

IN THE MATTER OF
HALLCRAFT JEWELERS, INC., ET AL.

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

Docket 9086. Complaint, July 20, 1976—Decision, May 9, 1977

This consent order, among other things, requires a Levittown, Pa., retailer of watches and jewelry, and its subsidiaries to cease misrepresenting an affiliation with the Government or the Armed Forces; the quality and prices of their merchandise; and their business methods and services. Respondents are required to advise customers of cancellation and refund rights; furnish Spanish translations of pertinent documents, where applicable; and, in connection with consumer credit, cease failing to disclose such information as is required by Regulation Z of the Truth in Lending Act. Further, respondents, in the collection of debts, are prohibited from threatening fictitious disciplinary action, or otherwise engaging in the acts and practices proscribed in the order.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *Richard A. Bookspany, Stark & Stark,*
Trenton, N.J.

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 Hallcraft Jewelers, Inc., a corporation, Hallcraft Jewelers, Inc. of New Jersey, a corporation, Crest Clothiers, Inc., a corporation, also trading and doing business as Crest Collection Agency, and Donald J. Bound, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hallcraft Jewelers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. It dominates and controls the acts and practices of its wholly-owned subsidiaries

Hallcraft Jewelers, Inc. of New Jersey and Crest Clothiers, Inc., which are corporations organized and doing business under and by virtue of the laws of the State of New Jersey. Respondent Crest Clothiers, Inc., also trades and does business as Crest Collection Agency. All of the above-named corporate respondents have their principal offices and places of business at 7022 Bristol Pike, Levittown, Pennsylvania.

Respondent Donald J. Bound is an officer of each of the corporate respondents named herein. He formulates, directs and controls the acts and practices of said corporate respondents including the acts and practices hereinafter set forth. His address is the same as that of said corporations.

The aforementioned respondents (hereinafter sometimes collectively referred to as Hallcraft Jewelers) cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been engaged in the manufacture of jewelry and the advertising, offering for sale, sale and distribution of jewelry and watches, as well as the collection of accounts resulting from the retail sale of such merchandise from various retail outlets located throughout the United States and adjacent to military bases.

PAR. 3. In the course and conduct of their aforesaid business, respondents are now, and for some time last past have been, engaged in shipping merchandise for retail sale from their principal place of business in the Commonwealth of Pennsylvania to various retail outlets located throughout the United States. Respondents also ship merchandise directly from their principal place of business to persons located throughout the United States and the District of Columbia, through the facilities of the United States Postal Service. Respondents also use the same facilities to mail collection forms and letters from their principal place of business to alleged debtors located throughout the United States and the District of Columbia and in various foreign countries.

Accordingly, respondents have maintained, and now maintain, a substantial course and conduct of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

COUNT I

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

PAR. 4. In the course and conduct of their aforesaid business, and

for the purpose of inducing the purchase of their products and services, respondents and their employees, salesmen, representatives, licensees, franchisees or contractors have represented and now represent, directly or by implication in oral solicitations to prospective customers that:

1. Hallcraft Jewelers is affiliated with or has some official relationship with the United States Government or the United States Armed Forces.

In order to enhance the above representation, respondents have made or make the following typical and illustrative, but not all-inclusive additional oral representations:

(a) Hallcraft Jewelers does not have to charge state sales tax with the sale of its merchandise.

(b) Hallcraft Jewelers can offer low prices for its merchandise because it is affiliated with Military Post Exchanges.

(c) Hallcraft Jewelers is the exclusive jewelry dealer for military personnel.

(d) Hallcraft Jewelers merchandise is either inspected or approved by military personnel.

(e) Hallcraft Jewelers registers the diamonds it offers for sale with the United States Government.

2. Upon payment and fulfillment of a debt to Hallcraft Jewelers purchasers are promised or may receive an "AAA credit rating," as evidenced by a printed card to that effect, which enables purchasers to then purchase merchandise on credit from merchants other than Hallcraft Jewelers.

PAR. 5. In truth and in fact:

1. Hallcraft Jewelers is not affiliated with, nor has any official relationship with the United States Government or the United States Armed Forces.

(a) Hallcraft Jewelers may not have to charge state sales tax with the purchase of its merchandise, not because it is affiliated with or has some official relationship with the United States Government or the United States Armed Forces, but rather because Hallcraft Jewelers may not have a store in the state in which its merchandise is being mailed.

