

IN THE MATTER OF
DURA-HAIR INTERNATIONAL, INC.

Docket 8830. Order, May 18, 1976

Denial of respondent's petition to reopen proceeding and modify the order to cease and desist.

Appearances

For the Commission: *Gerald Wright.*

For the respondent: *Pro se.*

ORDER DENYING PETITION TO REOPEN

Respondent, by petitions to reopen this proceeding dated February 13, and March 9, 1976, requests the modification of the order entered October 23, 1973 [83 F.T.C. 570], by deleting from the order the first, third, fifth, sixth, seventh, eighth and ninth "*It is further ordered*" paragraphs, and the first three subparagraphs under the second "*It is further ordered*" paragraph. These provisions mandate that respondent disclose that its so-called system of attaching hair involves a surgical procedure requiring the use of a local anesthetic, and resulting in the implantation of sutures in the scalp. Additionally, the order provisions that respondent requests be deleted require that respondent disclose that, as a result of the surgical procedure, there is a risk of discomfort, pain, infection, scarring, and other skin disorders, and, to minimize these risks, special care is necessary. These provisions further require that these and other disclosures be made to prospective purchasers, licensees, and franchisees of the system.

Respondent asserts that the deletions are warranted, as the technique of tunneling under the scalp to form the grip for the permanently implanted sutures to which the hair is attached has been replaced by a technique that utilizes skin grafts to form tunnels through which removable clips are placed. The hair is attached to the clips. Respondent contends that since the scalp is not open, infections and other referred-to-above risks are avoided.

Complaint counsel, in its answer opposing the reopening, take the position that since respondent's assertions relate to medical matters, an affidavit from a qualified medical person, substantiating the claims, is necessary.

We agree. When the subject of an opinion is related to a professional field such as medicine, the person expressing the opinion must have sufficient knowledge and expertness in the field to give rise to the inference that the opinion is creditable and reliable. Respondent's

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unsubstantiated assertions, as a consequence, do not raise issues of fact that would warrant a modification of the order or, if necessary, our directing hearings to resolve the factual issues. Accordingly,

It is ordered, That respondent's request for reopening of this proceeding be, and it hereby is, denied.

IN THE MATTER OF

J. STRICKLAND AND COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9051. Complaint, Aug. 19, 1975—Decision, May 18, 1976*

Consent order requiring a Memphis, Tenn., manufacturer of depilatory products and their Nashville, Tenn., advertising agency, among other things to cease failing to disclose cautionary statements in advertising and on product labels; and to provide complete directions on labels and packaging for use of depilatory products.

Appearances

For the Commission: *Barry E. Barnes.*

For the respondents: *Edward G. Thompson, Pope & Thompson,* Memphis, Tenn., *William W. Royal, Sloane & Royal,* Washington, D.C., for J. Strickland and Company, Inc., and *Mildred B. Long, Charles L. Carnelius,* Nashville, Tenn., for Noble-Dury & Associates, Inc.

COMPLAINT

The Federal Trade Commission, having reason to believe that J. Strickland and Company, Inc., a corporation, Mildred B. Long, individually and as an officer of said corporation, and Noble-Dury and Associates, Inc., a corporation, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Unless otherwise required by context, the following definition shall apply for purposes of this complaint and the accompanying order:

“Material facts” means facts material in light of representations made or material with respect to consequences which may result from the use of the commodity to which the advertisement or representations relate under such conditions as are customary or usual or under the conditions prescribed in the advertisement or representations.

All allegations in this complaint stated in the present tense include the past tense.

PAR. 2. Respondent J. Strickland and Company, Inc., hereinafter J. Strickland, is a Tennessee corporation with its office and principal place of business located at 1400 Ragan St., Memphis, Tennessee.

Respondent Mildred B. Long is an officer of J. Strickland. She

formulates, directs and controls the policies, acts and practices of J. Strickland, including those hereinafter set forth. Her address is the same as that of said corporation.

Respondent Noble-Dury and Associates, Inc., hereinafter Noble-Dury, is a Tennessee corporation with its office and principal place of business located at 3814 Cleghorn Ave., Box 15363, Nashville, Tennessee.

PAR. 3. Respondents J. Strickland and Mildred B. Long engage in the manufacturing, advertising, offering for sale, sale and distribution of Royal Crown Depilatory Shaving Powder, hereinafter "Royal Crown," a facial depilatory or beard removal product, which is a "drug" or "cosmetic," or both, as those terms are defined in Section 15 of the Federal Trade Commission Act. When applied to the skin, said product removes facial hair through chemical action. It is used frequently by men who suffer from pseudofolliculitis, or "razor bumps," a painful skin condition caused by shaving with a razor.

PAR. 4. Respondent Noble-Dury is the advertising agency for J. Strickland and prepares, places for publication, and causes the dissemination of advertising material, including but not limited to advertising referred to herein, to promote the sale of Royal Crown.

PAR. 5. In the course and conduct of its business respondents J. Strickland and Mildred B. Long cause Royal Crown, when sold, to be shipped and distributed from its place of business to retail stores and other purchasers located in various other States of the United States. Respondents J. Strickland, Mildred B. Long and Noble-Dury disseminate or cause to be disseminated certain advertisements concerning Royal Crown (1) by United States mail, newspapers and magazines of interstate circulation, radio broadcasts of interstate transmission, and by other means in or having an effect upon commerce, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of Royal Crown; or (2) by various means, for the purpose of inducing, or which are likely to induce, the purchase in or having an effect upon commerce of Royal Crown. Thus, respondents maintain a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Typical and illustrative of the statements and representations made in respondents' advertisements, but not all inclusive thereof, are the following:

Made for men with tough beards, tender skins, ingrown hair problems — any man who needs to shave without a razor.

* * * * *

Even big, strong men sometimes have tender skin. And that's what men like about

Royal Crown . . . The easy-going depilatory that creams beard away so never worry about razor pull or irritation.

PAR. 7. Through the use of the above statements and representations, and others not specifically set forth herein, respondents represent, directly or by implication, that Royal Crown is a safe means of removing facial hair without a razor for virtually everyone, including men with tender skin.

PAR. 8. In truth and in fact Royal Crown contains chemicals which can cause burns, rashes, and other skin irritations for a substantial number of users. The product should be used with caution at all times, especially by those whose skin is tender or severely irritated. Label directions should be followed carefully.

Therefore, the advertisements, statements and representations referred to in Paragraphs Six and Seven are false, misleading and deceptive, and also constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 9. Respondents advertise Royal Crown without disclosing that (1) the product may cause skin irritations; (2) the product should not be used by persons whose skin is tender or severely irritated; and (3) label directions should be followed carefully.

These are material facts which, if known to consumers, would be likely to affect their decision to purchase Royal Crown. Therefore, failure to disclose such facts is misleading, deceptive, and unfair and such advertisements also constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 10. In the further course and conduct of its business respondents J. Strickland and Mildred B. Long market Royal Crown without disclosing on the product label that:

A. The product may cause skin irritations. Label directions should be followed carefully.

B. Use of the product should be discontinued if irritation, burning, or allergic reactions occur.

C. The product should not be used in conjunction with an alcoholic shaving lotion.

D. The product should not be used if perspiring heavily.

E. One should not wash face before using the product.

F. To avoid excessive irritation the amount of time the product is left on the skin is crucial.

G. The product should not be used within 36 hours after shaving with a razor or a depilatory.

These are material facts which, if known to consumers, would be likely to affect their decision as to whether or not to purchase Royal

Crown. Therefore, failure to disclose such facts on the product label is unfair and deceptive.

PAR. 11. Respondents' aforesaid use of false, misleading and deceptive advertisements and unfair and deceptive labeling has the tendency and capacity to mislead and deceive consumers into erroneous and mistaken beliefs about the safety of Royal Crown and into the purchase of substantial quantities of the product.

PAR. 12. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are now in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as sold by respondents.

PAR. 13. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and respondents' competitors and constitute unfair or deceptive acts or practices and unfair methods of competition in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereto with violation of Sections 5 and 12 of the Federal Trade Commission Act, and the respondents having been served with a copy of the complaint; and

The respondents J. Strickland and Company, Inc. and Noble-Dury and Associates, Inc. and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, 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 set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having withdrawn the matter from adjudication for the purpose of considering the agreement containing consent order; and

Mildred B. Long, an officer of J. Strickland and Company, Inc., having been dropped as a named party respondent in the matter; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure

prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

A. Respondent J. Strickland and Company, Inc. is a Tennessee corporation with its office and principal place of business located at 1400 Ragan St., Memphis, Tennessee.

Respondent Noble-Dury and Associates, Inc. is a Tennessee corporation with its office and principal place of business located at 3814 Cleghorn Ave., Box 15363, Nashville, Tennessee.

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 J. Strickland and Company, Inc., and Noble-Dury and Associates, Inc., corporations, their successors and assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Royal Crown Depilatory Shaving Powder or any depilatory product, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated by United States mail or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which fails to clearly and conspicuously disclose the following statement in boldface capital letters exactly as it appears below, with nothing in contradiction thereof:

**CAUTION: THIS PRODUCT MAY CAUSE SKIN IRRITATIONS. DO NOT
USE IF SKIN IS TENDER OR SEVERELY IRRITATED. FOLLOW
DIRECTIONS CAREFULLY.**

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which fails to meet the requirement of Part I.A. of this order.

II.

It is further ordered, That respondent J. Strickland and Company, Inc., a corporation, its successors and assigns, officers, agents, representatives and employees, directly or through any corporation,

subsidiary, division or other device, in connection with the offering for sale, sale or distribution of Royal Crown Depilatory Shaving Powder or any depilatory product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to clearly and conspicuously disclose on the outer package box, if such is used, and on the product label:

A. The following statement in boldface capital letters exactly as it appears below with nothing in contradiction thereof:

CAUTION: THIS PRODUCT MAY CAUSE SKIN IRRITATIONS. DO NOT USE IF SKIN IS TENDER OR SEVERELY IRRITATED. FOLLOW LABEL DIRECTIONS CAREFULLY.

The above statement shall appear as the first item on the information panel of the product label and package box, if such is used.

B. A statement that use of the product should be discontinued if irritation, burning or allergic reactions occur.

C. Complete directions for use of the product, including but not limited to the following:

1. The product should not be used in conjunction with an alcoholic shaving lotion;
2. The product should not be used if perspiring heavily;
3. One should not wash before using the product;
4. To avoid excessive irritation, the amount of time the product is left on the skin is crucial; and
5. If hairs remain after the first application, do not immediately reuse the product. The product should not be used in any event within 36 hours after shaving with a razor or a depilatory.

III.

It is further ordered, That respondents forthwith deliver a copy of this order to their present and future officers, directors, and operating divisions, and that respondents secure from each such person and division a signed statement acknowledging receipt of this order.

IV.

It is further ordered, That respondents maintain complete business records relative to the manner and form of their continuing compliance with the terms and provisions of this order. Each record shall be retained by respondents for three years after such record is made.

V.

It is further ordered, That corporate respondents notify the

Commission at least thirty (30) days prior to any proposed change in the respondents 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.

VI.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

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IN THE MATTER OF

WEAVER AIRLINE PERSONNEL SCHOOL, INC., ET AL.

Docket C-2638. Decision, Feb. 13, 1976—Order, May 18, 1976*

Order requiring respondents to show cause why order to cease and desist should not be altered and modified; reopening the proceeding; and staying and suspending until further order of the Commission the enforcement of and respondents' duty to comply with Paragraph 12 of the order.

Appearances

For the Commission: *Keith Q. Hayes* and *Charles B. Wesonig*.

For the respondents: *Cahill, Gordon and Reindel*, New York City.

ORDER TO SHOW CAUSE AND ORDER MODIFYING ORDER

On February 24, 1976, the Commission issued an order to show cause why the Order to Cease and Desist, issued February 13, 1975 [85 F.T.C. 237], in this proceeding, should not be reopened and Paragraph 12 of said order modified and altered. Paragraph 12 requires the creation of an escrow account from which partial restitution to certain students is to be made. Complaint counsel represented to the Commission, and respondents do not deny, that Federal tax liens in the amount of \$564,611 may attach to such escrow account, just as they have attached to the accounts receivable of respondent Weaver Airline Personnel School, Inc.

Paragraph 12 further requires respondent Weaver to notify former students who had made partial payments towards tuition on the date the order became final of their right to partial restitution if they make affirmations as set out in the order. Since one of the affirmations is that a student has paid his tuition in full, the notifying letter would encourage former students to pay their outstanding accounts in the expectation of receiving partial restitution. The satisfaction of the Federal tax liens out of the escrow account could eliminate or substantially diminish the funds in the escrow account. Therefore, to avoid the possibility that respondents' compliance with Paragraph 12 would encourage student funding of an escrow account that would not benefit the students, our Order to Show Cause proposed to modify Paragraph 12 by staying and suspending respondents' duty to comply with Paragraph 12 until further order of the Commission.

It is now clear, however, that the necessity for a permanent stay is obviated by Paragraph 13 of the order, which provides that respondent General Educational Services Corporation (GESC) will guarantee the

* See 85 F.T.C. 237.

restitution requirements imposed upon respondent Weaver Airlines under the order. Respondent GESC, in its letter of March 3, 1976, to Eric Rubin, Assistant Director for Compliance, Bureau of Consumer Protection, agrees that Paragraph 13 applies "to the eligible Weaver students described in Paragraph 12 of the order pursuant to the terms and conditions of such order." Complaint counsel suggest, however, a possible ambiguity as to the application of Paragraph 13 to Paragraph 12, believing that it is possible to read Paragraph 12 so that "respondents' obligation to pay restitution could * * * be construed as requiring the distribution of only the amount of money left in the escrow account after levy on the tax lien," and not requiring distribution by GESC on the date specified by Paragraph 12 if a payout from the escrow account is prevented by a tax lien.

We disagree with this interpretation. We recognize, however, that we are not the final arbiter in the interpretation of Commission orders, and that if a court should disagree with us as to the application of Paragraph 13 to Paragraph 12, students making payment to the escrow account might ultimately be harmed. We, therefore, find it necessary to clarify the order. Accordingly,

It is ordered, pursuant to Section 5(b) of the Federal Trade Commission Act and Section 3.72 of the Commission's Procedures and Rules of Practice, that on or before the thirtieth (30th) day after service of the Order to Show Cause upon them, respondents show cause, if any there be, why the Commission should not alter and modify said order by issuing the following order:

It is ordered, That the following language be added to Paragraph 12(2)(c) of the order:

Provided, however, that if any of the sums required to be deposited into the Escrow Funds have been removed at any time or for any other reason cannot be distributed within thirty (30) days after the final date established for submission of student requests for restitution under this Paragraph, respondent General Educational Services Corporation, as guarantor, shall assure that the total sum paid in restitution under this Paragraph includes funds that have been removed, and that the total sums required to be deposited into the Escrow Fund for restitution are paid no later than sixty (60) days after the final date established for submission of student requests for restitution under this Order.

* * * * *

Because the obligation of GESC has not been finally resolved, it is

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necessary to continue the stay of respondents' compliance with Paragraph 12. Accordingly,

It is ordered, That the proceeding be, and it hereby is reopened.

It is further ordered, That the enforcement of the notification requirement of Paragraph 12 of the order of February 13, 1975, and the respondents' duty to comply therewith be, and they hereby are, stayed and suspended until further order of the Commission.

IN THE MATTER OF
McCRORY CORPORATION, ET AL.

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

Docket C-2676. Order, June 18, 1975—Modifying order, May 18, 1976

Order modifying an earlier order dated June 18, 1975, 40 F.R. 30477, 85 F.T.C. 1106, by changing Paragraph 2 of the order to permit language on billing statements sent to respondents' charge account customers whose accounts reflect credit balance, that respondents' store at a specified address may be contacted for a cash refund, or respondents will send a check in six months or less.

Appearances

For the Commission: *Alan D. Reffkin, Justin Dingfelder, and Howard F. Daniel.*

For the respondents: *Max Wild, Rubin, Wachtel, Baum & Levin, New York City.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

On March 23, 1976, respondent Lerner Stores Corporation (Lerner) by a paper entitled Motion to Modify an Order Dated June 18, 1975, which will be treated as a petition to reopen this proceeding, has requested that Paragraph 2 of the order be modified to permit language on billing statements sent to Lerner charge account customers whose accounts reflect a credit balance that a Lerner store at a specified address may be contacted for a cash refund, or Lerner will send a check in six (or a smaller number of) months. The Bureau of Consumer Protection has filed an answer wherein it advises that it does not oppose Lerner's request.

Since the requested language accurately describes Lerner's obligation under the order, the Commission has determined that the request should be granted.

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist be, and it hereby is, modified by substituting the following provision as the last full paragraph of Paragraph 2:

Such disclosure need not be made by any store in the event it is that store's policy to refund automatically and without request all credit balances regardless of amount. In such case, one of the following disclosures must be made:

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For refund contact (our) (any) store or we will send check in 6 (or smaller number) months; or

For refund contact Lerner Shops at (address) or we will send a check in 6 (or smaller number) months or less.

IN THE MATTER OF

AMERICAN EXPRESS COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS*Docket C-2821. Complaint, May 24, 1976—Decision, May 24, 1976*

Consent order requiring a New York City credit card company, among other things to cease failing to disclose to those credit card applicants who are rejected because of information contained in consumer reports or obtained from a person other than a consumer reporting agency such information as required by the Fair Credit Reporting Act.

