner of such space.

(d) The term "drugstore" refers to an establishment engaged in the retail sale of prescription drugs and patent medicines and usually is designated by the trade as a drugstore. A drugstore may carry a number of other lines including, cosmetics, toiletries, tobacco and novelty merchandise, and may operate a soda fountain or lunch counter.

(e) The term "rights of first refusal" refers to terms in a lease which provide that respondent shall have the unconditional right to reject or accept the opportunity to operate an additional drugstore in a shopping center where respondent already operates a drugstore.

II

It is ordered, That respondent directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from making, carrying out, or enforcing, directly or indirectly, an agreement or provision of an agreement which:

(1) gives respondent the right to be the only drugstore in a shopping center;

(2) gives respondent "rights of first refusal" in shopping centers;

(3) prohibits or in any manner controls the entrance of tenants into shopping centers;

(4) controls or restricts the business operations of other tenants in shopping centers.

III

It is further ordered, That respondent shall:

A. distribute a copy of this order to each of its operating divisions and subsidiaries;

B. within thirty (30) days after service of this order upon respondent, notify each shopping center developer or landlord of shopping centers in which respondent operates a drugstore of this order by providing each such developer or landlord with a copy of this order by registered or certified mail;

C. within sixty (60) days after service of this order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order; and

D. 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.

IN THE MATTER OF
LINDAL CEDAR HOMES, INC., ET AL.

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

Docket C-2774. Complaint, Jan. 5, 1976—Decision, Jan. 5, 1976

Consent order requiring a Seattle, Wash., manufacturer and seller of pre-cut building packages and distributorships, among other things to cease making advertising claims without prior substantiation; using unfair contract terms; failing to provide consumers with right of rescission if timely delivery of product is not made; failing to provide warranties that their products will be delivered complete and free from defects in accordance with terms of the purchase contract; failing to make disclosures required by F.T.C.'s proposed Trade Regulation Rule on Sale of Franchises; and failing to comply with the disclosure requirements of Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *David R. Pender.*

For the respondents: *James R. Hermsen, Karr, Tuttle, Koch, Campbell, Mawer & Morrow, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Lindal Cedar Homes, Inc., a corporation, and Sir Walter Lindal, individually and as a former officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and the Truth in Lending Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent Lindal Cedar Homes, Inc. (hereinafter Lindal, Inc.) is a Washington corporation with its office and principal place of business located at 10411 Empire Way South, Seattle, Washington.

Respondent Sir Walter Lindal was the president and chairman of the board of directors of the corporate respondent and he formulated, directed and controlled the policies, acts and practices of Lindal, Inc., including those hereinafter set forth. He continues to have a substantial ownership interest in the corporate respondent. His address is 3764 S.W. 171st, Seattle, Washington.

Allegations below stated in the present tense include the past tense.

PAR. 2. Respondents are engaged in the advertising, offering for sale, and sale of pre-cut wood buildings, and distributorships to sell pre-cut wood buildings. Lindal, Inc. reported 1974 sales of pre-cut wood buildings as \$8,091,171, and distributorship fees received as \$64,725.

PAR. 3. Respondents' acts and practices as hereinafter set forth are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course of their business, and for the purpose of inducing the purchase of their pre-cut wood buildings, respondents, through advertisements, brochures, promotional material, and other means, make numerous statements and representations with respect to their products. By and through the use of such statements and representations, respondents represent, directly or by implication, that:

A. Most persons can assemble a Lindal, Inc. pre-cut wood building with little difficulty;

B. Because most Lindal, Inc. components are pre-cut to exact lengths and numbered for each assembly, a purchaser can save as much as 75 percent in assembly time;

C. A Lindal, Inc. pre-cut wood building can be erected to the weatherproof stage in two to three weeks, or about one-fourth of the time usually required for a conventional home.

PAR. 5. In truth and in fact:

A. In certain instances, purchasers have experienced difficulty in assembling a Lindal, Inc. pre-cut wood building.

B. In certain instances, because of incomplete part numbering, shortages and/or substitution of materials, purchasers, in assembling Lindal, Inc. pre-cut wood buildings, have not saved as much as 75 percent in assembly time.

C. In certain instances, because of incomplete part numbering, shortages and/or substitution of materials, purchasers have been unable to erect Lindal, Inc. pre-cut wood buildings to the weatherproof stage in three weeks.

Therefore, the acts, practices and representations set forth in Paragraphs Four and Five are false, misleading, deceptive and unfair in violation of Section 5 of the Federal Trade Commission Act.

PAR. 6. In the course of purchasing Lindal, Inc. pre-cut wood buildings, purchasers reasonably believe that respondents will make timely delivery of such buildings in a condition suitable for immediate commencement of construction. In truth and in fact, however, immediate commencement of construction of such buildings after the scheduled delivery date is difficult or impossible because in certain instances:

- A. Lindal, Inc. has failed to make timely delivery of its products;
- B. Lindal, Inc. has failed to make complete delivery of its products.