(b) Hallcraft Jewelers is not affiliated with Military Post Exchanges and cannot for that reason offer lower prices for its merchandise. In fact, Hallcraft Jewelers charges higher prices for its merchandise than Military Post Exchanges do for the same or similar merchandise.

(c) Hallcraft Jewelers is not the exclusive jewelry dealer for military personnel.

(d) Hallcraft Jewelers merchandise is neither officially inspected nor approved by military personnel.

(e) Hallcraft Jewelers does not register the diamonds it offers for sale with the United States Government.

2. The "AAA credit rating" that purchasers of Hallcraft Jewelers merchandise are promised or may receive, will rarely, if ever, in and of itself enable purchasers to buy merchandise on credit from merchants other than Hallcraft Jewelers. In fact, the promise or granting of such ratings only constitutes a further attempt by respondents to falsely induce the purchase of their merchandise.

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

PAR. 6. In the further course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products and services, respondents have made and are now making, numerous statements and representations in various printed materials which respondents present to prospective or actual purchasers.

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

We use only the finest diamonds available.

To insure quality and avoid substitution of inferior gems, we certify that every diamond in your merchandise has been carefully examined under a 30-POWER DIAMOND LOUPE before mounting to guarantee brilliance, color, cut and clarity.

* * * * *

Hallcraft operates under a "military code of business ethics,"* * *[which provides that]

We will make no misrepresentations to customers regarding our business or services.

We will conceal no material fact, either directly or indirectly, which could cause a customer to be misled as to quality of merchandise, nature of service or terms of sale.

We will avoid any practice which might place this business under investigation by the Armed Forces Disciplinary Control Board, realizing that this Board has the duty to place any establishment which it finds engaged in unfair, immoral or illegal practices, off limits to military personnel.

* * * * *

No unjustified, insulting or ridiculous letters of indebtedness are ever sent to customers or their commanding officers. Many a promising military career has been ruined by unscrupulous merchants, who have written letters to commanding officers on unjustified debts.

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

1. Respondents sell only the finest diamonds available.
2. Respondents examine every diamond they sell under a 30-power diamond loupe before mounting which enables them to guarantee the brilliance, color, cut and clarity of diamonds sold.
3. Because respondents operate under a military code of business ethics, they are affiliated with or have some official relationship with the United States Armed Forces.
4. Because respondents operate under a military code of business ethics, it is unlikely that respondents will make any misrepresentations to customers regarding their business or services.
5. Because respondents operate under a military code of business ethics, it is unlikely that respondents will conceal material facts, either directly or indirectly, which could cause a customer to be misled as to quality of merchandise, nature of service or terms of sale.
6. Because respondents operate under a military code of business ethics, it is unlikely that respondents will engage in any practice which might place them under investigation by the Armed Forces Disciplinary Control Board, realizing that this Board has the duty to place any establishment which it finds engaged in unfair, immoral or illegal practices, off limits to military personnel.
7. Because of the serious consequences involved with sending letters of indebtedness to customers and their commanding officers, respondents will refrain from doing so, at least in the ordinary course and conduct of their business.

PAR. 8. In truth and in fact:

1. Respondents do not sell the finest diamonds available; in many instances, they sell a much lower quality grade of diamonds.
2. Examination of diamonds before mounting by respondents, under a 30-power diamond loupe, will not guarantee the brilliance, color, cut or clarity of diamonds. In fact, 30-power loupes are not ordinarily used in the industry for diamond examination.
3. Respondents are not affiliated with nor have any official relationship with the United States Armed Forces, and their use of the word "military" in conjunction with a code of business ethics is a misrepresentation of respondents' status or affiliations.
4. In disregard of their alleged adherence to a military code of business ethics, respondents have and are making numerous misrepresentations to customers regarding their business or services.
5. In disregard of their alleged adherence to a military code of

ethics, respondents have and are concealing material facts, either directly or indirectly, which cause customers to be misled as to quality of merchandise, nature of service or terms of sale.

6. In disregard of their alleged adherence to a military code of business ethics, respondents have engaged and are engaged in practices which have resulted in their being placed under investigation by the Armed Forces Disciplinary Control Board and in fact, the Board has exercised its duty to place respondents' place of business in various locations off limits to military personnel after finding that respondents engaged in unfair, immoral, or illegal practices.