Appearances

For the Commission: *C. Lee Peeler* and *Hong S. Dea*.

For the respondent: *Arnold M. Lerman, Wilmer, Cutler & Pickering*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that American Express Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Express Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 65 Broadway, New York, New York.

PAR. 2. Respondent, in the ordinary course and conduct of its business, through its credit card division, extends credit by issuing to persons credit cards, hereinafter referred to as "American Express Cards," which enable those persons to purchase property or services and defer payment therefor. In a substantial number of instances American Express Cards are issued to consumers, as "consumer" is defined in Section 603(c) of the Fair Credit Reporting Act (15 U.S.C. §§1681, 1681(a)(c) (1970)), who use the American Express cards for personal, family or household purposes.

PAR. 3. Respondent, in the ordinary course and conduct of its business, obtains "consumer reports" from "consumer reporting

agencies" as these terms are defined in Sections 603(d) and 603(f), respectively, of the Fair Credit Reporting Act. Respondent uses in whole or in part information contained in these consumer reports to deny applications for American Express Cards.

Respondent, in the ordinary course and conduct of its business, also obtains "third party information," which for the purposes of this complaint, and as this term is hereinafter used, means information obtained from a third person other than a consumer reporting agency bearing upon a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Respondent uses this third party information in whole or in part to deny applications for American Express Cards.

PAR. 4. When an application for an American Express Card is received by respondent, it is reviewed to determine whether, on the basis of the information supplied on the face of the application, the applicant appears to meet respondent's minimum credit worthiness criteria. This procedure is hereinafter referred to as the "initial screening." If the applicant does not appear to meet the minimum criteria for an American Express Card, respondent rejects the application without seeking any additional information.

If the application is not rejected during the initial screening, additional information is sought. In most instances a consumer report is included among the items of additional information obtained by respondent to evaluate the applications that are not rejected in the initial screening. Third party information, as hereinabove defined, may also be obtained for use in evaluating these applications. No application for an American Express Card is approved solely on the basis of information supplied by the applicant.

PAR. 5. In a substantial number of instances subsequent to April 25, 1971, respondent has rejected applications for its American Express Card after obtaining consumer reports on the applicants, and has notified these applicants of their rejection by means of either the "N," "L," "H," or "K" form letters set forth in relevant part below.

(1) We are sorry that we cannot comply with your request for an American Express Card.

Because the American Express Card offers virtually unlimited service at establishments throughout the world, we are obligated to place unique requirements on its availability. After giving your application every consideration, we do not find that it meets our membership requirements.

(Hereinafter referred to as the "N" letter)

(2) We are sorry that we cannot comply with your request for an American Express Card at this time.

We can assure you that your application has been given every consideration and nothing which would reflect adversely on you has been found in our investigation. Your application is declined because it does not meet our membership requirements with respect to length of employment.

It has been our experience that applicants who do not meet these requirements at one time may qualify later on, after achieving additional residence and employment stability. We cordially invite you to submit a new application at a later date when your circumstances have changed.

(Hereinafter referred to as the "L" letter.)

(3) We are sorry but we cannot comply with your request for an American Express Card at this time.

We can assure you that your application has been given every consideration and that nothing which would reflect adversely on you has been found in our investigation. It is declined because your individual income does not meet our minimum requirements.

Perhaps you have other income sources that did not appear on your application and that were not readily apparent in our investigation. If you do, please give us this additional information in writing now so we can evaluate it. Or, if you do not have other sources of income just now, we cordially invite you to submit a new application at a later date when your circumstances have changed.

(Hereinafter referred to as the "H" letter.)

(4) We are sorry that we cannot comply with your request for an American Express Card.

Because the American Express Card offers virtually unlimited service at establishments throughout the world, we are obliged to place unique requirements on its availability. After giving your application every consideration, we do not find that it meets our membership requirements.

Our decision is based upon information obtained not from a consumer report, but from other sources we deem to be reliable. If you write to us within sixty (60) days after receipt of this letter, we will be pleased to provide you with the nature of the information upon which our decision was based.

(Hereinafter referred to as "K" letter.)

Respondent sends no other notice of rejection to rejected applicants receiving "N," "L," "H" or "K" form letters.

PAR. 6. In certain instances the applications referred to in Paragraph Five, above, were rejected based in whole or in part on adverse or derogatory information contained in a consumer report. In other instances the applications were rejected based in whole or in part on

information contained in a consumer report which varied, contradicted or failed to confirm information on the face of the application. In other instances the applications were rejected based in whole or in part on the fact that the consumer report failed to provide sufficient affirmative information regarding the applicant's credit worthiness.

PAR. 7. By and through the use of the practices described in Paragraph Five and Six, above, respondent has denied consumers credit for personal, family or household purposes based in whole or in part on information contained in a consumer report without so advising the consumer and without supplying the name and address of the consumer reporting agency making the report. Therefore, respondent has violated the provisions of Section 615(a) of the Fair Credit Reporting Act.

PAR. 8. In a substantial number of instances subsequent to April 25, 1971, respondent has rejected applications for its American Express Card after obtaining third party information, as that term is hereinabove defined. Respondent has notified these applicants of their rejection by means of either the "N," "L" or "H" form letter referred to in Paragraph Five (1) through (3), above, or by means of the "J" form letter set forth in relevant part below.

We are sorry that we cannot comply with your request for an American Express Card.

Because the American Express Card offers virtually unlimited service throughout the world, we are obligated to place unique requirements on its availability. After giving your application every consideration, we do not find that it meets with our membership requirements.

We regret that the Credit Bureau listed below through which your credit application was processed has been unable to provide us with information of a nature which would enable us to approve your application. If you wish to discuss your record in that bureau, it is suggested that you communicate with the Customer Relations Department of that organization. (Hereinafter referred to as the "J" letter.)

Respondent sends no other notice of rejection to rejected applicants receiving "N," "L," "H" or "J" form letters.

PAR. 9. In certain instances the applications referred to in Paragraph Eight above, were rejected based in whole or in part on third party information which was adverse or derogatory. In other instances, the applications were rejected based in whole or in part on third party information which varied, contradicted or failed to confirm informa-

tion on the face of the application. In other instances, the applications were rejected based in whole or in part on the fact that the third party information failed to provide sufficient affirmative information regarding the applicant's credit worthiness.

PAR. 10. By and through the use of the practices described in Paragraphs Eight and Nine, above, respondent denied consumers credit for personal, family or household purposes based in whole or in part on third party information without clearly and accurately disclosing to the consumer his right to make a written request for the reasons for such adverse action within sixty days after learning of such adverse action. Therefore, respondent has violated Section 615(b) of the Fair Credit Reporting Act.

PAR. 11. By its aforesaid failures to comply with Sections 615(a) and 615(b) of the Fair Credit Reporting Act, and pursuant to Section 621(a) thereof, respondent has thereby engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) (1) 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 thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Fair Credit Reporting Act 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 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 respondent has violated the 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 procedures 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 American Express Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 65 Broadway, New York, New York.

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, American Express Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application for a credit card that is primarily for personal, family or household purposes, and in connection with either the receipt or consideration of any consumer report, as "consumer report" is defined in the Fair Credit Reporting Act (15 U.S.C. §1681 (1970)), or the receipt or consideration of any third party information other than a consumer report, do forthwith cease and desist from:

(1) Failing whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to so advise the consumer against whom such adverse action has been taken and to supply the name and address of the consumer reporting agency making the report.

(2) (a) Failing whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, to disclose the nature of the information to the consumer within a reasonable period of time, upon the consumer's written request for the reasons for the adverse action received by respondent within sixty days after the consumer learns of such adverse action; and,

(b) Failing to clearly and accurately disclose to the consumer his right to make such written request pursuant to subsection 2(a) above at the time such adverse action is communicated to the consumer.

It is further ordered, That respondent shall preserve evidence of compliance with the requirements imposed under this order for a

period of not less than two years after the date each required disclosure is made. Respondent shall upon request permit the Commission through its duly authorized representatives to inspect such records.

It is further ordered, That respondent shall deliver a copy of this order to cease and desist to all present and future employees engaged in reviewing or evaluating consumer reports or other third party information in connection with applications for credit cards to be used for personal, family or household purposes.

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 respondent 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

J. KURTZ & SONS, INC., ET AL.

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

Docket C-2822. Complaint, May 24, 1976—Decision, May 24, 1976

Consent order requiring a Brooklyn, N.Y. furniture and appliance retailer, among other things to cease advertising falsely and misleadingly; violating the Truth in Lending Act; failing to make material disclosures regarding products' warranties, composition, condition and content; delivery and assembly terms, procedures and limitations of sales, repairs, replacement, and refund policies; arbitration and other rights of customers as set out in the *Guides for the Household Furniture Industry*; and failing to make, in both English and Spanish, pertinent disclosure of customers' rights on prominently displayed signs, in sales contracts, invoices, and in booklets provided to purchasers. Further the order requires respondents to honor warranties, investigate complaints and make satisfactory adjustments within a specified time; advise customers when credit insurance is optional and that it may be declined; and establish an arbitration program, submitting, without cost and at customers' option, unresolved grievances to binding arbitration.

Appearances

For the Commission: *Carol H. Katz* and *Shirley F. Sarma*.

For the respondents: *Stroock, Stroock & Lavan*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 J. Kurtz & Sons, Inc., a corporation, and John Kurtz, individually and as an officer 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 J. Kurtz & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 773 Broadway, Brooklyn, New York.

Respondent John Kurtz is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of said corporate

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respondent including the acts and practices hereinafter set forth. His 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 purchasing, advertising, offering for sale, sale and distribution of furniture, appliances and related products to the public at retail.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have purchased, and continue to regularly purchase, furniture, appliances and other merchandise from suppliers, distributors and manufacturers in States other than New York for the purposes of offering said merchandise for sale, maintaining an available inventory for sale and to fill special purchase orders received from their customers.

PAR. 4. In the further course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, furniture, appliances and other merchandise, when sold, to be shipped from their place of business within the State of New York and have caused, and are now causing, such merchandise to be delivered to purchasers residing in the State of New York and in other States.

PAR. 5. In the course and conduct of their business, respondents have ordered appliances from out-of-State manufacturers pursuant to their customers' orders with the intention of having, and actually having, such manufacturers ship said appliances directly to the customers' residences.

PAR. 6. In the course and conduct of their business and pursuant to special customer orders for furniture, respondents have delivered said furniture directly to their customers in an unopened and crated condition as received by respondents from the aforesaid out-of-State manufacturers.

PAR. 7. In the course and conduct of their business, as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning their products and services by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, including, but not limited to, advertisements inserted in newspapers of interstate circulation and by means of commercial announcements transmitted by television and radio stations in New York State, having sufficient power to carry and carrying such broadcasts across State lines, for the purpose of

inducing, and which are likely to induce, directly or indirectly, the purchase of said merchandise.

PAR. 8. Respondents, through their advertising as set forth in Paragraph Seven, induce or are likely to induce, directly or indirectly, residents of other States, including New Jersey and Connecticut, to come into the State of New York for the purpose of purchasing furniture, appliances and other merchandise from respondents to be delivered to their residences outside the State of New York.

PAR. 9. By virtue of the aforesaid acts and practices, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 10. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their merchandise, respondents, in their salesrooms, have maintained, and are now maintaining, floor models and displays of furniture and displays of appliances and other merchandise being offered for sale, on the basis of which their customers select and order such merchandise.

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, appliances and other merchandise being offered for sale, the terms and conditions under which merchandise will be sold and delivered, and the services that will be provided by the 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 the manner in which respondents will perform various adjustments, replacements and repairs.

PAR. 11. In the course and conduct of their business and for the purpose of inducing the sale of their merchandise, respondents, by way of newspaper, radio and television advertisements, advertising circulars, showroom floor models, and various catalogs, brochures, pamphlets and other publications and sales presentations, represent, directly or by implication, that:

1. Furniture and appliances sold by respondents will be delivered to the purchaser free from damages or defects.
2. Furniture and appliances which are delivered to purchasers with damages or defects will be repaired or replaced within a reasonable time.
3. Furniture and appliances which are delivered to purchasers with

damages or defects will be repaired or replaced to the satisfaction of the purchaser.

PAR. 12. In truth and in fact, in many instances:

1. Furniture and appliances sold by respondents are delivered to purchasers with damages and/or defects.
2. Furniture and appliances which are delivered to purchasers with damages and/or defects are not repaired or replaced within a reasonable time.
3. Furniture and appliances which are delivered to purchasers with damages and/or defects are not repaired or replaced to the satisfaction of the purchasers.

PAR. 13. Therefore, the aforesaid statements, representations, acts and practices regarding respondents' products and services were, and are, false, misleading and deceptive, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Twelve are incorporated herein by reference as if fully set forth verbatim.

PAR. 14. In the further course and conduct of their business, respondents, through the representations and practices set forth in Count I and others of similar import and meaning, but not expressly set out herein, separately and in conjunction with their failure to disclose material facts, have represented, and are now representing, directly and by implication, that:

1. Merchandise delivered to purchasers will be new and unused and will not be from the showroom floor where it has been used as a model or sample.
2. The sales price is for fully assembled merchandise and respondents or their representatives will assemble any merchandise in need thereof upon delivery.

PAR. 15. In truth and in fact, in some instances:

1. Respondents have delivered showroom floor samples to their customers without disclosing, either prior to the sale or at delivery, that it was such.
2. Respondents have delivered unassembled merchandise to customers without disclosing, prior to sale, that such merchandise would be delivered in crates and would not be assembled either upon or after delivery.

PAR. 16. The failure of the respondents and their representatives to disclose material facts, separately and in connection with their

aforesaid representations and practices, has the tendency and capacity to mislead prospective purchasers and to induce a number of purchasers into the understanding and belief that the purchaser will be receiving new, unused and completely assembled merchandise for a specified price and that the purchaser will not be required to expend additional funds or labor in order to make merchandise usable. Thus respondents have failed to disclose material facts, which, if known to certain customers, would likely affect their consideration of whether or not to respond to respondents' advertisements and to purchase merchandise being offered for sale.

PAR. 17. Therefore respondents' aforesaid representations and practices were and are false, misleading and deceptive and respondents' failure to disclose such material facts, both orally and in writing prior to the time of sale, was and is unfair, misleading and deceptive and said acts and practices constituted and now constitute unfair and deceptive acts or practices, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Seventeen are incorporated herein by reference as if fully set forth verbatim.

PAR. 18. By virtue of respondents' false, misleading and deceptive representations, acts and practices set forth in Counts I and II, customers have been induced to pay substantial sums of money to respondents for furniture, appliances and other merchandise. Respondents have received such sums and have failed to offer or agree to refund payments to purchasers or cancel contractual obligations in regard thereto when merchandise has been, or is, delivered in a nonconforming, damaged or defective condition or when such merchandise has not been assembled, repaired or replaced by respondents within a reasonable period of time.

PAR. 19. Respondents have failed, and continue to refuse, to repair or replace, or make refunds for nonconforming, damaged and/or defective merchandise and thereby to honor the implied warranties imposed by law upon such sales.

PAR. 20. Therefore, the use by the respondents of the aforesaid practices and their continued retention of the said sums under the circumstances described herein is an unfair act or practice, in violation of Section 5 of the Federal Trade Commission Act, as amended.

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COUNT IV

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Twenty are incorporated herein by reference as if fully set forth verbatim.

PAR. 21. In the further course and conduct of their business, as aforesaid, respondents on numerous occasions have utilized various dunning procedures and practices, including dunning letters, letters to employers, and threats of repossession and wage assignments, in order to collect debts allegedly due and owing to J. Kurtz & Sons, Inc. from customers who purchased furniture on credit, where the customers temporarily discontinued payment because respondents failed satisfactorily to repair or replace defective or damaged furniture or investigate complaints from such customers within a reasonable time.

PAR. 22. As a result of respondents' aforesaid debt collection practices, customers have been coerced into paying monies for merchandise which has not been satisfactorily repaired or replaced, in order to avoid harassment, extra interest and late penalty charges and threatened wage attachments, repossession and legal action.

PAR. 23. Therefore, respondents' use of the aforesaid collection practices, against those purchasers who failed to make timely payments because of respondents' failure to investigate complaints or satisfactorily repair or replace defective or damaged furniture within a reasonable period of time, is an unfair act or practice within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Ten are incorporated herein by reference as if fully set forth verbatim.

PAR. 24. In the further course and conduct of their aforesaid business, and for the purpose of inducing the sale of their furniture, respondents have made certain statements and representations in various newspaper advertisements, and are now making certain statements with respect to carved-like designs which accent the styling of the furniture and the grades of fabric available for sale with certain furniture.

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

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FLAWLESS DETAIL, WARM WOOD TONES AND CARVED MOLDED OVERLAYS ACCENT THE BEAUTIFUL STYLING OF THIS LUXURIOUS SUITE

RICH CARVED MOLDED OVERLAYS ON SELECTED HARDWOODS ACCENTED BY SOFT WOOD TONES AND BRASSED HARDWARE

RICHLY CRAFTED SUITE - FEATURING BEAUTIFUL CARVED MOLDED OVERLAYS IN WARM WOOD TONES

SELECT GROUP OF GRADE A FABRICS, TRULY A FANTASTIC BUY

ALL AVAILABLE IN A SPECIAL GROUP OF GRADE A FABRICS

PAR. 25. By and through the use of the aforesaid quoted statements and representations, and others of similar import and meaning but not expressly set forth herein, the respondents have represented and are now representing, directly or by implication, that:

1. Furniture has been styled by the process of carving or cutting wood into shape.

2. A purchaser will be getting the top grade of fabric, as is the customary understanding of the term "Grade A."

PAR. 26. In truth and in fact:

1. The molded overlays are not carved like wood, but are formed from plastic by the use of a mold.

2. Fabrics are graded in the furniture industry from A to F with "Grade A" being the least expensive and of the lowest quality.