Furthermore, in certain instances, respondents have either failed to correct such untimely or incomplete delivery or have corrected such delivery only after protracted negotiations. Such acts and practices of respondents have resulted in substantial expense, inconvenience, and hardship to certain purchasers.

Therefore, said acts and practices are unfair in violation of Section 5 of the Federal Trade Commission Act.

PAR. 7. In the course of their business respondents have used sales and earnest money agreements which contain, *inter alia*, the following standard terms:

A. * * * Purchaser accepts delivery when the material is loaded on carrier at plant, and either the carrier or the Purchaser is responsible for any theft, fire or any damage by any cause once the material leaves the plant.

B. The factory price entered above is based on current published price list and specification sheet and is good for 60 days from the date of this order. Should delivery from the plant be after this period, the price and specifications will be adjusted to those then current.

C. This contract contains the entire contract as between the parties and there are no conditions, warranties or representations expressed or implied, statutory or otherwise, with respect to this contract or affecting the rights of the parties, other than as specifically contained herein. Nonesuch have been made by the Seller, its officers, or agents, nor shall any agreement collateral hereto be binding upon the Seller unless it is included in the contract in writing.

PAR. 8. In certain instances, the use of each of the aforesaid provisions, in combination with the acts and practices of respondents, is unfair to purchasers of Lindal, Inc. products in that:

A. The provision set forth in Paragraph Seven, subparagraph A, requires purchasers to accept the goods and pay the full purchase price prior to any opportunity to inspect the goods. In certain instances when purchasers have claimed that delivery was incomplete, respondents have rejected their complaints on the basis that incomplete delivery resulted from theft or damage after the goods were accepted by the purchasers. When subsequent negotiations have failed to resolve the disputes, certain claims have been abandoned by the purchasers due to the cost, inconvenience and problems of proof associated with pursuing such claims.

B. The provision set forth in Paragraph Seven, subparagraph B, permits respondents to adjust the purchase price to the price then current if, after the contract is made, delivery has not occurred within sixty days. Prior to the signing of the contract, however, respondents represent that the pre-cut wood building package is presently in

storage, or will be packaged and ready for delivery within sixty days. Nevertheless, when delivery does not occur within sixty days of the contract date, respondents, in certain instances, have increased the price to the new prevailing price for their product, if in fact a new prevailing price is in existence. Such new prices are higher than purchasers could reasonably have anticipated at the time the contract was made. Thus, certain purchasers are forced to pay new, higher contract prices set by respondents or forfeit part or all of the deposits required by respondents.

C. The provision set forth in Paragraph Seven, subparagraph C, purports to legally exclude and disclaim all implied-in-law warranties. In truth and in fact, under the applicable law of several states in which Lindal, Inc. buildings are sold at retail, such exclusions and disclaimers are unenforceable. Therefore, this contract term has the tendency and capacity to mislead purchasers as to their warranty rights.

Furthermore, the effect of the contract terms described in Paragraph Seven is not generally understandable to persons lacking legal training. Therefore, certain purchasers believe they have waived valuable remedial rights when respondents use or require others to use these terms in contracts for the purchase of Lindal, Inc. products. Thus, the use of the contract terms described in Paragraph Seven is unfair, deceptive and misleading in violation of Section 5 of the Federal Trade Commission Act.

PAR. 9. In the course of their business, respondents disseminate certain advertisements and promotional material in a continuing program of recruiting distributors to sell products of Lindal, Inc. Typical and illustrative of the representations and statements appearing in such material, but not all inclusive thereof, are the following:

A distributorship in an average metro area of 300,000 should make its owner \$50,000 income during the second or at least third year. Double, or \$100,000 is also highly possible. With a lesser effort and more leisurely life style, \$25,000 is probable.

A Lindal distributor recently grossed \$156,000 working one day a week. * * * by putting in an extra day or two each week he could have grossed at least \$300,000, for an income of well over \$70,000.

PAR. 10. Through the use of such statements and representations, and others not specifically set out herein, respondents have represented, directly or by implication, that an average distributor can reasonably expect to make a net profit between \$25,000 and \$100,000 after a few years of operation.

PAR. 11. In truth and in fact, at the time the representations were made, respondents had no reasonable basis from which to conclude that

an average distributor could reasonably expect to make a net profit between \$25,000 and \$100,000 after a few years of operation.

Therefore, the acts, practices and representations set forth in Paragraphs Nine, Ten and Eleven are false, misleading, deceptive and unfair in violation of Section 5 of the Federal Trade Commission Act.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and the aforesaid unfair and deceptive acts and practices have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that those statements and representations are true and complete and to induce substantial numbers of persons to purchase products and distributorships from Lindal, Inc.