7. Respondents have not refrained from sending numerous letters of indebtedness to customers and their commanding officers and in fact, respondents have and are sending numerous such letters to other third parties as well, in the ordinary course and conduct of their business.

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

PAR. 9. In the further course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products and services, respondents and their employees, salesmen, representatives, licensees, franchisees or contractors have engaged and are engaged in the following unfair, false, misleading and deceptive acts and practices:

By and through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four, Six and Seven, above, and through the use of high pressure sales methods predicated upon a child's love for his parents or some other loved one, respondents or their representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

PAR. 10. In the course and conduct of their aforesaid business, and in furtherance of a program for inducing the payment of alleged delinquent accounts by purchasers of jewelry and watches, pursuant to contracts with Hallcraft Jewelers, respondents have made, and are now making, numerous statements and representations in printed forms and letters and other printed material which respondents mail, or cause to be mailed, to alleged delinquent debtors.

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

1. Statements and representations on the inside of Hallcraft Jewelers series of dunning envelopes:

A letter to your Commanding Officer will be written if you ignore this letter.

Re LEGAL PROCEEDINGS

* * * * *

* * *our attorneys are now in the process of enforcing said Articles.

* * * * *

Such proceedings and legal fees can be stopped only by a remittance of at least \$40. within 10 days,* * *

Should you fail to remit or reply, your will force us to turn your account over to THE CREST COLLECTION AGENCY without further notice to you.

2. Statements and representations on forms and letters with the letterhead "Hallcraft Jewelers, Inc.:"

Be advised, due to the serious delinquent condition of your account, it has now been transferred to the legal department.

Should you decide not to cooperate, to bring about liquidation of your account, litigation by this department will be initiated and all legal avenues available to us will be used.

Seymour Cohen,
Legal Department

The second copy [of a complete report of our efforts to attain liquidation of the balance] will be delivered to the local credit bureau's (sic) of all concerned.

[A third letter] will be sent to the Adjutant General, Washington, D.C. If sent, there is no doubt, disciplinary action will result.

Be advised, litigation against the above named individual and yourself has been initiated.

If it becomes necessary to take action to either collect the amount past due on your account, or to repossess our merchandise through the civil courts, please be advised that all court costs and attorney fees will be paid by you, as stated in terms of the Conditional Sales Contract, signed by you at the time of purchase.

3. Statements and representations on forms and letters with the letterhead "Crest Collection Agency, P.O. Box 185, Burlington, New Jersey 18016:"

Your delinquent account with the above named company has been transferred to the Crest Collection Agency for collection purposes.

To avoid the embarrassment of having a credit investigation conducted in your local area, plus the possibility of having a collection agent coming to your home, we again implore you to lend us your cooperation.

* * *To protect ourselves and our affiliates we do hereby notify you that after ten

(10) days from date hereof we disclaim all liability of the part of ourselves and our affiliates for any loss of position, injury to prestige, credit standing, reputation or influence, or any other damage caused you by the just and fair prosecution of this claim to a full and complete settlement thereof.

In boldface type headings, sometimes in Latin:

PEREMPTORY NOTICE

DISCLAIMER OF LIABILITY

DRAFT DEPOSITION NOTA BENE

Along with a masthead insignia which depicts an eagle, a stars and stripes shield and the scales of justice.

PAR. 11. 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, that:

1. If payment is not made, respondents will notify the debtor's superior officers and disciplinary action will result.
2. If payment is not made, respondents will initiate legal proceedings against the debtor.
3. Because payment had not been made, respondents have initiated legal proceedings against the debtor.
4. If payment is not received within the time specified by respondents, some immediate action will be taken by respondents to collect a debt, such as notification of superior officers or turning over accounts to a collection agency.
5. Respondents maintain a legal department.
6. If respondents seek to collect a debt or repossess their merchandise through the civil courts, the Conditional Sales Contract between respondents and debtor provides that the debtor pay all court costs and attorneys fees.
7. If payment is not made, the debtor's account will be turned over to an independent collection agency retained by respondents to collect respondents' delinquent accounts.
8. If payment is not made, the debtor's account will be turned over to a local credit bureau and the local credit bureaus of his relatives, references and recipients of the purchased merchandise.
9. If payment is not made, respondents will cause a credit investigation to be conducted in the debtor's local area with the possibility that a collection agent will call at his home.
10. Respondents can validly disclaim all liability for the possible consequences of their actions taken against the debtor, including his

loss of position, injury to prestige, credit standing, reputation or influence, or any other damages caused the debtor.