PAR. 27. The failure of respondents to disclose material facts regarding the composition of furniture and quality of fabric, separately and in connection with their aforesaid representations, has the tendency and capacity to mislead prospective purchasers into the mistaken belief that they are being offered merchandise of a different quality, durability, composition or construction than is actually being sold. Thus respondents have failed to disclose material facts, which, if known to certain customers, would likely affect their consideration of whether or not to respond to respondents' advertisements and to purchase merchandise being offered for sale.

PAR. 28. Therefore respondents' aforesaid statements and representations set forth in Paragraphs Twenty-Four and Twenty-Five were and are false, misleading and deceptive and respondents' failure to disclose such material facts prior to the time of sale, was and is unfair, misleading and deceptive and constituted and now constitutes an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VI

Alleging violation by respondents of Section 5 of the Federal Trade

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Commission Act, as amended, the allegations of Paragraphs One through Twenty-Eight are incorporated herein by reference as if fully set forth verbatim.

PAR. 29. In the further course and conduct of their business, respondents engage in the sale of merchandise, and have sold merchandise, to customers who speak, read, write and understand only the Spanish language. An oral sales presentation in the Spanish language is given to these customers which does not include all the terms and conditions of the contract. The contract which is written only in the English language is not read and translated into Spanish for these customers and said customers do not understand all the terms and conditions of the contract.

PAR. 30. Therefore the practice by respondents of providing customers, who understand only Spanish, with a partial disclosure in Spanish of the terms and conditions of the contract, without translating all the terms and conditions of the contract into Spanish, is deceptive, misleading and confusing to Spanish speaking customers and constitutes an unfair and deceptive act and practice in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VII

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Thirty are incorporated herein by reference as if fully set forth verbatim.

PAR. 31. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

PAR. 32. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, directly or by implication, 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 and services by reason of said erroneous and mistaken belief.

PAR. 33. 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 in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VIII

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

PAR. 34. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend 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. 35. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are now causing, customers to execute binding "retail installment credit agreements," hereinafter referred to as the "credit agreement," for the purchase of respondents' goods and services. Said agreements constitute the only disclosure of consumer credit terms made to the customer before a transaction is consummated.

PAR. 36. In connection with their extensions of credit, respondents make disclosures to their customers describing the credit terms of their agreements and customer accounts. Said disclosures include, but are not limited to, disclosure that the finance charges will be computed by a periodic rate and disclosure of the annual percentage rate of such charges. Furthermore, in connection with their extensions of credit, respondents have caused to be delivered, and are delivering, to their customers, periodic billing statements. Based upon the foregoing, respondents profess to be extending open end credit.

PAR. 37. However, in further connection with their extensions of credit, respondents also require that customers execute a new retail credit agreement for subsequent purchases and consolidate the old balance, the balance due on the new sale, and credit life insurance charges on the new agreement. In addition, in many instances, respondents reverify credit information when new retail credit agreements are executed.

PAR. 38. For the reasons, set forth in Paragraph Thirty-Seven, and for other reasons not specifically set forth herein, respondents are not extending consumer credit on an account pursuant to a plan under which the respondents permit customers to make repetitive transac-

tions on a revolving basis, and are, therefore extending other than open end credit.

PAR. 39. By and through the use of the aforementioned credit agreement, respondents:

1. Fail to make the required disclosures clearly, conspicuously, and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.
2. Fail to make all the required disclosures in one of the following three ways, in accordance with Section 226.8(a) of Regulation Z.
 - (a) together on either the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or
 - (b) on one side of a separate statement which identifies the transaction; or
 - (c) on both sides of a single document, provided that the amount of the finance charge and the annual percentage rate appear on the face thereof, both sides contain the statement "Notice: see other side for important information," and the place for the customer's signature follows the full content of the document.
3. Fail to use the term "cash price" to describe the cash price of the property purchased, as prescribed by Section 226.8(c)(1) of Regulation Z.
4. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.
5. Fail to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed but which are not a part of the finance charge, as prescribed by Section 226.8(c)(5) of Regulation Z.
6. Fail to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.
7. Fail to determine the sum of all charges incident to or as a condition of the extension of credit as required by Section 226.4 of Regulation Z and to disclose that sum, with a description of each amount included, using the term "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z and also fail to print this term more conspicuously than other terminology as required by Section 226.6(a) of Regulation Z.
8. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

9. Fail 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 and to print that term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

10. Fail to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.

11. Fail to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

12. Fail to disclose the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

PAR. 40. In connection with their extensions of credit, respondents have included, and are now including, in their credit agreement a provision regarding the purchase of credit life insurance by the customer. On the credit agreement said insurance is disclosed as voluntary and not required for credit, and the agreement purportedly requires the customer to choose whether or not such insurance is desired by signing and dating the appropriate space beneath the insurance disclosure. Respondents do not include premiums for such insurance in the finance charge.

PAR. 41. In truth and in fact, respondents' representatives fill in the provision regarding credit life insurance and present it to the customer for his signature as though it was an integral part of the entire agreement, not necessitating a separate decision. If the customer still declines to purchase the insurance, respondents' representatives state to him, directly or by implication, that in such a case his application for credit might not then be approved.

PAR. 42. By and through the aforesaid acts and practices, and others of similar import, meaning and consequence, but not expressly set forth herein, the respondents have defeated, and continue to defeat and circumvent, the elective language of the credit insurance provisions. Respondents thereby prevent consumers from exercising their own independent voluntary choice whether to obtain credit life insurance and, in effect, make such insurance a requirement for credit. Therefore, the respondents have violated, and continue to violate, Sections 226.4(a)(5) and 226.8(c)(8) of Regulation Z, by failing to include the premium for said credit life insurance in the finance charge.

PAR. 43. By and through respondents' failure to include the premium for credit life insurance in the finance charge as described in Paragraphs Forty through Forty-Two, respondents have failed to compute and disclose the "annual percentage rate" accurately to the nearest quarter of one percent in accordance with Sections 226.5(b) and 226.8 of Regulation Z.

PAR. 44. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure 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, as amended.

COUNT IX

Alleging violation of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One, Two and Thirty-Four through Forty-Four hereof are incorporated by reference in Count IX as if fully set forth verbatim.

PAR. 45. In order to promote the sale of their goods and services, respondents have caused advertisements, as "advertisement" is defined in Regulation Z, to appear in various media. Such advertisements aid, promote, or assist, directly or indirectly, the aforesaid extensions of consumer credit, in connection with the sale of goods, which respondents arrange. By and through the use of the advertisements, respondents state that there is no credit charge in certain credit transactions, without also clearly and conspicuously stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) of Regulation Z:

- (1) The cash price;
- (2) The amount of the downpayment required or that no downpayment is required, as applicable;
- (3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (4) The amount of the finance charge expressed as an annual percentage rate; and
- (5) The deferred payment price.

PAR. 46. 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, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent J. Kurtz & Sons, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 773 Broadway, Brooklyn, New York.

Respondent John Kurtz is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his 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

A. *It is ordered*, That respondents J. Kurtz and Sons, Inc., a corporation, its successors and assigns, and its officers, and John Kurtz, individually and as an officer 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, as amended, do forthwith cease and desist from:

(1) Using the term "carved" to describe any part of furniture that has not been cut into shape.

(2) Failing to disclose either (a) the true composition, construction or styling of furniture or its parts or (b) that material is not what it appears to be, whenever any statement, depiction or representation is made, through advertising, which may otherwise be misleading as to the true composition or construction of the furniture or its parts without such disclosure. In regard to styling of furniture, disclosure must be made only if an affirmative oral or written statement is made. Such disclosures shall be made clearly and conspicuously, and in close conjunction with any representations, statements or depictions used; *provided, however*, that this paragraph does not apply to outer coverings, as the term "outer coverings" is referred to in the *Guides for the Household Furniture Industry*.

(3) Failing to clearly and conspicuously disclose, through the use of tags sufficiently attached to furniture so as not to be easily removed and which can be understood by purchasers, either the true composition or construction of furniture or its parts or that material is not what it appears to be, whenever the appearance of such furniture or its parts may otherwise be misleading as to its true composition without such disclosure; *provided, however*, that this paragraph does not apply to outer coverings, as the term "outer coverings" is referred to in the *Guides for the Household Furniture Industry*.

(4) Failing, whenever any reference is made in advertising to a constituent fiber of an outer covering made of a mixture of different fibers, to disclose each constituent fiber present as follows:

(a) Each constituent fiber present in quantities of at least 5 percent should be designated in the order of its predominance by weight.

(b) Each designated constituent fiber which is present in quantities of less than 5 percent shall be stated as a percentage of the total weight.

(c) All disclosures shall be made clearly and conspicuously and in close conjunction with any representations made.

(5) Failing, whenever any identifying reference is made on a tag or label of an outer covering made of a mixture of different kinds of fibers, to disclose each constituent fiber present by percentage and in order of its predominance by weight.

(6) Representing that merchandise will be sold in Grade "A" fabrics, or in Grade "1" fabrics, without including in such representation, or

any advertisement thereof, a clear and conspicuous disclosure, that Grade "A" or Grade "1" refers to the least expensive and lowest quality grade of fabric, if that is the fact, and without disclosing that the price will be higher for the same merchandise in a better fabric.

(7) Failing to disclose orally and in writing, conspicuously on the face of all sales contracts, invoices and receipts in close proximity to the description and price of the merchandise being sold, whenever merchandise to be sold will be other than in mint or unmarred condition, the material facts regarding the condition of such merchandise and the terms of sale, such as whether the merchandise is being sold a) "as is" that is, without warranties, or b) with a patent defect, irregularity or damage, but subject to warranties implied by law as well as the rights set forth in Paragraph B of this Order I.

(8) Failing to disclose orally and in writing, on the face of all sales contracts, invoices, and receipts, and on tags attached to displayed furniture, that such furniture is to be sold and delivered in an unassembled condition and that respondents will not assemble the furniture, if that is the fact.

(9) Failing to disclose, clearly and conspicuously, on tags attached to displayed furniture and in the booklet as provided in Paragraph A, subpart (16), if furniture is to be delivered in an unassembled condition, the manner and terms under which respondents will assemble the furniture at the customer's premises.

(10) Failing to disclose, conspicuously on all sales contracts, invoices and receipts, that respondents regularly and in the normal course of their business, sell and deliver furniture off of the showroom floor.

(11) Failing to post and maintain signs prominently displayed on the walls of all showroom floors, in English and in Spanish, and of sufficient size and clarity and in sufficient quantity so as to be readily seen and understood by consumers, which state that respondents regularly and in the normal course of their business, sell and deliver furniture off of the showroom floors.

(12) Failing to disclose clearly and conspicuously on tags attached to soft goods, that such merchandise has been on display for at least a total of three months whenever such is the fact.

(13) Delivering furniture from the showroom floor to customers who order furniture other than from the showroom floor.

(14) Failing to provide customers with contracts, booklets, credit cost disclosures and other mandated written disclosures printed in English and Spanish when the sales presentation was made substantially in the Spanish language.

(15) Failing to provide conspicuously on all sales contracts, invoices and receipts, in addition to the requirements of Paragraph C, subpart

(2), that respondents will submit all disputes with customers to arbitration at the customer's option, in clear language in substantially the following form:

Any dispute or claim you have involving this contract or the merchandise you purchased may be settled by arbitration, if you choose.

(16) Failing to provide customers with other disclosures and material information regarding, but not limited to: (a) warranties and guarantees; (b) delivery terms; (c) assembly terms and procedures; (d) respondents' refund policies; (e) the repair or replacement of nonconforming, defective or damaged merchandise; (f) the availability of arbitration of disputes; and (g) the other rights provided for in this order. These disclosures shall be set forth in a booklet which shall be furnished to each customer who purchases any merchandise exceeding \$5 in cost, and to each customer upon the opening of a credit or charge account.

(17) Failing to disclose orally and in writing, conspicuously on the face of all sales contracts, invoices and receipts for merchandise exceeding \$5 in value, that essential contract terms are set forth in a booklet which shall be given to each customer before signing the sales contract, in substantially the following form:

NOTICE TO CUSTOMER:

Important information on warranties, delivery terms, assembly terms and procedures, refunds, repairs, replacements and the availability of arbitration of disputes is contained in the booklet which you have received or may obtain from the merchant. Read this booklet carefully and keep it for future information.

(18) Failing to provide in such booklet that customers may have other legal rights concerning their contracts in addition to those set out in the contract and booklet.

(19) Failing to provide in such booklet that customers may seek court redress of any grievances which might arise concerning their contracts or may use the arbitration rights provided for in this order.

(20) Failing to comply with all requirements, or to fulfill all of the obligations to customers, which are set forth in Paragraph B of this Order I and to comply with all of the procedures and rights set forth in the booklet.

B. *It is further ordered*, That beginning the effective date of this order, respondents shall cease and desist from failing to act in accordance with the following procedures:

(1) As to complaints, written or oral, of damaged, defective,

unassembled or nonconforming merchandise, made within ten (10) days of actual delivery of such merchandise:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall assemble, within a reasonable time not to exceed ten (10) days after such investigation, merchandise which respondents have agreed to assemble in the customer's home.

(c) Respondents shall repair to mint condition or make replacement of damaged, defective or nonconforming merchandise within a reasonable time not to exceed thirty-one (31) days from the date of complaint, except when merchandise has been specially ordered by the customer, such merchandise shall be repaired or replaced within ninety (90) days from the date of complaint.

(d) If the repair or replacement of such damaged, defective or nonconforming merchandise is unsatisfactory, respondents shall cancel all applicable contract provisions with a full refund within seven (7) business days from receipt of the customer's notice of cancellation, subject to the provisions of Paragraph B, subpart (17) of this Order I. In the event, however, that the repair is made in the customer's home and such repair is unsatisfactory, respondents shall have the option of replacing such merchandise within thirty-one (31) days from the date of the original complaint as provided in Paragraph B, subpart 1(c).

(e) If the investigation, repair, assembly, or replacement cannot be completed within the time specified by Paragraph B, subparts 1(a), 1(b) and 1(c) of this Order I, respondents shall make diligent efforts to notify the customer orally and shall notify the customer in writing immediately upon ascertaining that respondents are unable to make timely performance, and shall, at the customer's option, cancel all applicable contract provisions with a full refund within seven (7) business days from the date set for completion. In no event shall respondents' notice of inability to make timely performance be given to the customer after the last day set out for performance in Paragraph B, subparts 1(a), 1(b) and 1(c) of this Order I.

(f) Respondents may refund in full the actual purchase price of the merchandise if repair is not commercially practicable and respondents are unable to provide replacement.

(2) As to complaints, written or oral, of defective merchandise other than carpeting, made after ten (10) days as provided in Paragraph B, subpart (1), and within three (3) months from the actual date of delivery of such merchandise:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall satisfactorily repair or, at respondents' option, replace such defective merchandise at no additional cost to the customer within a reasonable time not to exceed sixty (60) days after the inspection of the merchandise, except when merchandise has been specially ordered by the customer, such merchandise shall be repaired or, at the respondents' option, replaced within ninety (90) days after the inspection of the merchandise. In instances where respondents are unable to obtain an identical replacement item, replacement with suitable merchandise may be made only with the customer's consent, and such replacement must be satisfactory to the customer.

(c) In instances where it appears upon investigation that repair or replacement of case goods or major appliances may take longer than thirty (30) days or where thirty (30) days have already elapsed from the time of the investigation, respondents shall offer to the customer a suitable interim replacement at no extra cost.

(3) As to complaints, written or oral, of defective merchandise, other than outer coverings and carpeting, made after three (3) months as provided in Paragraph B, subpart (2), and within one (1) year from the actual date of delivery of such merchandise:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall satisfactorily repair or, at their option, replace with like merchandise such defective merchandise at no additional cost within a reasonable time not to exceed ninety (90) days after the inspection of the merchandise.

(c) In instances where it appears upon investigation that repair or replacement of case goods or major appliances may take longer than thirty (30) days, or where thirty (30) days have already elapsed, respondents shall offer to the customer a suitable interim replacement at no extra cost.

(4) With respect to complaints, written or oral, of defective outer coverings, respondents shall act in accordance with the procedures set forth in Paragraph B, subparts 3(a) and 3(b) above when a written or oral complaint of a defect has been made after three (3) months and within six (6) months from the actual date of delivery, or if plastic

coverings have been used by the customer on such merchandise, within nine (9) months from such date.

(5) With respect to outer coverings, Paragraph B, subparts (2), (3) and (4) shall be applicable only to manufacturing defects and shall not be applicable to fading and reasonable wear and tear of fabrics.

(6) Respondents shall clearly and conspicuously disclose, orally and in writing, to customers, all terms and limitations of sale regarding outer coverings as set forth in Paragraph B, subparts (4) and (5).