PAR. 13. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute 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 the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, the allegations of Paragraphs One and Two above are incorporated by reference in Count II as if fully set forth herein.

PAR. 14. Respondents, in the ordinary course of their business as aforesaid, and particularly between July 1972 and December 1973, as to certain purchasers of Lindal, Inc. buildings, 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. 15. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused purchasers to execute promissory notes of various types upon which minimal consumer credit cost information is set forth. In most instances, respondents and their agents have not provided these purchasers with any other consumer credit cost disclosures.

By and through the use of such notes, respondents:

A. Failed to use the terms "cash price," "cash downpayment," "unpaid balance of cash price," "unpaid balance" and "prepaid finance charge" and have failed to give the corresponding disclosures with those terms as required by Sections 226.8(c)(1),(2),(3),(5) and (6), respectively, of Regulation Z.

B. Failed to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.

C. Failed to disclose the annual percentage rate computed in accordance with Section 226.5 of Regulation Z as required by Section 226.8(b)(2) of Regulation Z.

D. Failed to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

E. Failed, in some instances, where a security interest was retained or acquired by respondents in connection with the credit sale, and where a clear identification of the property to which the security interest relates could be made on the note, to provide such identification as required by Section 226.8(b)(5) of Regulation Z.

F. Failed to furnish to the purchaser a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

PAR. 16. 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 Seattle 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 days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further

conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

A. Respondent Lindal Cedar Homes, Inc. is a Washington corporation with its office and principal place of business located at 10411 Empire Way South, Seattle, Washington.

Respondent Sir Walter Lindal was the president and chairman of the board of directors of the corporate respondent, and he formulated, directed and controlled the policies, acts and practices of Lindal Cedar Homes, Inc., including those hereinafter set forth. He continues to have a substantial ownership interest in the corporate respondent. His address is 3764 S.W. 171st, Seattle, Washington.

B. 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 Lindal Cedar Homes, Inc. (hereinafter Lindal, Inc.), a corporation, its successors and assigns, and its officers; Sir Walter Lindal, individually and as a former officer of Lindal, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of any building, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation in writing, orally, visually, or in any other manner, directly or by implication, as to the ease, economy or time involved in the construction of any building, unless at the time the representation is made respondents:

A. Have a reasonable basis for such representation based on a statistically valid sample of those persons who have either purchased or constructed Lindal, Inc. buildings; and

B. Make available to distributors of Lindal, Inc. products and to the general public, at the point of retail sale, copies of a brief but comprehensive statement of the substantiating material, in terms understandable to the average consumer.

II.

It is further ordered, That respondents, their successors and assigns, in connection with the advertising, offering for sale or sale of any building do forthwith:

A. Cease and desist from disseminating, using, or causing others to use, in any manner, any sales agreement, earnest money agreement, or other contract which provides directly or indirectly, that:

1. The purchaser must accept or has accepted delivery of respondents' products prior to the time the purchaser has had an opportunity to inspect the goods in a reasonable place, time and manner for damages, defects and shortages.

2. The respondents may increase the price of their product to a price higher than the respondents' prevailing price for like products.

3. Respondents disclaim liability for implied-in-law warranties where such disclaimers are in contravention to applicable state laws.

B. Abide by, and include in all sales agreements, earnest money agreements and other contracts which Lindal, Inc. distributes, uses, or causes others to use, a term which has the following effect and none in contradiction thereof:

The purchaser has the option to cancel the contract and obtain a return of all deposits, less costs for plans and engineering actually incurred by respondents prior to cancellation, should either of the following circumstances occur:

1. If shipment of the ordered merchandise is not made within thirty (30) days of the scheduled shipment date mutually agreed upon by the respondents and the purchaser.

2. If respondents increase the price of their product to the purchaser at any time after a contract for sale of the product has been signed or otherwise consummated.

C. Maintain, abide by, and continue to provide a warranty to every purchaser of their products, whether said purchasers buy directly from respondents or from one of respondents' distributors. Said warranty shall be written and shall incorporate, but not necessarily be limited to, the following standards and terms, in language understandable to the average purchaser:

1. The identity and address of the warrantor.

2. The materials ordered by the purchaser are warranted to be delivered complete at the site designated by the purchaser for delivery. The duration of this warranty shall in no event be less than 10 days from the date when delivery is made at the designated site to the purchaser or to his/her duly authorized agent. There shall be no exceptions or exclusions to this warranty.

3. The materials ordered by the purchaser are warranted to be delivered free from defects and of a kind and quality designated or specified in the contract of sale. The duration of this warranty shall in no event be less than 150 days from the date when the purchaser