11. Respondents' communications to debtors constitute legal process forms.

PAR. 12. In truth and in fact:

1. Notification of the debtor's superior officers by respondents will rarely, if ever, result in disciplinary action taken against the debtor.

2. Respondents rarely initiate legal proceedings against debtors.

3. Respondents do not take immediate action to collect debts if payment is not received within the time specified; only further threatening forms and letters are sent to debtors.

4. Respondents do not maintain a legal department.

5. When respondents attempt to collect a debt or repossess their merchandise through the civil courts, the Conditional Sales Contract between respondents and debtor does not provide that the debtor pay all court costs and attorneys fees, but in fact, provides that the debtor pay attorneys fees in an amount not exceeding 10 percent of the balance due on a debt.

6. Debtors' accounts are not turned over to an independent collection agency, but are rather turned over to the Crest Collection Agency, a component of the single business entity operated as an integrated operation by respondent Donald J. Bound; and its different mailing address from Hallcraft Jewelers, Inc. is a further misrepresentation of respondents' actual business organization.

7. Debtors' accounts are rarely, if ever, turned over to a local credit bureau and are never turned over to the local credit bureaus of relatives, references or recipients of the purchased merchandise.

8. Respondents rarely, if ever, cause a credit investigation to be conducted in the debtor's local area with a collection agent calling at his home.

9. Respondents cannot validly disclaim all liability for the possible consequences of their actions against debtors; debtors have the right to a trial to establish any damages possibly suffered by them. Respondents make this claim only to impliedly threaten debtors with the very possibilities described, in order to further harass and intimidate them.

10. Respondents' communications to debtors do not constitute legal process forms.

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

PAR. 13. In the further course and conduct of their aforesaid

business, and in furtherance of a program for inducing the payment of alleged delinquent accounts by purchasers of jewelry and watches, pursuant to contracts with Hallcraft Jewelers, Inc., respondents have engaged, and are now engaging in the act and practice of communicating with various third parties concerning the alleged indebtedness. By such communication, respondents have also demanded and are now demanding of such third parties, either directly or by implication, that full or partial payment be made by them to liquidate the alleged indebtedness. Respondents have contacted, and are now contacting, members of the United States Armed Forces, debtors' relatives, references and recipients of purchased merchandise.

Typical and illustrative of such contact and statements and representations found therein, but not all-inclusive thereof, are the following:

1. On forms and letters with the letterhead "Hallcraft Jewelers, Inc." and "Crest Collection Agency" sent to members of the United States Armed Forces:

In the interest of settling the delinquent account of the above named individual, we respectfully request your assistance.

In reference to the above-named individual, we are asking that a member of your staff counsel this man with regard to his obligation to this company.

It would be appreciated if the subject could be counseled with regard to the advantages of voluntary repossession of purchased item(s), and obtain from him, his statement of release.

We are familiar with Military Regulations concerning an individual's responsibility to creditors and equally familiar with the limits you have as a Commander in such matters. Therefore, we are not asking you to act as a collection agent, but rather, as an intermediary between Crest Collection Agency and the debtor.

2. On the inside of Hallcraft Jewelers dunning envelopes and on forms and letters with the letterhead "Crest Collection Agency" sent to debtors:

Copy Sent to Legal Home Address and Holder of Merchandise.

3. On the inside of Hallcraft Jewelers, Inc. dunning envelopes and on forms and letters with the letterhead "Hallcraft Jewelers, Inc." sent to the recipients of merchandise and a debtor's legal home address:

This serious action and embarrassment can be stopped only by the immediate receipt of \$40.

Such proceedings and legal fees can be stopped only by a remittance of at least \$40. within 10 days* * *

* * *we have found it necessary. to send the first letter of indebtedness to the above-mentioned individual's Commanding Officer. Please do not underestimate this action for it can cause serious consequences with regards to his Military records* * *

If you wish to interdict this action in the interest of assisting the above individual, please remit at least \$40. before the 20th of this month, along with arrangements to liquidate the remaining balance.

The second copy [of a complete report of our efforts to attain liquidation of the balance] will be delivered to the local credit bureau's (sic) of all concerned.

Be advised, litigation against the above-named individual and yourself has now been initiated. You have been named as the holder of merchandise still encumbered by this company and subsequently will be named as the co-defendant in legal proceedings now being prepared.