(7) With respect to complaints, written or oral, of defective carpeting, made after ten (10) days as provided in Paragraph B, subpart (1), and within six (6) months from the actual date of delivery:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the carpeting for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall satisfactorily repair or replace such defective carpeting at no additional cost to the customer within a reasonable time not to exceed sixty (60) days after the inspection of the carpeting.

(8) With respect to complaints, written or oral, of defective carpeting, made after six (6) months, as provided in Paragraph B, subpart (7), and within one (1) year from the actual date of delivery:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall satisfactorily repair defects to the extent only of reinserting missing tufts and clipping sprouted loops within sixty (60) days after the inspection of the carpeting.

(9) Paragraph B, subparts (7) and (8) shall be applicable only to manufacturing defects and shall not be applicable to crushing or matting of pile carpeting, fading, reasonable wear and tear, and instances where the carpeting has not been used with a pad.

(10) Respondents shall clearly and conspicuously disclose, orally and in writing, to customers all terms and limitations of sale regarding carpeting as set forth in Paragraph B, subparts (7), (8) and (9) of this Order I.

(11) For purposes of the time limitations contained in Paragraph B of this Order I, customers may at any time give their written consent for an extension of respondents' time for performance. Such written consent shall set forth a date certain which shall be a date by which respondents actually expect to complete performance. No rights

accruing from the provisions contained in this Order I shall be affected by such extension.

(12) If a repair, investigation, or replacement cannot be completed within the time specified by Paragraph B, subparts (2), (3), (4), (7) and (8) of this Order I, respondents shall make diligent efforts to notify the customer orally and shall notify the customer in writing, at least seven (7) days prior to the scheduled completion date, of respondents' inability to complete repairs or replacement by such date and shall advise the customer of the customer's right to submit the grievance to arbitration, where an arbitrator may award appropriate remedies or damages under the circumstances.

(13) The provisions of Paragraph B of this Order I shall not apply in instances where the damage or defect in the merchandise was caused by the customer or another while the merchandise was in the customer's possession or control.

(14) The provisions of Paragraph B of this Order I shall not apply to merchandise sold "as is" nor to the specific patent damages, defects or irregularities (including worn outer coverings) disclosed in accordance with the requirements of Paragraph A, subpart (7) of this Order I.

(15) For purposes of this order, nonconforming merchandise shall include, but not be limited to, merchandise which is worn in appearance when such wear has not been specifically designated as a condition of sale as provided in Paragraph A, subpart (7) of this Order I.

(16) For the purposes of this order, the term "special order" shall refer to merchandise ordered specifically at a customer's request rather than that merchandise which is ordered for respondents' regular inventory or usual stock of goods.

(17) For purposes of this order, the term "satisfactorily" may be a subject of an arbitration held pursuant to this order.

(18) For purposes of Paragraph B, subparts 1(a), 2(a), 3(a), 7(a) and 8(a) of this Order I, the circumstances surrounding respondents' failure to conduct an investigation within twenty-one (21) days as provided may be considered by the Arbitrator in any arbitration held pursuant to this order.

(19) Respondents shall not sell merchandise without any implied warranties, or with any disclaimer or limitation of implied warranties, except that respondents may sell merchandise "as is."

(20) Disputes arising with respect to implied warranties conferred by State or local statutory law or by the common law may be a subject of an arbitration held pursuant to this order.

(21) *Provided*, that there is clear and conspicuous disclosure, orally and in writing, of the terms and limitations of the sale, prior to its

consummation, the provisions of Paragraph B, subparts (2), (3) and (4) shall not apply to the following:

(a) any defects in the outer covering of mattresses or mattress handles not visible upon delivery, beyond the obligation to patch any such defects visible within one (1) year from the date of the actual delivery, *provided*, that the mattress is in a sanitary condition;

(b) any defects in a mattress when used with an incompatible box spring or foundation;

(c) any mattresses not kept in a sanitary condition.

(22) *Provided*, that there is clear and conspicuous disclosure, orally and in writing, of the terms and limitations of the sale, prior to its consummation, the provisions of Paragraph B, subpart (3) shall not apply to television and audio equipment whenever the manufacturer of such equipment limits its express warranties to less than one year, and in that event the durational provision of Paragraph B, subpart (3) shall be coextensive with such warranties.

(23) The investigation, pick-up and delivery of repair or replacement merchandise shall be at no additional cost to the customer unless made to a location, other than the point of original delivery, which is outside of respondents' normal delivery areas.

(24) No rights conferred by State or local statutory law or by the common law shall be affected by the provisions and rights contained herein.

C. *It is further ordered*, That respondents shall cease and desist from failing to act in accordance with the following procedures:

(1) If the respondents and a customer are unable to agree upon a settlement of any controversy involving the sale of merchandise, including the failure to deliver merchandise, the delivery or repair of any damaged, defective, or nonconforming furniture, appliances, or other merchandise, the failure to assemble merchandise when respondents are obligated to assemble, the failure satisfactorily to replace or repair damaged, defective or nonconforming merchandise, or the failure to make refunds to which a customer is entitled pursuant to this order or otherwise, then, at the option of the customer, such customer shall have the right to submit the issues to an impartial arbitration procedure entailing no mandatory administrative cost or filing fee to the consumer, which shall be conducted in accordance with the arbitration procedures annexed to this order, as Appendix "A," (Arbitration Rules, J. Kurtz and Sons, Inc.), and the procedures for arbitration adopted in Appendix "A" are to be considered as incorporated within the terms of this order.

(2) That respondents shall provide adequate notification to customers of their right to submit such controversies to arbitration and the

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binding nature of an arbitration award in the booklet referred to in Paragraph A of this Order I and in all sales contracts which shall set forth the name, address and telephone number of the arbitration tribunal and the manner in which arbitration can be obtained. Respondents are authorized and directed to change the instructions as to how to secure arbitration if circumstances require.

(3) Such arbitration shall be conducted in accordance with the Arbitration Rules of the Consumer-Business Arbitration Tribunal of the Better Business Bureau of Metropolitan New York, Inc., as amended and contained in attached Appendix "A" (Arbitration Rules, J. Kurtz and Sons, Inc.), whose offices are presently located at 110 Fifth Ave., New York, New York, telephone (212) 989-6150. In the event that the Better Business Bureau should discontinue its arbitration tribunal, or modify the tribunal to impose filing fees, respondents may petition the Commission for appropriate relief. Respondents' failure to utilize arbitration during any such period shall not constitute a violation of this order, *provided, however*, that during this interim period respondents adopt an informal dispute settlement mechanism which complies with Title I, Section 110 of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. §2301, and the rules and regulations promulgated thereunder.

(4) That respondents comply with and abide by any award or decision rendered pursuant to the aforesaid arbitration, subject to respondents' rights under the arbitration provisions of the New York Civil Practice Law and Rules or other applicable law.

(5) That respondents shall not be entitled to prevent arbitration pursuant to any provision of this order by reason of having obtained a default judgment against any customer in an action for money allegedly due the respondents or their assignees.

D. *It is further ordered*, That whenever a customer has sought the relief contained in Paragraph B of this Order I, or has advised respondents of the discontinuance of payment on the ground that respondents failed to deliver or assemble merchandise, to replace nonconforming merchandise, to repair or replace defective or damaged merchandise, or to make any refund to which a customer is entitled by reason of this order, or otherwise, that respondents desist from any action to collect the amount owed or any part thereof other than mailing a routine statement of account in regard to such merchandise and desist from giving any adverse information to any credit reporting agency, unless respondents have conducted a thorough investigation of such complaint and made a written reply to the customer, stating whether respondents have concluded that such grievance is justified or unjustified, with reasons in support thereof, and what action will be

taken. Such written reply shall be sent to each customer, along with a notice advising the customer of his right to refer grievances to arbitration.

E. *It is further ordered*, That before any action is taken to collect an amount due from a customer, other than the mailing of a routine statement of account, or before any adverse information is sent to a credit reporting agency, respondents shall make their best efforts to ascertain that respondents are not engaged in a dispute with said customer relating to the quality of the merchandise, or its replacement, condition, repair or assembly, and, if so involved, verify that respondents have investigated and found the grievance to be unjustified and have so advised the customer, in accordance with the provisions of Paragraph D of this Order I.

F. *It is further ordered*, That the corporate respondent shall, at all times subsequent to the effective date of this order, maintain complete business records relating to the manner and form of its continuing compliance with this order during the immediately preceding three-year period, such records to include: (1) all refund, repair or replacement requests sent to respondents by customers; (2) all other grievance letters and documents received from customers; (3) adequate records to disclose the facts pertaining to the receipt, handling and disposition of each and every communication from a customer, oral or written, requesting cancellation, refund, assembly, replacement, repair or arbitration; (4) all investigation reports concerning such grievances; and (5) all records pertaining to those customers to whom any collection or dunning notices have been sent.

ORDER

II

It is further ordered, That respondents, J. Kurtz & Sons, Inc., a corporation, its successors and assigns, and its officers, and John Kurtz, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any 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, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*) do forthwith cease and desist from:

A. In regard to consumer credit cost disclosures and procedures of other than open end credit:

(1) Failing to make the required disclosures clearly, conspicuously,

and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

(2) Failing to make all the required disclosures prior to the consummation of the transaction in one of the following three ways, in accordance with Section 226.8(a) and Interpretation Section 226.801 of Regulation Z:

(a) together on the contract or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or

(b) on one side of a separate statement which identifies the transaction; or

(c) when the contract, security agreement and evidence of the transaction are combined in a single document designed for processing by mechanical or electronic equipment, on both sides of a single document, *provided*, that the amount of the finance charge and the annual percentage rate appear on the face thereof, both sides contain the statement "Notice: see other side for important information," and the place for the customer's signature follows the full content of the document.

(3) Failing to use the term "cash price" to describe the cash price of the property purchased, as prescribed by Section 226.8(c)(1) of Regulation Z.

(4) Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.

(5) Failing to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed, but which are not part of the finance charge, as prescribed by Section 226.8(c)(5) of Regulation Z.

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

(7) Failing to determine the sum of all charges incident to or as a condition of the extension of credit as required by Section 226.4 of Regulation Z and to disclose that sum, with a description of each amount included, using the term "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z and also to print this term more conspicuously than other terminology as required by Section 226.6(a) of Regulation Z.

(8) Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the

“deferred payment price,” as required by Section 226.8(c)(8)(ii) of Regulation Z.

(9) Failing 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 and to print that term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

(10) Failing to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the “total of payments,” as prescribed by Section 226.8(b)(3) of Regulation Z.

(11) Failing to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

(12) Failing to disclose the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

B. Representing, directly or by implication, in any advertisement to promote or assist directly or indirectly any credit sale of other than open end credit, 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:

- (1) The cash price;
- (2) The amount of the downpayment required or that no downpayment is required, as applicable;
- (3) The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (4) The amount of the finance charge expressed as an annual percentage rate; and
- (5) The deferred payment price.

C. In regard to any extension of open end credit, as that term is defined in Section 226.2(r) of Regulation Z:

(1) Failing to disclose on a single written statement which the customer may retain before the first transaction is made on any open end credit account:

(a) The conditions under which a finance charge may be imposed, including an explanation of the time period, if any, within which any

credit extended may be paid without paying a finance charge, as required by Section 226.7(a)(1) of Regulation Z;

(b) The method of determining a balance upon which a finance charge may be imposed, as required by Section 226.7(a)(2) of Regulation Z;

(c) The method of determining the amount of the finance charge, including the method of determining any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge, as required by Section 226.7(a)(3) of Regulation Z;

(d) The conditions under which any other charges may be imposed, and the method by which they will be determined, as required by Section 226.7(a)(6) of Regulation Z and;

(e) The minimum periodic payment required, as required by Section 226.7(a)(8) of Regulation Z.

(2) Failing to make all of the disclosures required by Section 226.7(b) of Regulation Z on periodic statements sent to customers in accordance with Section 226.7(b) of Regulation Z in the manner and form prescribed by Sections 226.7(b) and (c) of Regulation Z.

(3) Representing, directly or by implication, in any advertisement to aid, promote, or assist directly or indirectly the extension of open end credit, any of the terms described in Section 226.7(a) of Regulation Z, the Comparative Index of Credit Cost, or that a specified downpayment, or periodic payment is required, the period of repayment or any of the following items, unless it also clearly and conspicuously sets forth all the following items in terminology prescribed under Section 226.7(b) of Regulation Z as required by Section 226.10(c) of Regulation Z:

(a) An explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(b) The method of determining the balance upon which a finance charge may be imposed.

(c) The method of determining the amount of the finance charge, including the determination of any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(d) Where one or more periodic rates may be used to compute the finance charge, each corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year and, where there is more than one corresponding annual percentage rate, the range of balances to which each is applicable.

(4) In regard to purchases by a customer on an existing open end credit account:

(a) Requiring the customer to execute a new credit agreement or note each time additional credit is extended.

(b) Consolidating old and new credit balances on sales contracts or documents.

(c) Conducting, at the time of any purchase made subsequent to the opening of an open end account, any third party or outside reverification of the customer's credit worthiness, marital status, reliability or place of employment, or requiring a customer to make any statements regarding his or her credit worthiness, marital status or reliability except to request information from the customer as to the customer's current address and present place of employment, unless respondents have determined, through their own internal records, that the customer has exceeded or will exceed his or her previously established credit limit or has not conformed to the terms of his or her account by failing to make timely payments in accordance with respondents' plan. *Provided, however*, that respondents shall be relieved of this provision of the order if the Board of Governors of the Federal Reserve Board promulgates a regulation, rule or interpretation amending Regulation Z which permits reverification in connection with any extension of open end credit, to the extent that any rule, regulation or interpretation of the Board permits reverification.

(5) Failing to mail or deliver any changes in the terms previously disclosed to the customer of an open end credit account, in the manner and form required by Section 226.7(e) of Regulation Z.

(6) Failing to disclose the credit limit for an open end credit account on the written statement required by Section 226.7(a) of Regulation Z and on all periodic statements required by Section 226.7(b) of Regulation Z.

(7) Requiring, in connection with the opening of any open end credit account or in connection with any purchases or extensions of credit under an open end account, a customer to secure a cosigner, surety or guarantor for payments on the account or for any purchases made by a customer under an existing open end account. Respondents may require a cosigner for purchases or extensions of credit in excess of a customer's established credit limit under an open end account, *provided*, that: (a) the liability of the cosigner, surety or guarantor is limited to the particular transaction for which the cosigner was required and (b) respondents provide the cosigner, surety or guarantor with a statement containing all of the disclosures required by Section 226.8 of Regulation Z in the manner and form prescribed by Sections 226.4, 226.6 and 226.8 of Regulation Z.

(8) Failing to disclose on the written statement required by Section

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226.7(a) that downpayments may be required on subsequent transactions in an open end account for special orders, if such is the fact.

D. In regard to credit life insurance, or credit accident and health insurance:

(1) Failing to include the premium for credit life and/or credit accident and health insurance in the finance charge where such insurance is required for the extension of credit or when the customer is led to believe that such insurance is required in connection with the credit transaction, as required by Section 226.4(a)(5) of Regulation Z.

(2) Failing to advise the customer, if credit life insurance and/or credit accident and health insurance are not included in the finance charge, that such insurance is optional and that the customer may choose to decline either or both forms of insurance and still purchase on credit.

(3) Failing to give full disclosure of the monthly cost of such insurance to the customer.

(4) Making any marks or otherwise instructing a consumer where to sign or date the personal insurance authorization required by Section 226.4(a)(5)(ii) of Regulation Z in advance of the consumer's free and independent choice for such insurance.

(5) Misrepresenting, orally or otherwise, directly or by implication, that credit life and/or credit accident and health insurance are required as a condition of obtaining credit from respondents when such insurance costs are not included in the finance charge.

(6) Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of credit life and/or credit accident and health insurance.

(7) Failing to disclose to customers on all periodic statements sent to customers in accordance with Section 226.7(b) of Regulation Z, in connection with any extension of open end credit, that the credit life and/or credit accident and health insurance is optional and may be cancelled by the customer.

(8) Failing, in regard to charges for credit life and/or accident and health insurance of any open end credit account, to compute the premium for such insurance based on a declining balance owed by the customer.

E. Failing to tell every customer the purpose(s) of each signature requested by respondents on any document directly related to the consummation of the credit transaction.

F. 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.

ORDER

III

A. *It is further ordered*, That respondents prominently display the following notice in English and in Spanish 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.

B. *It is further ordered*, That respondents deliver a copy of this order to cease and desist to all operating divisions and 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 such person.

C. *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.

D. *It is further ordered*, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized in the advertising, promotion or sale of merchandise.

E. *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.

F. *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 or employment in which he is engaged as well as a description of his duties and responsibilities.

APPENDIX "A"

ARBITRATION RULES

J. KURTZ & SONS, INC.

1. *AGREEMENT OF PARTIES* — The parties shall be deemed to have made these Rules a part of their arbitration agreement. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

2. *ADMINISTRATOR* — When parties agree to arbitrate under these Rules and an arbitration is initiated thereunder, they thereby constitute the Better Business Bureau (hereinafter BBB) the administrator of the arbitration. The authority and obligations of the administrator are prescribed in the agreement of the parties and in these Rules.

3. *PANEL OF ARBITRATORS* — The BBB shall establish and maintain a Panel of Arbitrators and shall appoint Arbitrators therefrom as hereinafter provided.

4. *CHANGE OF CLAIM* — After filing of the claim, if either party desires to make any new or different claim, such claim shall be made in writing and filed with the BBB, and a copy thereof shall be mailed to the other party who shall have a period of seven days from the date of such mailing within which to file an answer with the BBB. However, after the Arbitrator is appointed no new or different claim may be submitted to him except with his consent.

5. *INITIATING ARBITRATION* — If a customer notifies the BBB of an intention to submit a dispute to arbitration, the BBB will send the customer a copy of these Rules and will obtain the customer's signature on an agreement, designated as an "Arbitration Agreement," binding the customer to arbitration. The BBB will also obtain the respondents' signature (or the signature of their designated agent) on an agreement, designated as an "Arbitration Agreement," binding the respondents to arbitration. The customer's request for arbitration shall include a statement setting forth the nature of the dispute, the approximate amount involved, if any, and the remedy sought. The BBB will then transmit to the respondents the information summarizing the nature of the dispute, the amount involved and the remedy sought. The respondents will then have 5 days to file an answering statement with the BBB. Failure of respondents to file an answer or submit a signed "Arbitration Agreement" shall not operate to delay the arbitration. Upon receipt of a signed arbitration agreement from the customer, the BBB shall commence procedures to arbitrate the dispute pursuant to these Rules.

6. *FIXING OF LOCALE* — The parties may mutually agree on the time and place where the arbitration is to be held. If any party requests that the hearing be held at a specific time and place and the other party files no objection thereto within seven days after notice of the request, the time and place shall be the one requested.

If the time and place is not designated within seven days from the date of filing the Submission the BBB shall have power to determine the time and place. Its decision shall be final and binding.

7. *QUALIFICATIONS OF ARBITRATOR* — No person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

8. *APPOINTMENT FROM PANEL* — The Arbitrator shall be appointed in the following manner: Immediately after the filing of the Submission, the BBB shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the BBB. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the BBB shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the BBB shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

9. *NUMBER OF ARBITRATORS* — In disputes involving amounts of \$2,000 or less, there shall be one Arbitrator; *provided*, however that either party may specify three arbitrators for such disputes and in such instances the specifying party shall pay the tribunal a forty dollar (\$40.00) administrative fee. In all other cases there shall be one Arbitrator unless one or both of the parties specifies three Arbitrators. If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the BBB, in its discretion, directs that a greater number of Arbitrators be appointed.

10. *NOTICE TO ARBITRATOR OF HIS APPOINTMENT* — Notice of the appointment of the Arbitrator shall be mailed to the Arbitrator by the BBB, together with a copy of these Rules, and the signed acceptance of the Arbitrator shall be filed prior to the opening of the first hearing.

11. *DISCLOSURE BY ARBITRATORS* — Any person selected to serve as an Arbitrator shall divulge, in his signed acceptance of appointment, any financial, competitive, professional, family or social relationship, however remote, with the Parties to the dispute or disputes he is assigned to arbitrate. All doubts should be resolved in favor of disclosure. Any such disclosures shall be transmitted to the BBB which shall provide them to the Parties with a waiver/objection form. If a Party objects or if an Arbitrator is unable or unwilling to serve, the BBB may in its discretion select or appoint a replacement, unless one or both of the parties specifies that the new Arbitrator is to be selected in accordance with Paragraph Eight (8) of these Rules. In any event, no person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration unless both parties waive such disqualification.

12. *VACANCIES* — If any Arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of his office, the BBB may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules and the matter shall be reheard unless the parties shall agree otherwise.

13. *REPRESENTATION BY COUNSEL* — Any party may be so represented by counsel. A party intending to be so represented shall notify the other party and the BBB of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

14. *STENOGRAPHIC RECORD* — The BBB shall make the necessary arrangements for the taking of a stenographic or electronic record whenever such record is

requested by a party. The requesting party or parties shall pay the cost of such record, unless otherwise agreed.

15. *INTERPRETER* — The BBB shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, who shall assume the cost of such service if a volunteer interpreter cannot be secured.

16. *ATTENDANCE AT HEARINGS* — Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons. The Arbitrator shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. Representatives of the Better Business Bureau of Metropolitan New York and of the Federal Trade Commission shall be permitted to attend arbitration proceedings for the purposes of monitoring the administration of the program set forth herein.

17. *ADJOURNMENTS* — The Arbitrator may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

18. *OATHS* — Before proceeding with the first hearing or with the examination of the file, each Arbitrator may take an oath of his office, and if required by law, shall do so. The Arbitrator may, in his discretion, require witnesses to testify under oath administered by any duly qualified person, or if required by law or demanded by either party, shall do so.

19. *WITNESSES, SUBPOENAS, DEPOSITIONS* —

(a) The arbitrator may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the Court by a party or the Arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the Arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the Arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

20. *MAJORITY DECISION* — Whenever there is more than one Arbitrator, all decisions of the Arbitrators must be by at least a majority.

21. *ORDER OF PROCEEDINGS* — A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of the place, time and date of the hearing, the presence of the Arbitrator and parties, and counsel if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present his claim and proofs and his witnesses who shall submit to questions. The defending party shall then present his defense and proofs and his witnesses, who shall submit to questions. The Arbitrator may in his discretion vary this procedure but he shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

22. *ARBITRATION IN THE ABSENCE OF A PARTY* — Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. While an Arbitrator may make an *ex parte* award, such award shall not be made solely on the default of a party.

The Arbitrator shall require the party who is present to submit such evidence as he may require for the making of an award.

23. *EVIDENCE* — The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

24. *EVIDENCE BY AFFIDAVIT AND FILING OF DOCUMENTS* — The Arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the BBB for transmission to the Arbitrator. The tribunal shall forward copies to all parties who shall then be afforded the opportunity to examine such documents and to reply within seven days.

25. *INSPECTION OR INVESTIGATION* — Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall direct the BBB to advise the parties of his intention. The Arbitrator shall set the time and the BBB shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

26. *CONSERVATION OF PROPERTY* — The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

27. *CLOSING OF HEARINGS* — The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreement by the parties, upon the closing of the hearings.

28. *REOPENING OF HEARINGS* — The hearings may be reopened by the Arbitrator on his own motion, or upon application of a party at any time before the award is made. The Arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

29. *WAIVER OF ORAL HEARING* — The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the BBB shall specify a fair and equitable procedure.

30. *WAIVER OF RULES* — Any party who proceeds with the arbitration after knowledge that any procedure or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

31. *EXTENSION OF TIME* — The parties may modify any period of time by

mutual agreement. The BBB for good cause may extend any period of time established by these Rules, except the time for making the award. The BBB shall notify the parties of any such extension of time and its reason therefor.

32. *COMMUNICATION WITH ARBITRATORS AND SERVING OF NOTICES*

(a) There shall be no communication between the parties and the Arbitrator other than at oral hearings. Any other oral or written communications from the parties to the Arbitrator shall be directed to the BBB for transmittal to the Arbitrator.

(b) Each party to an agreement which provides for arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party by mail addressed to such party or his attorney at his last known address or by personal service, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

33. *TIME OF AWARD* — The award shall be made promptly by the Arbitrator and, unless otherwise agreed by the parties, or specified by law, no later than thirty days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the Arbitrator.

34. *FORM OF AWARD* — The award shall be in writing, shall be signed either by the sole Arbitrator or by at least a majority if there be more than one, and shall specify the date by which any performance is to be completed. It shall be executed in the manner required by law, and shall be a final and binding determination of the claim.

35. *SCOPE OF AWARD* — The Arbitrator may grant any remedy or relief, including consequential damages, which he deems just and equitable and within the scope of the agreement of the parties. The Arbitrator may not, however, grant punitive damages.

(a) The award may require specific performance of a contract; require the acceptance or replacement of merchandise; fix allowances for defective merchandise; declare a contract breached in whole or in part; and/or award money damages in the alternative or otherwise.

(b) The Arbitrator shall take into consideration the provisions of the Federal Trade Commission Order in *J. Kurtz & Sons, Inc.* in rendering an award.

36. *AWARD UPON SETTLEMENT* — If the parties settle their disputes during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

37. *DELIVERY OF AWARDS TO PARTIES* — Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the BBB, addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

38. *RELEASE OF DOCUMENTS FOR JUDICIAL PROCEEDINGS* — The BBB shall, upon the written request of a party, furnish to such party, at his expense, certified facsimiles of any papers in the BBB's possession that may be required by judicial proceedings relating to the arbitration.

39. *EXPENSES* — The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic or electronic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall

otherwise agree and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required travelling and other expenses of the Arbitrator and of BBB representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the Arbitrator in his Award assesses such expenses or any part thereof against any specified party or parties.

40. *ARBITRATOR'S FEE* — Members of the Panel of Arbitrators serve without fee in arbitrations. In prolonged or in special cases the parties may agree to the payment of a fee. Any arrangements for the compensation of an Arbitrator shall be made through the BBB and not directly by him with the parties.

41. *INTERPRETATION AND APPLICATION OF RULES* — The Arbitrator shall interpret and apply these Rules insofar as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an Arbitrator or a party may refer the question to the BBB for final decision. All other Rules shall be interpreted and applied by the BBB.

1335

Complaint

IN THE MATTER OF

SILTON BROTHERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND WOOL PRODUCTS LABELING ACTS

Docket C-2823. Complaint, May 24, 1976—Decision, May 24, 1976

Consent order requiring a Los Angeles, Calif., importer and manufacturer of wool products, among other things to cease misbranding wool products; furnishing false guaranties that their products are not misbranded; and, for a five-year period, importing wool products into the United States without posting a bond with the Secretary of the Treasury, conditioned upon compliance with the Wool Products Labeling Act. Further, respondents are required to notify each customer which purchased the products giving rise to the complaint that said products were misbranded.

Appearances

For the Commission: *David G. Cameron.*

For the respondents: *Albert Berg, Encino, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Silton Brothers, Inc., a corporation trading and doing business under its own name, as Brigham Sportswear, and as Brigham Sportswear Corporation, and Fred S. Silton, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Silton Brothers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, trading and doing business under its own name, as Brigham Sportswear, and as Brigham Sportswear Corporation, with its principal office and place of business located at 3535 South Broadway, Los Angeles, California.

Respondent Fred S. Silton is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are engaged in the manufacture, importation and sale of men's and boys' garments. They ship and distribute such products to various customers in the United States.

PAR. 2. Respondents, now and for some time last past, have imported and manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain boys' jackets stamped, tagged, labeled, or otherwise identified as containing 40 percent reprocessed wool, 23 percent linen, and 37 percent man made fibers, whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers from those represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain boys' jackets with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers.

PAR. 5. Respondents' wool products described in Paragraphs Three and Four, above, were imported by respondents into the United States and, as particularized in said paragraphs, were not stamped, tagged, labeled, or otherwise identified in accordance with the provisions of the Wool Products Labeling Act of 1939.

The invoices of said imported wool products required under the Tariff Act of 1930 failed to set forth the information with respect to said wool products required under the provisions of the Wool Products Labeling Act of 1939, to wit, the percentage of the total fiber weight of

the said wool products, exclusive of ornamentation not exceeding 5 per centum of fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers, and respondents falsified the consignee's declaration provided for in the Tariff Act of 1930 insofar as it related to said information, in violation of Section 8 of the Wool Products Labeling Act of 1939, and of Section 5 of the Federal Trade Commission Act.

PAR. 6. Respondents furnished false guaranties that certain of their said wool products were not misbranded under the provisions of the Wool Products Labeling Act of 1939, when respondents in furnishing such guaranties had reason to believe that the wool products so falsely guaranteed might be introduced, sold, transported, or distributed in commerce, in violation of Section 9(b) of said Act.

PAR. 7. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning 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 Los Angeles 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 Wool Products Labeling Act of 1939; 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 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent Siltan Brothers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, trading and doing business under its own name, as Brigham Sportswear, and as Brigham Sportswear Corporation, with its principal office and place of business located at 3535 South Broadway, Los Angeles, California.

Respondent Fred S. Siltan 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 Siltan Brothers, Inc., a corporation trading and doing business under its own name, as Brigham Sportswear, as Brigham Sportswear Corporation, or under any other name or names, and its officers, and Fred S. Siltan, individually and as an officer of the said corporation, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division, or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contain therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Siltan Brothers, Inc., a corporation trading and doing business under its own name, as Brigham Sportswear, as Brigham Sportswear Corporation, or under any other name or names, and its officers, and Fred S. Siltan, individually and as an officer of the said corporation, and respondents' agents, representatives, employees, successors and assigns, directly or

through any corporation, subsidiary, division, or other device, do forthwith cease and desist from:

1. Importing, or participating in the importation of, any wool products into the United States for a period of five (5) years from the date on which this order becomes final except upon filing bond with the Secretary of Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of the Wool Products Labeling Act of 1939.

2. Furnishing a false guaranty that their wool products are not misbranded under the provisions of the Wool Products Labeling Act of 1939, when there is reason to believe that any wool product so falsely guaranteed may be introduced, sold, transported, or distributed in commerce, as "commerce" is defined in the said Act.

It is further ordered, That respondents forthwith notify, by delivery of a copy of this order by registered mail, each of their customers that purchased the products which gave rise to this complaint of the fact that such products were misbranded.

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

It is further ordered, That the corporate respondent herein notify the Commission at least thirty (30) days prior to any proposed change in said 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 shall 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 years following the effective date of this order. Such notice shall include the address of the business or employment with which respondent is newly affiliated and a description of the respondent's duties and responsibilities in that business or employment.

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.

Complaint

87 F.T.C.

IN THE MATTER OF

RENTEX, INC. T/A HOMEFINDERS OF AMERICA, ETC.,
ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9024. Complaint, April 1, 1975—Decision, May 25, 1976*

Consent order requiring a Denver, Colo., real estate listing agency, among other things, to cease misrepresenting the availability of rental housing and failing to disclose relevant facts concerning said housing. Respondent is required to verify every 72 hours (in advertising, verification must be made every 24 hours) if rental housing is still available or remove listing; post and present to customers, prior to purchase of service, a statement containing a description and limitations of the offered services and advise whether rental housing currently available suits their needs. Further, the order requires respondents to disclose to purchasers the availability date, monthly rent, landlord restrictions, deposit requirements and other pertinent information.

Appearances

For the Commission: *Barry E. Barnes.*

For the respondents: *Paul A. Goodin, Seattle, Wash., Myers, Woodford & Hopper, Denver, Colo.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Rentex, Inc., a corporation now or previously doing business as Homefinders of America, Homelocators of America, North American Homefinders, and various other names; Larry S. Glist and Larry Senderhauf, individually and as officers of said corporation; Homelocators, Inc., a corporation doing business as Rentex of Seattle and Rentex of Tacoma, and Rodney Molzahn, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated Section 5 of the Federal Trade Commission Act and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Rentex, Inc. is a Colorado corporation with its office and principal place of business located at 3321 East Colfax, Denver, Colorado.

Larry S. Glist and Larry Senderhauf are individuals, officers and directors of Rentex, Inc. Together they formulate, direct and control the policies, acts and practices of Rentex, Inc., including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporate respondent.

Homelocators, Inc. is a Washington corporation with its office and principal place of business located at 7712 Greenwood Ave. North, Seattle, Washington. Said corporation is a licensee of Rentex, Inc. and is doing business as Rentex of Seattle and Rentex of Tacoma.

Rodney Molzahn is an individual, officer and director of Homelocators, Inc. and the holder of a license from Rentex, Inc. He formulates, directs and controls the policies, acts and practices of Homelocators, Inc., including the acts and practices hereinafter set forth. His address is the same as that of Homelocators, Inc.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Unless otherwise required by context, the following definitions shall apply for purposes of this complaint and the accompanying order:

A. "Rental housing" means any housing accommodation, whether real or personal property and including apartment housing, which may be leased, subleased, or rented as a private dwelling, abode or place of residence.

B. "Rental listing" means any list or other source of information concerning the location, availability and characteristics of rental housing.

C. "Landlord" means the person or persons legally empowered to lease, sublease or rent particular rental housing.

PAR. 3. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale and sale of rental listings to consumers for fees of from \$20 to \$30. Respondents Rentex, Inc. and its officers named herein have also conducted said business through individuals who have entered into license agreements with them which grant said individuals the exclusive right to offer such listings in connection with the use of the trade name "Rentex" in designated territories surrounding various metropolitan areas in the United States and Canada.

Respondent Rentex, Inc. receives ten percent of each licensee's gross sales as royalty payments, an additional five percent of each licensee's gross sales as a reserve account to ensure performance of the agreement until such account reaches \$10,000, and other covenants from each licensee.

Respondents Rentex, Inc. and its officers named herein dominate, control, furnish various means, instrumentalities, services and facilities for their licensees, and condone, approve, and accept pecuniary and other benefits flowing from the acts and practices hereinafter set forth of said respondents and their licensees.

PAR. 4. Respondents are engaged in business in or affecting

commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. Advertising of particular rental housing and respondents' services appears in newspapers of interstate circulation and on television and radio broadcasts of interstate transmission. Personnel, monies, accounts, records, correspondence and other documents flow across State lines between Rentex, Inc. and its licensees, including respondent Homelocators, Inc., located in various States of the United States and various provinces in Canada and customers and landlords located throughout the United States and Canada. The volume of such business in or affecting commerce is and has been substantial.