PAR. 14. The aforesaid acts and practices of respondents as described in Paragraph Thirteen hereof has had, and now has, the capacity and tendency to cause alleged delinquent debtors and various third parties contacted by respondents to feel coerced, pressured and embarrassed, their private affairs to be interfered with and their integrity to be undermined. Therefore, the use by respondents of such acts and practices is, and was, unfair.

PAR. 15. The use by 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. 16. 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 products and services of the same general kind and nature as those sold by the respondents.

PAR. 17. 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.

COUNT II

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

PAR. 18. In the course and conduct of their aforesaid business, respondents regularly extend, and for some time past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 19. Subsequent to July 1, 1969, respondents, in the course and conduct of their aforesaid business, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute binding conditional sales contracts, hereinafter referred to as the "Contract." Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the Contract, respondents:

1. Fail to use the term "cash price" as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the merchandise or service, as required by Section 226.8(c)(1) of Regulation Z.
2. Fail to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.
3. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.
4. 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.
5. Fail to use the term "deferred payment price" to describe 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, as required by Section 226.8(c)(8)(ii) of Regulation Z.
6. Fail to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness, as required by Section 8(b)(3) of Regulation Z.
7. Fail to properly disclose the amount, or method of computing

the amount, of a delinquency charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

8. Fail to make all required disclosures 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 on one side of a separate statement which identifies the transaction, as required by Section 226.8(a) of Regulation Z.

PAR. 20. Subsequent to July 1, 1969, respondents have caused to be disseminated through the mail, advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, to aid, promote, or assist directly or indirectly consumer credit sales of merchandise of various types.

By and through the use of the advertisement, respondents disclose one or more of the credit terms listed in Section 226.10(d)(2) of Regulation Z without also clearly and conspicuously disclosing the additional credit terms required by and set forth in paragraphs (i) through (v) of Section 226.10(d)(2) in terminology prescribed under Section 226.8 of Regulation Z.

PAR. 21. Subsequent to October 28, 1974, respondents have caused to be disseminated through the mail, advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, to aid, promote or assist directly or indirectly consumer credit sales of merchandise of various types. These consumer credit sales were repayable in more than four installments without the imposition of a separately stated finance charge. Certain of these advertisements have failed to state clearly and conspicuously, as required by Section 146 of the Truth in Lending Act and Section 226.10(f) of Regulation Z, the disclosure: "THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES."

PAR. 22. 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(c) of the Truth in Lending Act, respondents have thereby engaged in unfair or deceptive acts or 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 heretofore issued its complaint charging the respondents named in the caption hereto with violation of Section 5 of the Federal Trade Commission Act, as amended, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the respondents having

been served with a copy of the complaint together with a proposed form of order; and

The Commission having duly determined upon a joint motion of Commission counsel and respondents' counsel that, by the circumstances presented, the public interest would be served by withdrawal of the matter from adjudication for the purpose of considering a proposed agreement containing a consent order pursuant to Section 3.25 of the Commission's Rules; and

The respondent and counsel for the Commission having 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 the complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Hallcraft Jewelers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 7022 Bristol Pike, Levittown, Pennsylvania.

Respondents Hallcraft Jewelers, Inc. of New Jersey and Crest Clothiers, Inc., which also trades and does business as Crest Collection Agency, and wholly-owned subsidiaries of Hallcraft Jewelers, Inc. and are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with their offices and principal places of business located at 7022 Bristol Pike, Levittown, Pennsylvania.

Respondent Donald J. Bound is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, and his address is the same as that of the corporate respondents.

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

ORDER

I

It is ordered. That respondents Hallcraft Jewelers, Inc., a corporation, Hallcraft Jewelers, Inc. of New Jersey, a corporation, Crest Clothiers, Inc., a corporation, also trading and doing business as Crest Collection Agency, or under any other name or names, their successors and assigns, and their officers, and Donald J. Bound, individually and as an officer of said corporate respondents, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of jewelry and watches, or other products or services, and 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, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from, orally or in writing, directly or by implication:

1. Representing that respondents are either affiliated with or have any official relationship with either the United States Government or the United States Armed Forces.

2. Representing that respondents do not have to charge state sales tax with the sale of their merchandise due to any affiliation with or official relationship with either the United States Government or the United States Armed Forces or for any other reason that is inconsistent with official state sales tax regulations.