PAR. 5. In the course and conduct of their aforesaid business, respondents have:

A. Advertised and/or listed rental housing as available for rent when it was not in fact available for rent.

B. Advertised and/or listed rental housing information which is inaccurate, including but not limited to information concerning rental price, location, rental terms and restrictions.

C. Advertised and/or listed rental housing information which is incomplete since it fails to disclose material facts, including but not limited to information concerning damage deposits, security deposits, clean-up fees, and other rental terms and restrictions.

D. Represented, directly or by implication, that rental housing fitting a prospective customer's stated needs is currently available for rent in respondents' rental listings, when in fact no such rental housing was available for rent at that time.

The aforesaid acts and practices were and are false, misleading, deceptive, or unfair.

PAR. 6. In the course and conduct of their business, and at all times mentioned herein, respondents have been and now are in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale and performance of services of the same general nature as those sold and performed by the respondents.

PAR. 7. 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.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereto with violation of Section 5 of

the Federal Trade Commission Act, and the respondents having been served with a copy of the complaint; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, 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 set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having withdrawn the matter from adjudication for the purpose of considering the agreement containing consent order; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

A. Respondent Rentex, Inc. is a Colorado corporation with its office and principal place of business located at 4633 East Colfax, Denver, Colorado.

Respondents Larry S. Glist and Larry Senderhauf are individuals, officers and directors of Rentex, Inc. Together they formulate, direct and control the policies, acts and practices of Rentex, Inc., including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporate respondent.

Respondent Homelocators, Inc. is a Washington corporation with its office and principal place of business located at 7712 Greenwood Ave. North, Seattle, Washington. Said corporation is a licensee of Rentex, Inc. and is doing business as Rentex of Seattle and Rentex of Tacoma.

Respondent Rodney Molzahn is an individual, officer and director of Homelocators, Inc. and the holder of a license from Rentex, Inc. He formulates, directs and controls the policies, acts and practices of Homelocators, Inc., including the acts and practices hereinafter set forth. His address is the same as that of Homelocators, Inc.

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

It is ordered, That respondents Rentex, Inc. and Homelocators, Inc., corporations, their successors and assigns, and their officers, Larry S

Glist and Larry Senderhauf, individually and as officers of Rentex, Inc., and Rodney Molzahn, individually and as an officer of Homelocators, Inc., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchisee, licensee or other device, in connection with the advertising, offering for sale or sale of rental housing information or similar information services to consumers in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

I

A. Advertising or representing, directly or by implication, that:

1. Rental housing is available for lease, sublease or rent *unless*

a. All rental housing which is being advertised has been verified daily as actually available for rent and all rental housing which has not been verified as actually available for rent that day is cancelled the same day or promptly in the morning of the next business day if cancellation is not possible on the same day due to the business hours of the advertising medium involved;

b. In the case of all other representations, the rental housing has been verified as actually available for rent within the previous 72 hours or removed from the rental listings until so verified.

2. Rental housing is available for lease, sublease or rent unless the following information is fully and accurately and clearly and meaningfully disclosed:

a. The date of availability of the rental housing, if it is not currently available;

b. The monthly rent;

c. The fact that damage deposit, security deposit, clean-up fees, rent prepayment, or any similar charges over and above the monthly rent are required, if applicable;

d. The number of bedrooms;

e. The fact that a lease is required, if applicable;

f. Any landlord restrictions (such as no pets, no children, etc.) except those prohibited by Federal, State, or local law;

g. The type of neighborhood (residential, rural, commercial, high-rise or other similar description);

h. The type of dwelling (single family, apartment, duplex, house-oat, etc.);

i. The location of the rental housing by appropriate reference to the reasonably smallest definable neighborhood (whether community district, zip code district or otherwise) in which it is located;

j. The utilities paid for, if any;

k. The telephone number of the landlord.

Provided that, in the case of advertising, only a., b., and h. must be disclosed and provided further that respondents shall not be liable under this order provision where it neither knew nor upon reasonable inquiry could have known that the information was false.

3. Rental housing fitting a person's stated needs is currently listed as available for lease, sublease or rent unless such is the fact.

B. Failing to disclose to each prospective customer of the service whether or not rental housing fitting a person's stated needs is currently listed as available for lease, sublease or rent prior to the time such person enters into any agreement obligating him or her to undertake the service.

C. Failing to provide to each prospective customer of the service, prior to the time such person enters into any agreement obligating him or her to undertake the service, in boldface capital letters of 14-point or larger type with no information to the contrary or in mitigation thereof, the following statement exactly as it appears below:

NOTICE

We are an information service only. We make no attempt to secure you housing. The service offers only compiled information concerning available rental housing units. No guarantee is made that you will find rental property by using this service [and no refund is offered.]*

*The material in brackets shall be included, if no refund is offered.

D. Failing to post the notice statement required by paragraph I.C. of this order with nothing to the contrary or in mitigation thereof in a clear and conspicuous manner and in a location and print size easily viewable by the customer at respondents' place of business.

E. Failing to keep adequate records, which may be inspected by Federal Trade Commission staff members upon reasonable notice, of the following:

1. Customer contracts including a complete and up-to-date description of the customer's needs for rental housing;
2. Information on rental housing obtained from the landlord, including but not limited to the following:
 - a. Name and telephone number of the landlord;
 - b. Date or dates the information was received;
 - c. All the information contained in paragraph I.A.2. of this order.
3. Information which will disclose the date and, in the case of advertised rental housing, the time of day of each verification of availability for rent of rental housing in respondents' rental listings.
4. A cross-reference system which will enable a person to find in

respondents' rental listings information concerning any specifically advertised rental housing.

Such records shall be retained by respondents for two years after such record is made.

II

It is further ordered, That:

A. Respondent Rentex, Inc. deliver a copy of this order to each of its present or future franchise or license holders or to any other person or entity connected with said respondent who sells or promotes the sale of rental housing information to consumers;

B. Respondent Rentex, Inc. provide each person or entity described in paragraph A above with a form, returnable to said respondent, clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this order; respondent Rentex, Inc. shall retain said statement during the period said person or entity is so engaged, and make said statement available to the Commission's staff for inspection and copying upon request;

C. Respondent Rentex, Inc. inform each person or entity described in paragraph A above that respondent Rentex, Inc. shall not use or engage or shall terminate the use or engagement of any such person or entity, unless such person or entity agrees to and does file notice with said respondent that he or she will be bound by the provisions contained in this order; and that said respondent is obligated by this order to discontinue dealing with or to terminate the use or engagement of those persons or entities who engage on their own in the acts or practices prohibited by this order;

D. In the event such person or entity will not agree to file notice set forth in paragraph B above with respondent Rentex, Inc. and be bound by the provisions of this order, respondent Rentex, Inc. shall not use or engage or continue the use or engagement of such person or entity to sell or promote the sale of rental housing information to consumers;

E. Respondent Rentex, Inc. institute a program of continuing surveillance adequate to reveal whether the business practices of each of said persons or entities described in paragraph A above conform to the requirements of this order; and

F. Respondent Rentex, Inc. discontinue dealing with or terminate the use or engagement of any person or entity described in paragraph A above, who continues on his or her own any act or practice prohibited by this order, as revealed by the aforesaid program of surveillance.

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 or corporations, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

In the event that either of the corporate respondents 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 respondent shall require said successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided* that if respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it 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 in which (1) they are involved in a management, policy-making or ownership capacity, and (2) which involves the sale of information to consumers for a fee. 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 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

LE CONTE COSMETICS, INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9031. Complaint, Apr. 29, 1975—Decision, May 27, 1976

Consent order requiring a Los Angeles, Calif., manufacturer and mail order seller and distributor of drug and cosmetic preparations, among other things to cease misrepresenting their products prevent baldness, stimulate hair growth, eliminate dandruff, and have Food and Drug Administration approval to be labeled "hair grow" or "growhair." Respondents are further required to institute a surveillance program to insure their franchisees and distributors comply with the provisions of the order.

Appearances

For the Commission: *Blanche R. Deight.*

For the respondents: *Louis W. Shaffer*, Los Angeles, Calif., *Pastoriza & Kelly*, Santa Monica, Calif.

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 Le Conte Cosmetics Incorporated, a corporation, trading and doing business under its own name and as Many Ways to Beauty Corporation, and Elton C. Toland, individually, and as an officer of said corporation, and trading and doing business as University Health & Beauty Discount Center, and Lamar Toland, and James Toland, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Le Conte Cosmetics, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2520 South Main St., in the city of Los Angeles, State of California.

The corporate respondent trades and does business under its own name and as Many Ways to Beauty Corporation.

Respondent Elton C. Toland is 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.

Respondent Elton C. Toland also trades and does business as University Health & Beauty Discount Center, a sole proprietorship with its principal office and place of business located at 837 Hunter St., N.W., Atlanta, Georgia.

Respondents Lamar Toland and James Toland 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.

The spelling of the name of the corporate respondent in advertising is not standardized; for example, the name Le Conte sometimes appears as one word, "LeConte," and sometimes as two, "Le Conte," and the accent mark may or may not appear.

PAR. 2. Respondents are now, and for some time last past have been, engaged in manufacturing, selling and distributing drug and cosmetic preparations, as the terms "drug" and "cosmetic" are defined in the Federal Trade Commission Act, for external use in the treatment, care and improvement of conditions of the hair and scalp. Respondents sell said preparations to wholesalers who in turn sell to beauty parlors and to the public. Respondents sell said preparations directly to the public through mail order.

Respondent Elton C. Toland, doing business as University Health & Beauty Discount Center of Atlanta, Georgia, sells and distributes, and has sold and distributed, said preparations directly to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of California 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 or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated and now disseminate, and have caused and now cause the dissemination of, certain advertisements concerning their said products by the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements placed in newspapers of general circulation, national magazines, trade magazines, their own published magazines, brochures; and on packages, displays, and product labels; and on radio and television; and in ora

sales presentations to beauty supply dealers, prospective purchasers and purchasers, and others, for the purpose of inducing and which were likely to induce, directly, or indirectly, the purchase of said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Never accept a substitute for LeConte;
Demand to know the ingredients in a product that have been proven to make hair grow. * * *

* * * * *

The remarkable Hormones Hair Grow Back Treatment GROW[S] BACK HAIR* * *GUARANTEED RESULTS!

* * * * *

For the last 35 years, the FDA has forbidden the use of the word "hair grow" as applied to the so-called hair-growing preparations. At the time this law was enacted, no known combination of ingredients were known to make hair grow. So the law was properly enacted.

In 1947, the cosmetic chemists of Le Conte' Cosmetics, Inc., discovered a combination of raw materials, which, when compounded with the right kind of hormones, in the proper proportion, promoted the growth of hair.

* * *Le Conte Hormones with Tolanol and Takanal, is the only hair care treatment on the market with this right combination of chemicals. This has been proven by Doctors and clinical testing to be effective.* * *

Takanal has recently been added to Le Conte' Growhair Treatment to regulate the metabolism which stimulates faster hair growth.

* * *AN EXAMPLE OF WHAT IS TAKING PLACE WITH HORMONES in hair products:

Without any kind of research, or knowledge of hormones; without any biological or clinical testing, the market exploiters are using the word "Hormones" on containers. Since the market exploiters DO NOT MEET the requirements of the FDA which requires proof of positive results for growing hair, they are trying to fool you. THEY DO THIS BY USING LETTERS THAT SPELL NOTHING. "GRO" is not a word like "GROW." GROW is a word with a meaningful definition. GRO means nothing.

* * *WHY GET "HAIR-NOTHING" WHEN YOU CAN GET LeCONTE GROW-HAIR TREATMENT, A TESTED AND PROVEN PRODUCT.

* * * * *

Only years of research on hormones and their behavior can qualify research chemists properly employ hormones in any product used by humans.
The incomparable quality found in LeConte Hormones with Tolanol growhair treatment is the result of 22 years of dedicated research.

* * * * *

Le Conte' chemists, through years of scientific investigation have isolated those hormones that are the most active in the growth and condition of human hair.

* * * * *

No other product has the quality of LeConte'.
PROVE IT TO YOURSELF!
Eliminate Dandruff.* * *

* * * * *

THE NEW ADDITION TAHANAL [sic]* * *PREVENTS FALLING HAIR AND STOPS DANDRUFF.

* * * * *

Le Conte HAIRSPRAY with TOLANOL and HORMONES* * *goes three times further than other sprays.

* * * * *

Everyone can use LeConte without fear of any harmful after effects.

* * * * *

The only one [hair care treatment on the market] with written documentary proof from biological, clinical, and laboratory tests proving Le Conte safe, non irritating [sic], and more effective.* * *

* * * * *

Only LeConte hair care products have documented proof by government standards to be safe.

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, respondents have represented, and are now representing, directly or by implication:

1. That respondents' product or products, or ingredients therein, will cause human hair to grow or will régulate human metabolism so as to stimulate hair growth.
2. That respondents' product or products, or ingredients therein, constitute a medical treatment for conditions of the hair or scalp.
3. That respondents' product or products, or ingredients therein, have met the requirements of the Food and Drug Administration in proof of their effectiveness to grow hair, and have consequently received the approval of the Food and Drug Administration to bear the label "hair grow" or "growhair."
4. That tests by physicians, and clinical and biological tests have proven the effectiveness, in a manner acceptable to the scientific

community, of respondents' product or products, or ingredients therein, to cause human hair to grow.

5. That respondents' products are the result of research by an authority on hormones, that is, a person or persons qualified by scientific training and experience to have special knowledge of or expertise in human hormones as such knowledge and expertise are recognized in the scientific community.

6. That the hormonal component of respondents' products applied topically in combination with other ingredients stimulates, or contributes to the stimulation of, human hair growth.

7. That respondents' product or products, or ingredients therein, eliminate dandruff.

8. That respondents' product or products, or ingredients therein, prevent the loss of hair.

9. That respondents' hair spray product provides the user with three times as much application as other hair sprays.

10. That everyone can use respondents' products without possibility of harmful consequences.

11. That respondents' hair care products are unique in that they have been tested for safety according to government or other standards.

PAR. 6. In truth and in fact:

1. Respondents' product or products, or ingredients therein, do not have the ability to cause hair to grow; nor does any such product or ingredient regulate human metabolism so as to stimulate hair growth.

2. Respondents' product or products, or ingredients therein, do not constitute a medical treatment for conditions of the hair or scalp.

3. Respondents' product or products, or ingredients therein, have not met the requirements of the Food and Drug Administration as to proof of effectiveness in growing hair, nor has the Food and Drug Administration approved the use of the words "growhair" or "hair grow" in respondents' labeling.

4. No tests by physicians, nor clinical or biological tests, have proven the effectiveness, in a manner acceptable to the scientific community, of respondents' product or products or ingredients therein, to cause human hair to grow.

5. The one person principally responsible for the development of the hormonal component in Le Conte products is not an authority on hormones; that is, he is not qualified by scientific training and experience to have special knowledge of or expertise in human hormones, as such knowledge and expertise are recognized in the scientific community.

6. The hormonal component of respondents' products applied

topically in combination with other ingredients does not stimulate or contribute to the stimulation of human hair growth.

7. Respondents' product or products, or ingredients therein, do not eliminate dandruff.

8. Respondents' product or products, or ingredients therein, do not prevent the loss of hair.

9. At the time of the representation respondents had no reasonable basis to support the claim that their hair spray product provided the user with three times as much application as other hair sprays in that respondents had no competent and reliable scientific evidence to support such representation.

10. At the time of the representation respondents had no reasonable basis to support the claim that everyone could use respondents' products without possibility of harmful consequences.

11. Respondents' hair care products are not unique in having been tested for safety according to government or other standards. In fact, the Food and Drug Administration recommends that all manufacturers conduct safety tests on their hair care products, and a significant number of manufacturers conduct such tests.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in or affecting commerce, with corporations, firms and individuals, in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of 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. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued its complaint on April 29, 1975, charging the respondents named in the caption hereof with

violation of Sections 5 and 12 of the Federal Trade Commission Act, and the respondents having been served a copy of that complaint together with a proposed form of order; and

The Commission having duly determined upon a joint motion of Counsel Supporting the Complaint and respondents' counsel that in the circumstances presented, the public interest would be served by withdrawal of the matter from adjudication pursuant to Section 3.25(c) of the Commission's Rules; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Le Conte Cosmetics, Incorporated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2520 South Main St., in the city of Los Angeles, State of California.

The corporate respondent trades and does business under its own name and as Many Ways to Beauty Corporation.

Respondent Elton C. Toland is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

Respondent Elton C. Toland also trades and does business as University Health & Beauty Discount Center, a sole proprietorship with its principal office and place of business located at 837 Hunter St., N.W., Atlanta, Georgia.

Respondents Lamar Toland and James Toland are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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 Le Conte Cosmetics, Incorporated, a corporation, trading and doing business under its own name and as Many Ways to Beauty Corporation, and Elton C. Toland, individually, and as an officer of said corporation, and trading and doing business as University Health & Beauty Discount Center, and Lamar Toland, and James Toland, individually and as officers of said corporation, and respondents' agents, representatives and employees, acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or the transportation or distribution of any hair care products or any other products do forthwith cease and desist from:

A. Disseminating or causing to be disseminated any advertisement by means of the United States mail, or by any means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or indirectly that:

1. Respondents' products, or any ingredients therein, will cause human hair to grow or regulate human metabolism so as to stimulate hair growth; or misrepresents in any manner the effect of respondents' products, or any ingredients therein, on the structure or on any function of the body.