3. Representing that respondents can offer low prices for their merchandise due to any affiliation with or official relationship with either the United States Government or the United States Armed Forces, including Military Post Exchanges.

4. Representing that respondents are the exclusive jewelry dealers for military personnel, the United States Armed Forces or any branches therein.

5. Representing that respondents' merchandise is either inspected or approved by military personnel.

6. Representing that respondents register the diamonds they offer for sale with the United States Government.

7. Representing that purchasers who receive an "AAA credit rating" from respondents may then be able to purchase merchandise on credit from merchants other than respondents.

8. Representing that respondents either use or sell only the finest diamonds available.

9. Representing that examination of diamonds before mounting

by respondents, under a 30-power diamond loupe, or any other power loupe will guarantee the brilliance, color, cut, clarity or any other aspect of diamond quality.

10. Representing that through the use of the word "military" in conjunction with a code of business ethics, respondents are affiliated with or have some official relationship with the United States Armed Forces.

11. Representing that respondents will make no misrepresentations to customers regarding their business or services.

12. Representing that respondents will conceal no material facts, either directly or indirectly, which could cause a customer to be misled as to quality of merchandise, nature of service or terms of sale.

13. Representing that respondents will avoid any practice which might place their business under investigation by the Armed Forces Disciplinary Control Board, realizing this Board has the duty to place any establishment which it finds engaged in unfair, immoral or illegal practices, off limits to military personnel.

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

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

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

16. Failing to furnish each purchaser, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10 point boldface type the following information and statements in the same language,

415

Decision and Order

e.g., Spanish, as that used in the contract in substantially the following form:

NOTICE OF CANCELLATION

[enter date of transaction]

(Date)

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

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

IF YOU CANCEL, YOU MUST RETURN OR CAUSE TO BE RETURNED TO THE SELLER, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU OR DELIVERED TO ONE DESIGNATED BY YOU, UNDER THIS CONTRACT OR SALE AT THE SELLER'S EXPENSE AND IN COMPLIANCE WITH INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS.

IF YOU FAIL TO RETURN OR CAUSE TO BE RETURNED THE GOODS DELIVERED TO YOU OR THE ONE DESIGNATED BY YOU WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [Name of Seller], AT [Address of seller's local place of business], NOT LATER THAN MIDNIGHT OF (Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)

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

18. Including in any sales contract or receipt any confession of

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

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

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

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

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

23. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess and if so, the manner in which this may be accomplished at the seller's expense, or whether the seller intends to abandon any shipped or delivered goods.

24. Representing that disciplinary action will be taken against debtors upon notification of their superior officers.

25. Representing that legal proceedings will or have been initiated against debtors unless and until such representation is true.

26. Representing that an account will be or has been referred to an attorney for initiation of legal proceedings or that an attorney will be or is actively involved in collecting or reviewing an account, unless, and until such representation is true.

27. Representing that any immediate action will be taken to collect a debt, such as notification of superior officers or turning over accounts to a collection agency, unless, and until such representation is true; or misrepresenting, in any manner, the imminency of any action that respondents may or will take.

28. Representing that respondents maintain a legal department or employ attorneys as part of their debt collection business.

29. Representing that respondents will require debtors to pay all attorneys fees or any other amount of attorneys fees generated, which is in excess of 15 percent of the balance due on a debt.

30. Representing that collection notices sent to debtors by

respondents are sent by a collection agency independent of respondents; or misrepresenting, in any manner, respondents' status, activities, or actions.

31. Representing that respondents will notify the local credit bureaus of any persons other than the debtor's own local credit bureau, and in that instance, only when respondents actually take the represented action, at that stage of the collection process.

32. Representing that a credit investigation will be conducted in the debtor's local area or that a collection agent will call at his home, unless respondents actually cause the action to be taken, at that stage of the collection process.

33. Representing that respondents can validly disclaim liability for any action that they may take in the collection of a debt; or making any other such statements in dunning communications which are unfair because they appear legally conclusive or misleading.

34. Representing through depictions or manifestations of form, that any of respondents' dunning communications constitute legal process forms; or misrepresenting, in any manner, the source, authorization, or approval of any document.

It is further ordered. That respondents cease and desist from using the words "collection agency" or any other words of similar import or meaning in any corporate, firm, partnership or other business or trade name or title which indicates or suggests that respondents individually or collectively, are engaged in the business of collecting money debts for others.