2. Respondents' products, or any ingredients therein, constitute a treatment; or misrepresents in any manner that respondents' products are a specific for any disorder of the hair or scalp or for any other bodily disorder.

3. Respondents' products, or any ingredients therein, have met the requirements of the Food and Drug Administration in proof of their effectiveness to grow hair, or have received the approval of the Food and Drug Administration to bear the label "hair grow" or "grow hair"; or misrepresents in any manner that an approval of any of their products or an approval of advertising or labeling claims relating to any of their products has been obtained from any individual or organization.

4. Tests by physicians, clinical, biological or other tests have proven the effectiveness of respondents' products, or ingredients therein, to cause human hair to grow; or misrepresents in any manner the scientific or other basis of any claims as to their products' effect on humans.

5. Respondents' products are the result of research by an authority on hormones, or by anyone qualified by scientific training and

experience to have special knowledge of, or expertise in human hormones, as such knowledge and expertise are recognized in the scientific community; or misrepresents in any manner the qualifications of the person or persons performing research on any of their products, or the relevance of such qualifications or research to the findings claimed:

Provided, however, respondents may state their years of experience in the compounding, blending, and manufacturing of cosmetics, including products with hormone ingredients.

6. The hormonal component of respondents' products has any effect on the stimulation of human hair growth; or misrepresents in any manner the effect of such hormonal component.

7. Respondents' product or products, or any ingredients therein, eliminate dandruff; or misrepresents in any manner the beneficial effect of such products or ingredients on dandruff or any scalp disorder.

8. Respondents' products, or any ingredients therein, prevent the loss of hair or baldness.

9. Respondents' hair spray product provides the user with three times as much application as other hair sprays; or represents in any manner the capacity for application of any of their products, unless at the time of such representation respondents have a reasonable basis to substantiate such representation.

10. Everyone can use respondents' products without possibility of harmful consequences; or represents in any manner the possibility of use of their products without harmful or allergic consequences, unless at the time of such representation respondents have adequate and reliable scientific documentation of such claims.

11. Respondents' hair care products are unique in that they have been tested for safety according to government or other standards; or misrepresents in any manner the uniqueness of their products.

B. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' hair care products, or any other products, which advertisements contain any of the representations prohibited in Paragraph A hereof.

C. Communicating orally, visually, in writing, by product labels, displays, or in any other manner, directly or by implication, any of the representations prohibited in Paragraph A hereof.

It is further ordered, That each individual respondent named herein shall 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 years following the effective date of this order. Such notice shall include the address of the business or employment with which 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:

A. Respondents deliver a copy of this order to all present and future distributors, franchisees, licensees, and sales representatives and to any other person or entity connected with respondents engaged in the offering for sale or the sale of any of respondents' products, or in any aspect of preparation, creation, or placing of advertising for the offering for sale, sale, or distribution of respondents' products;

B. Respondents provide each person or entity described in Paragraph A above with a form, returnable to said respondents, clearly stating his or her intention to conform his or her business practices to the requirements of this order; respondents shall retain said statement during the period said person or entity is so engaged, and make said statement available to the Commission's staff for inspection and copying upon request;

C. Respondents inform each person or entity described in Paragraph A above that respondents shall not use or engage or shall terminate the use or engagement of any such person or entity, unless such person or entity agrees to and does file notice with said respondents that he or she will conform his or her business practices to the requirements of this order; and that said respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of those persons or entities who engage on their own in the acts or practices prohibited by this order;

D. In the event such person or entity will not agree to file notice set forth in Paragraph B above with respondents and conform to the provisions of this order, respondents shall not use or engage or continue the use or engagement of such person or entity to sell, offer to sell, or promote the sale of respondents' products;

E. Respondents institute a program of continuing surveillance adequate to reveal whether the business practices of each of said persons or entities described in Paragraph A above conform to the requirements of this order; and

F. Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating a violation of any provision of this order by any person or entity described in

Paragraph A above, respondents shall within 24 hours notify such person or entity by certified mail, return receipt requested, that such violation of this order has occurred ("Notice"), and that respondents will discontinue dealing with said person or entity upon receipt by respondents of actual knowledge of any further violations of this order by such person or entity. Respondents shall obtain from such person or entity written acknowledgement of receipt of such Notice which acknowledgement shall indicate the date of receipt of such Notice. Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating any violations of any provision of this order, following a person or entity's receipt of the aforesaid Notice, respondents shall permanently cease dealing with such person or entity.

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 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.

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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Complaint

IN THE MATTER OF
NEW PROCESS COMPANY, INC., ET AL.

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

Docket C-2824. Complaint, May 28, 1976—Decision, May 28, 1976

Consent order requiring a Warren, Pa., mail order seller and distributor of wearing apparel, among other things to cease failing to disclose the limitations of their "free" trial wear period; substituting inferior merchandise to that ordered without prior consumer authorization; misrepresenting their maintenance of a legal department; that collection letters are final notices before litigation; that nonpayment of debts will result in local credit investigations and legal action; and misrepresenting that in the event of litigation, debtors will be required to pay all court costs, and their properties may be seized to satisfy judgments if found guilty.

Appearances

For the Commission: *Thomas J. Keary and Alan L. Cohen.*

For the respondents: *Timothy J. May and E. Bruce Butler, Patton, Boggs, Blow, Verrill, Brand & May, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that New Process Company, Inc., a corporation, and Robert P. Eaton, an individual, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New Process Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 220 Hickory St., Warren, Pennsylvania.

Respondent Robert P. Eaton is an individual engaged in the practice of law as a member of the Bar of the Commonwealth of Pennsylvania, with his office and principal place of business located at Warren National Bank Building, Suite 309, Warren, Pennsylvania.

The aforementioned respondents cooperate and act together to bring about some of the acts and practices which are hereinafter set forth.

PAR. 2. Respondent New Process Company, Inc. is now, and for some

time last past has been, engaged in the advertising, offering for sale, sale and distribution of wearing apparel and other merchandise, to the public by mail order and through a retail outlet, as well as the collection of accounts resulting from the retail sale of such merchandise.

Respondent Robert P. Eaton, through an agreement with respondent New Process Company, Inc., prepared form letters under his attorney's letterhead which were and are now being used by respondent New Process Company, Inc. in the collection of accounts.

PAR. 3. In the course and conduct of its mail order business, respondent New Process Company, Inc. is causing, and for some time last past has caused, said merchandise, when sold, to be shipped from its place of business located in the Commonwealth of Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia.

In the further course and conduct of its business, respondent New Process Company, Inc. is causing, and for some time last past has caused, advertisements, brochures, fliers, letters, and order forms to be mailed through facilities of the United States Postal Service, from the place of business of respondent New Process Company, Inc. located in the Commonwealth of Pennsylvania to individuals located throughout the United States.

In the course and conduct of their business, respondents are causing, and for some time last past have caused, debt collection letters to be mailed, through facilities of the United States Postal Service, from the place of business of respondent New Process Company, Inc. located in the Commonwealth of Pennsylvania to alleged debtors located throughout the United States.

Respondent's volume of business is substantial and their 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 and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as those sold by the respondents.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, by respondent New Process Company, Inc., the allegations of Paragraphs One, Two, Three and Four hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 5. In the course and conduct of its mail order business, as aforesaid, respondent New Process Company, Inc. offers merchandise for sale by means of advertisements, brochures, fliers, letters or other material which make certain statements and representations descriptive of the type and kind of merchandise offered. In reliance on said descriptive representations, consumers have placed, and continue to place, orders for merchandise. In many instances, respondent New Process Company, Inc. has substituted and sent to the consumer and continues to substitute and send to the consumer, without the consent of the consumer, merchandise which is substantially different from that described by respondent New Process Company, Inc. and ordered and prepaid by the consumer.

Consequently, in many instances, consumers receive merchandise which is a substantially different color, pattern, design or style from that ordered. Therefore, such descriptive representations were and are false and misleading and respondent New Process Company, Inc.'s substitution policy constitutes an unfair and deceptive act and practice.

PAR. 6. In the course and conduct of its mail order business, as aforesaid, and for the purpose of inducing the purchase of its products, respondent New Process Company, Inc. has made, and is now making, numerous statements, and representations in its advertisements, brochures, fliers, letters, and other promotional material disseminated through the United States Postal Service.

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

Dear Mr. Smith:

Early next week, I'm sending you one of these handsome new All-Weather Coats to wear — FREE!

* * * * *

Wear Yours FREE!

* * * * *

PAR. 7. 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, respondent New Process Company, Inc. has represented, and is now representing, directly or by implication, that the offer of a free trial wear period is without limit, restriction or qualification, and no cost is incurred by persons accepting this trial period.

PAR. 8. In truth and in fact, the offer of the free trial wear period is not without limit, restriction or qualification, and these limitations,

restrictions or qualifications are not clearly and conspicuously disclosed to prospective purchasers. In many instances, persons accepting said free trial period must pay postage and handling charges for return of the merchandise.

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

PAR. 9. The use by respondent New Process Company, Inc. of the aforesaid false, misleading, and deceptive statements and representations, directly or by implication, 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 merchandise from respondent New Process Company, Inc. by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondent New Process Company, Inc. as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent New Process Company, Inc.'s 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, as amended.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, by respondent New Process Company, Inc., the allegations of Paragraphs One, Two, Three and Four hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. In the course and conduct of the business of respondent New Process Company, Inc., and in furtherance of a program for inducing the payment of debts allegedly due and owing to it by consumers, respondent New Process Company, Inc., has made, and is now making, numerous statements and representations in dunning letters, notices and similar instruments which respondent New Process Company, Inc. mails, or causes to be mailed, to alleged delinquent debtors.

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

We have written you many times about your overdue account, but, to our dismay, have not received payment.

Therefore, we are compiling a CASE HISTORY of your account and will turn it over to our Legal Department ten days from today — unless we receive a remittance from you in the meantime — with instructions to make collection.

CASE HISTORY OF ACCOUNT IN DEFAULT (must be completed by Accounts Dept., and accompany any account passed on for further action.)

* * *III. INFORMATION ASSEMBLED FROM LOCAL RATING BUREAUS, BANKS, NEIGHBORS, ETC.

- A. Debtor's present occupation (*name and address of employer*)
 - B. Approximate weekly earnings _____
 - C. Debtor's paying habits.
- Prompt Pay _____ Slow Pay _____ Poor Pay _____

* * * * *

Hence we have registered this letter before a Notary Public, so that in the event of a suit being filed against you, the defense cannot be that you were not properly notified.

* * * * *

When judgment is entered against a debtor, he is assessed all the costs, and these are often greater than the original debt. All services, subpoenas, court costs, attachments, executions and lawyer fees are charged against him and his property when it is seized and sold to satisfy the judgment.

We will wait only the customary TEN DAYS after receipt of this registered notification before instructing our attorneys to proceed with vigorous action in accordance with their custom in cases of this kind.

PAR. 12. 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, respondent New Process Company, Inc. has represented, and is now representing, directly or by implication, that:

1. If payment is not made within 10 days, the debtor's account will be promptly turned over to respondent's attorneys for the initiation of legal proceedings.
2. Respondent maintains a Legal Department for the purpose of debt collection.
3. If payment is not made, respondent will compile a case history of the debtor's account, and in the process will conduct a credit investigation in the debtor's local area, and will contact rating bureaus, banks, neighbors and others to determine the debtor's earnings and "paying habits."
4. Respondent engages in the collection of debts through litigation in civil courts.
5. Where a judgment is entered against the debtor pursuant to the debt, said debtor will in all cases pay all services, subpoenas, court costs, attachments, executions and attorney's fees and his property where seized will be sold to satisfy the judgment.

PAR. 13. In truth and in fact:

1. A debtor's account is seldom, if ever, turned over within the specified time to respondent's attorneys to initiate legal proceedings.

2. Respondent does not maintain a Legal Department to which it refers delinquent accounts.

3. Respondent does not compile a case history of the debtor's account nor does respondent make a credit investigation in the debtor's local area and obtain information from rating bureaus, banks and neighbors among others.

4. Respondent seldom, if ever, collects debts through litigation in the civil courts.

5. If respondent did engage in litigation for the collection of debts, the debtor would not necessarily be bound to pay all services, subpoenas, court costs, attachments, executions and attorney's fees, and his property would not necessarily be seized and sold to satisfy the judgment.

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

PAR. 14. The use by the respondent New Process Company, Inc. of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the payment of alleged debts by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of the respondent New Process Company, Inc., as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent New Process Company, Inc.'s 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, as amended.

COUNT III

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, by respondents New Process Company, Inc. and Robert P. Eaton, the allegations of Paragraphs One, Two, Three and Four hereof are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 16. In the further course and conduct of its business, as aforesaid, respondent New Process Company, Inc., has entered into an agreement with respondent Robert P. Eaton, an attorney and member of the Bar of the Commonwealth of Pennsylvania, under which form collection letters are prepared by respondent New Process Company, Inc. and respondent Robert P. Eaton, under Robert P. Eaton's

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letterhead. The form letters are printed at the sole cost and expense of New Process Company, Inc., which has sole discretion in selection of debtors to whom the letters are sent and complete control over the usage of the letters in the collection process.

By acquiescing to the use of the aforesaid collection letters by the respondent New Process Company, Inc., respondent Robert P. Eaton has placed in the hands of the respondent New Process Company, Inc. the means and instrumentalities by which it may, and does, mislead members of the public in the manner hereinafter described.

Respondents New Process Company, Inc. and Robert P. Eaton have made certain statements and representations to alleged delinquent debtors on letters bearing the letterhead of respondent Robert P. Eaton and mailed, or caused to be mailed, by respondent New Process Company, Inc.

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

It becomes my painful duty to forward your account to a collection agency in your vicinity* * *

I am very much more desirous of keeping your good will as a New Process Company customer than of having you sued for this debt in a local court with the attendant publicity and embarrassment and costs which would alienate your customer - friendship which the Company values highly.

Therefore, I hope that promptly upon receiving this letter you will write me frankly stating whether it is agreeable to you for me to have a local bill collector take judgment against you and issue execution, or whether you prefer to avoid that dilemma by paying your account direct to New Process Company now, at least in part if you cannot pay it all.

Sincerely yours,

/s/ Robert P. Eaton

* * * * *

Before authorizing legal action, I now give you one LAST opportunity to adjust this matter amicably - direct to me.

PAR. 17. By and through the use of the aforesaid statements, representations and practices, and others of similar import and meaning not specifically set out herein, respondents Robert P. Eaton and New Process Company, Inc. have represented to debtors, directly or by implication, that:

1. Collection letters sent to alleged debtors are sent pursuant to the direction and control of respondent Robert P. Eaton.
2. Respondent Robert P. Eaton has been retained by respondent New Process Company, Inc., to prosecute or to direct others in the prosecution of suit against the debtor.

3. Unless payment is received by respondent Robert P. Eaton soon after the date of his letter, court action will be commenced by respondent Robert P. Eaton, as attorney, or others under his direction and control, to recover the amount claimed.

4. The collection letter purportedly sent to the debtor by respondent Robert P. Eaton is a final notice before litigation.

PAR. 18. In truth and in fact:

1. Collection letters sent to alleged debtors are sent pursuant to the complete direction and control of respondent New Process Company, Inc., which pays for all expenses in connection with their use.

2. Respondent Robert P. Eaton has not been retained by respondent New Process Company, Inc. to prosecute, or to direct others in the prosecution of, suit against the debtor. Respondent New Process Company, Inc. does not engage in suit for the collection of debts.

3. Any payments made by debtors pursuant to demands and threats made upon them in letters under the letterhead of Robert P. Eaton are not received by respondent Robert P. Eaton but are paid directly to respondent New Process Company, Inc. which, in fact, controls receipts of monies paid by debtors who mistakenly believe that they are making payments to an attorney. Respondent Robert P. Eaton does not commence, or direct others to commence, court action if payment is not forthcoming.

4. Collection letters sent on the letterhead of Robert P. Eaton, Attorney, containing threats that they are final notices before litigation are, in fact, not final inasmuch as respondents seldom, if ever, engage in litigation to collect said debt.

Therefore, the statements, representations and practices as set forth in Paragraphs Sixteen and Seventeen were and are false, misleading and deceptive.

PAR. 19. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the payment of alleged debts by reason of said erroneous and mistaken belief.

PAR. 20. The aforesaid 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 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, 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 Washington, D.C. 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 issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent New Process Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 220 Hickory St., Warren, Pennsylvania.

Respondent Robert P. Eaton is an individual engaged in the practice of law as a member of the Bar of the Commonwealth of Pennsylvania, with his office and principal place of business located at Warren National Bank Building, Suite 309, Warren, Pennsylvania.

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 respondent New Process Company, Inc., a corporation, its successors, assigns, officers, agents, representatives

and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of wearing apparel, or any other products or services, and in connection with collection of, or attempt to collect, accounts allegedly due and owing to respondent New Process Company, Inc., in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Shipping or causing to be shipped, without the prior written or telephonic consent of a prospective customer, any merchandise which is not substantially similar in design, style, pattern, or in any other manner, to the merchandise which is ordered by that customer in response to any depiction or description in any of respondent's advertisements, mailings, literature, or any other offer, orally or in writing, that solicits the purchase of respondent's merchandise.

2. Shipping, or causing to be shipped, any merchandise which is substantially similar to but differs in design, style, pattern, or in any other manner, from the merchandise which is ordered by that customer in response to any depiction or description in any of respondent's advertisements, mailings, literature, or any other offer, orally or in writing, that solicits the purchase of respondent's merchandise, unless all of the following conditions are met:

a. The merchandise supplied is of equal or better quality to the merchandise depicted or described;

b. respondent notifies the customer in writing in every case in which such differing merchandise has been supplied;

c. respondent notifies the customer in writing of the customer's right to a refund of any prepayment he or she has made, as well as his or her right to reimbursement for the postage cost incurred in returning the substituted merchandise which the customer determines he or she does not want, for any reason; and

d. respondent does in fact promptly refund such prepayment and reimburse such postage without further action of the customer.

3. Failing to maintain records which will reveal, for every substitution for a period of three (3) years following the effective date of this order, the identity of the customers to whom substitutions were sent and a description of the items that were ordered and substituted.

4. Using the word "free," "absolutely free," or any other word or words of similar import or meaning in advertisements, mailings, literature or any other offer, orally or in writing, that solicits the purchase of respondent's merchandise, to designate or describe a trial or examination period unless all of the conditions, obligations, costs, and prerequisites to the utilization of such trial or examination period

are clearly and conspicuously disclosed in the offer so as to leave no reasonable probability that the terms of the trial or examination might be misunderstood; *provided*, that it shall not be a violation of this provision if the aforesaid disclosure of all such conditions, obligations, costs and prerequisites is clearly and conspicuously made on each and every order blank for merchandise for which an offer of a free trial is made.

5. Representing, directly or by implication, orally or in writing, that any consumer's account will be referred to an attorney for the initiation of legal proceedings, or representing, directly or by implication, orally or in writing, that an attorney is or will be actively involved in collecting or reviewing any consumer's account; *provided, however*, that it shall not be a violation of this paragraph where at the time such representation is made, and in each and every instance in which such representation is made, the representation is true.

6. Representing, directly or by implication, orally or in writing, that any consumer's account may be referred to an attorney to determine what action is appropriate; *provided, however*, that it shall not be a violation of this paragraph to represent that respondent may refer the account of a delinquent debtor to an attorney for evaluation of what action is appropriate where, in fact, respondent takes such action in a majority of cases in which such representation is made and payment has not been made on the account at the time of the representation.

7. Representing, directly or by implication, orally or in writing, that specific action will be taken by respondent upon nonpayment by a consumer, or within a specified number of days after nonpayment by a consumer, unless respondent actually takes such action within the time represented.

8. Representing, directly or by implication, orally or in writing, that respondent maintains a Legal Department or employs an attorney as part of its debt collection business, unless such is the fact.

9. Representing, directly or by implication, orally or in writing, that because of a consumer's nonpayment a credit investigation or any other inquiry will be made with a rating bureau, bank, neighbor or any other individual or institution unless respondent actually causes such action to be taken at the time represented or within a reasonable time after such representation.

10. Representing, directly or by implication, orally or in writing, that legal action has been or will be taken against a delinquent debtor unless payment is made on a delinquent account; *provided, however*, that it shall not be a violation of this paragraph to represent that respondent has taken or will take legal action against a delinquent

debtor unless payment is made on a delinquent account where, in fact, respondent does take or has taken such legal action when payment is not made in all cases in which the representation is made.

11. Representing, directly or by implication, orally or in writing, that legal action may be taken against a delinquent debtor unless payment is made on a delinquent account; *provided, however*, that it shall not be a violation of this paragraph to represent that respondent may take legal action against a delinquent debtor unless payment is made on a delinquent account where, in fact, respondent takes such legal action against a majority of debtors to whom such representation is made.

12. Representing, directly or by implication, orally or in writing, contrary to fact or the law applicable to such debtor, that where judgment is obtained by respondent pursuant to suit on the debt, the delinquent debtor will be bound to pay services, subpoenas, court costs, attachments, executions or attorney's fees, or that the debtor's property will be seized and sold to satisfy the judgment.

13. Representing, directly or by implication, orally or in writing, that communications to an alleged debtor are from an attorney when, in fact, no attorney is actively involved in reviewing the case or when such attorney does not, in fact, subsequently deal directly with any communication to him, or her, from the alleged debtor.

14. Representing, directly or by implication, orally or in writing, that some person or organization other than respondent is engaged in the collection of an allegedly delinquent account, unless such is the fact.

15. Representing, directly or by implication, orally or in writing, that any collection letter or notice is a final notice before litigation, unless such is the fact.

II

It is ordered, That respondent Robert P. Eaton, an individual, his agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of, or attempting to collect, or assisting in the collection of, or inducing, or attempting to induce, the payment of accounts allegedly due and owing on merchandise or services purchased by consumers, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

16. Making any of the representations prohibited by Paragraphs Five, Six, Seven, Ten, Eleven, Twelve, Thirteen, Fourteen, and Fifteen of Part I of this order.

17. Placing in the hands of others the means and instrumentalities for making any of the representations prohibited by Paragraphs Five, Six, Seven, Ten, Eleven, Twelve, Thirteen, Fourteen, and Fifteen of Part I of this order.

III

It is further ordered, That respondent New Process Company, Inc. deliver a copy of this order to all present and future employees or other persons with responsibility for the preparation and placing of respondent New Process Company, Inc.'s advertisements, brochures, fliers, letters or other material soliciting orders, or in any aspect of the collection of accounts, and that respondent New Process Company, Inc. secure from each such employee or other person a signed statement acknowledging receipt of a copy of said order.

It is further ordered, That respondent New Process Company, Inc. notify the Commission at least thirty (30) days prior to any proposed change in the corporate status 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 Robert P. Eaton 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 Robert P. Eaton's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

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IN THE MATTER OF

RICH'S, INC.

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

Docket C-2825. Complaint, June 7, 1976—Decision, June 7, 1976

Consent order requiring an Atlanta, Ga., operator of retail department stores, among other things to cease entering into agreements applicable to shopping centers, which enables it to restrain entry of competing retailers; control competitors' advertising, pricing or merchandising policies; and types or brands of merchandise and services offered for sale. Further, the order prohibits respondent from conspiring with other tenants to exclude particular classes of tenants from shopping centers.

Appearances

For the Commission: *H. Marshall Korschun* and *Stephen E. Nagin*.
For the respondent: *John Izard, King & Spalding*, Atlanta, Ga.

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, as amended, 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 would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows: its complaint, stating its charges in that respect as follows:

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

a. The term "respondent" refers to Rich's, Inc., its operating divisions, its subsidiaries, and their respective officers, agents, representatives, employees, successors or assignees.

b. The term "shopping center" refers to a group of retail outlets in the United States of America planned, developed and managed as a unit and containing (1) a total floor area designed for retail occupancy of 200,000 square feet or more, of which at least 50,000 square feet is for occupancy by tenants other than respondent; (2) at least two tenants other than respondent; (3) at least one major tenant; and (4) on-site parking.

c. The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center which occupancy is for sale of merchandise or services to the public, whether said occupant leases or owns said space, but the term does not refer to an occupant of space within the store occupied by respondent, which occupant operates a department for respondent pursuant to a license from respondent.

d. The term "major tenant" refers to a tenant providing substantial drawing power in a shopping center. A tenant which occupies at least 50,000 square feet of floor area will be deemed to provide substantial drawing power.

PAR. 2. Respondent Rich's, Inc. (hereinafter referred to as Rich's) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 45 Broad St., S.W., Atlanta, Georgia. Rich's is engaged in the operation of chain retail stores, including department stores and, through its Richway Division, discount department stores. In fiscal year 1973, Rich's sales exceeded \$284 million.

Rich's is the leading department store retailer in the Atlanta metropolitan area, with nine department stores containing approximately 2.53 million square feet of floor space, and seven discount department stores. Eight of the nine department stores are located in the following regional shopping centers:

- Belvedere Plaza Shopping Center — Decatur, Georgia
- Cobb County Shopping Center — Smyrna, Georgia
- Cumberland Mall — Cobb County, Georgia
- Greenbriar Shopping Center — Atlanta, Georgia
- Lenox Square Shopping Center — Atlanta, Georgia
- North DeKalb Shopping Center — Decatur, Georgia
- Perimeter Mall — Atlanta, Georgia
- South DeKalb Shopping Center — Decatur, Georgia

Additionally, Rich's has a department store located in Brookwood Village Mall, Birmingham, Alabama, and two discount department stores located in Charlotte, North Carolina. Rich's has entered into agreements for the operation of department stores in the following planned shopping centers:

- Century Plaza Shopping Center — Birmingham, Alabama
- Southlake Mall Shopping Center — Atlanta, Georgia

PAR. 3. Respondent's volume of business is substantial and its acts and practices, as hereinafter set forth, are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as

amended. Rich's has been and now is engaged in interstate negotiations and transactions with developers or prospective developers of shopping centers in which Rich's has, or plans, retail operations. These negotiations or transactions involved, or involve, extensive use of the United States mail across State lines.

Respondent also purchases for resale a great variety and substantial amount 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. Such goods have been and are shipped across State lines to customers. Rich's has also disseminated certain advertisements and promotional materials concerning its products across State lines through the United States mail. Moreover, Rich's advertises in media of interstate circulation to encourage purchases at its stores in the shopping centers in which Rich's operates a store.

PAR. 4. The movement of population, and particularly the higher income segment of the population, from the central city to the suburbs has precipitated the growth of shopping centers in suburban areas. In 1960, there were approximately 4,500 shopping centers in the United States; their number now exceeds 13,000. In 1972, retail sales in shopping centers amounted to approximately \$123.5 billion and accounted for approximately 44 percent of the total retail sales in the United States.

Regional shopping centers are the most economically significant type of shopping center. They reproduce to a substantial extent the retail facilities once available only in downtown business districts, and are displacing and replacing the central, downtown business district as primary outlets for retail distribution of goods and services. Department store operators, including respondent herein, have recognized the potential business opportunities presented by the expanding suburban markets and have, in recent years, taken steps to establish themselves in regional shopping centers.

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 household goods, home furnishings, apparels and services, 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. In the course and conduct of its business, Rich's is and has been engaged in unfair methods of competition and unfair acts or practices in or affecting commerce, in that it has entered into leasing

agreements, operating agreements, or other agreements with shopping center developers, which agreements contain provisions which suppress, restrict, restrain, hinder, lessen, prevent and foreclose competition in the retail distribution of goods and services. Said provisions include, but are not limited to, the following:

- a. the right by respondent to disapprove certain tenant leases and other occupancy agreements;
- b. limitation on the floor space available to other tenants;
- c. prohibition against discount operations; and
- d. the power to exercise continuing control over the conduct of the business operations of other occupants or prospective occupants, including, but not limited to, discount advertising or discount selling of goods and services.

PAR. 7. The aforesaid provisions, the rights, powers and privileges thereby conferred on respondent as a major tenant in regional shopping centers, and its negotiation, utilization and enforcement thereof, have had and continue to have the tendency to restrain trade and commerce. Included among such restraints are the following effects:

- a. fixing, controlling and maintaining retail prices;
- b. allowing the respondent to select its competitors and to exclude actual and potential competitors;
- c. hindering and discouraging discount advertising, discount pricing, and discount selling; and
- d. restricting and hindering shopping center developers in their choice of potential tenants in shopping centers.

Said agreements and agreement 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 or affecting commerce in violation of Section 5 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Atlanta 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, as amended; 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 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent Rich's, 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 45 Broad St., S.W., Atlanta, Georgia.

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.

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

1. The term "respondent" refers to Rich's, Inc., its operating divisions, its subsidiaries, and their respective officers, agents, representatives, employees, successors or assignees.

2. The term "shopping center" refers to a group of retail outlets in the United States of America planned, developed and managed as a unit and containing (1) a total floor area designed for retail occupancy of 200,000 square feet or more, of which at least 50,000 square feet is for occupancy by tenants other than respondent; (2) at least two tenants other than respondent; (3) at least one major tenant; and (4) on-site parking.

3. The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center which occupancy is for sale of merchandise or services to the public, whether said occupant leases or owns said space, but the term does not refer to an occupant of space within the store occupied by respondent, which occupant operates a department for respondent pursuant to a license from respondent.

4. The term "major tenant" refers to a tenant providing substan-

tial drawing power in a shopping center. A tenant which occupies at least 50,000 square feet of floor area will be deemed to provide substantial drawing power.

II.

A. *It is ordered*, That respondent, in its capacity as a tenant in a shopping center, cease and desist from obtaining, making, carrying out or enforcing, directly or indirectly, any agreement or provision of any agreement, whether applicable to the shopping center or to any expansion thereof, which:

1. grants respondent the right to approve or disapprove the entry into a shopping center of any other tenant;

2. prohibits the admission into a shopping center of any particular tenant or class of tenants, including, for purposes of illustration:

- (a) other department stores,
- (b) junior department stores,
- (c) discount stores, or
- (d) catalogue stores;

3. specifies that any tenant in any shopping center shall not be a discounter or sell merchandise or services at discount prices;

4. limits the types of merchandise or brands of merchandise or services which any other tenant in a shopping center may offer for sale;

5. specifies that any other tenant in a shopping center shall or shall not sell its merchandise or services at any particular price or within any range of prices;

6. grants respondent the right to approve or disapprove the location in a shopping center of any other tenant;

7. specifies or prohibits any type of advertising by any other tenant or grants respondent the right to approve or disapprove any advertising by any other tenant; and

8. grants respondent the right to approve or disapprove the amount of floor space that any other tenant may occupy in a shopping center.

B. *It is further ordered*, That respondent, in its capacity as a tenant, shall not enter into or carry out any conspiracy, combination or arrangement with any other tenant to exclude any tenants from a shopping center or to grant respondent or another tenant any control over the admission of tenants to the shopping center.

III.

A. *It is further ordered*, That when respondent is the first major tenant to agree with a developer or landlord of a shopping center to

become a tenant in such center, this order shall not prohibit respondent from terminating its agreement to become a tenant in such center if such developer or landlord does not obtain the agreement of one other major tenant acceptable to respondent to operate a store in the center.

B. *It is further ordered,* That this order shall not prohibit respondent from entering into a reciprocal easement agreement or lease with respect to a shopping center which agreement or lease contains a provision which identifies in designated buildings respondent and those other major tenants which contemporaneously enter into such reciprocal easement agreement or lease with respect to such shopping center. The provisions of this Section III.B. shall not be interpreted as permitting respondent to approve or disapprove the entry into a shopping center of any other tenant (as prohibited by Section II.A.1. of this order) or to approve or disapprove the location in a shopping center of any other tenant (as prohibited by Section II.A.6. of this order).

C. *It is further ordered,* That this order shall not prohibit respondent from negotiating to include, including, carrying out or enforcing an agreement or provision in any agreement which:

1. requires that with respect to the selection of tenants in the shopping center by the developer the following objective shall be considered — maintaining a balanced and diversified grouping of retail stores, merchandise, and services;

2. requires that with respect to the selection of tenants in the shopping center, the developer shall select businesses which are financially sound and of good reputation;

3. prohibits occupancy of space in a shopping center immediately proximate to respondent by types of tenants that create undue noise, litter or odor;

4. requires that reasonable standards of appearance, signs, maintenance, and housekeeping be maintained in a shopping center;

5. establishes a layout of a shopping center for initial development or future expansion which layout may (a) designate respondent's store, (b) set forth the location, aggregate size and height of all buildings, but not the amount of floor space that any other tenant may occupy in the shopping center, and (c) locate parking areas, roadways, utilities, entrances, exits, walkways, malls, landscape areas and other common areas.

6. requires that any expansion of the shopping center not provided for in the initial layout:

- (a) shall not interfere with efficient automobile and pedestrian traffic flow into and out of the shopping center and between

respondent's store and perimeter and access roads, parking areas, malls and other common areas of the shopping center;

(b) shall not interfere with the efficient operation of respondent's store including its utilities or its visibility from within the shopping center or from roads and highways adjacent thereto;

(c) shall not result in a significant change of (i) the shopping center's parking ratio; (ii) the location of a number of parking spaces reasonably accessible to respondent's store determined by the application of such parking ratio to the number of square feet of floor area of respondent's store; (iii) the entrances and exits to and from respondent's store and any malls; and (iv) those parking area mall entrances and exits which substantially serve respondent's store;

(d) shall not be undertaken unless any and all covenants, obligations and standards (for example, construction, architecture, operation, maintenance, repair, alteration, restoration, parking ratio, and easements) of the shopping center, not otherwise prohibited by this order, (i) shall be made applicable to the expansion area and (ii) shall be made prior in right to any and all mortgages, deeds of trust, liens, encumbrances, and restrictions applicable to the expansion area, and (iii) shall be made prior in right to any and all other covenants, obligations and standards applicable to the expansion area.

IV.

A. *It is further ordered*, That respondent shall:

1. within thirty (30) days after service of this order upon respondent, distribute a copy of this order to each of its operating divisions;
2. within thirty (30) days after service of this order upon respondent, notify each developer of shopping centers in which respondent is a tenant of this order by providing each such developer with a copy thereof by certified mail;
3. 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 now complying with each and every specific provision of this order; and
4. 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, or any other change in the corporation which may affect compliance obligations arising out of this order.