It is further ordered. That respondents, in the course of collecting a debt, cease and desist from communicating, or threatening to communicate with the consumer's employer or any agent of the employer or any other person not liable for the debt other than the spouse or the attorney of the consumer, except as permitted by order of a court or solely to locate a consumer whose whereabouts are genuinely unknown to the creditor or to determine the nature and extent of a consumer's wages or property, provided that, in these latter two instances, there is no specific mention of the alleged indebtedness.

Provided, however, nothing herein shall prohibit respondents from communicating with the recipient of purchased merchandise, but then only for the dual purpose of (1) actually attempting, and not merely threatening, to repossess the merchandise upon the terms and conditions provided by contract between the debtor and respondents and in the same communication, (2) offering said recipient the option of retaining the merchandise upon the recipient's promise to

assume payment of the specified balance due on the debt; *provided* that in these instances, respondents do not fail to also mail copies of any such communication to the named purchaser involved and respondents do not fail to clearly and conspicuously disclose in each such repossession communication that:

Upon repossession, this account will be marked satisfactorily settled and an immediate credit for the money paid on the account will be forwarded to the attention of the purchaser along with a price catalogue from which said purchaser may be able to choose and receive other merchandise based upon the credit he receives.

It is further ordered, That respondents, upon actual repossession of the purchased merchandise upon the terms and conditions provided by contract between the debtor and respondents and this order, do not fail to mail to said debtor, a price catalogue from which he may be able to choose and receive other merchandise based upon the credit he receives.

It is further ordered, That respondents cease and desist from failing to furnish the purchaser with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which contains a clearly and conspicuously disclosed statement in substantially the following form:

In the course of collecting a debt, Hallcraft Jewelers, Inc. will not communicate or threaten to communicate with a consumer's employer or any agent of the employer or any other person not liable for the debt other than a consumer's spouse or attorney, except as permitted by order of a court, or solely to locate a consumer whose whereabouts are genuinely unknown to the creditor or to determine the nature and extent of a consumer's wages or property, provided that, in these latter two instances, there is no specific mention of the alleged indebtedness. Hallcraft Jewelers may however, communicate with the recipient of any purchased merchandise, but only for the purpose of repossession of their merchandise upon a consumer's default or offering the recipient, in the alternative, the option of retention of the merchandise and assumption of the payments due on the balance of the debt.

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

II

It is further ordered. That respondents Hallcraft Jewelers, Inc., Hallcraft Jewelers, Inc. of New Jersey, Crest Clothiers, Inc., also trading and doing business as Crest Collection Agency, or under any other name or names, corporations, their successors and assigns, and their officers, and Donald J. Bound, individually and as an officer of said corporations, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit, or any advertisement to aid, promote, or assist, directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. Section 226) of the Truth in Lending Act, as amended, (Pub. L. 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to use the term "cash price" as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the merchandise or service, as required by Section 226.8(c)(1) of Regulation Z.

2. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

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

4. 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.

5. Failing to use the term "deferred payment price" to describe 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, as required by Section 226.8(c)(8)(ii) of Regulation Z.

6. Failing to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

7. Failing to properly disclose the amount, or method of computing the amount, of a delinquency charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

8. Failing to make all required disclosures 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 on one side of a separate statement which identifies the transaction, as required by Section 226.8(a) of Regulation Z.

9. Failing, in any advertisement for an extension of consumer credit which is repayable in more than four installments without the imposition of a separately stated finance charge, to disclose clearly and conspicuously, "THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES," as required by Section 146 of the Truth in Lending Act and Section 226.10(f) of Regulation Z. Such disclosure shall appear:

(a) immediately adjacent to the price, whenever the price is quoted, either as a monthly payment or a total payment amount; and

(b) immediately above the space provided for the customer's signature on the merchandise order form.

10. Representing in any such advertisement, directly or by implication, that no downpayment is required, 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:

(i) the cash price;

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

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

(iv) the amount of the finance charge expressed as an annual percentage rate; and

(v) the deferred payment price.

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

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale or sale of respondents' products or services or in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, or in the collection of accounts, and that respondents secure a signed statement acknowledging the receipt of the order from each such person.

It is further ordered, That respondents shall, within thirty (30) days

after service of this order upon respondents, distribute a copy thereof by registered or certified mail to each military base commander within a twenty-five (25) mile radius of each of respondents' retail stores.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate 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 corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five years from the effective date of this order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture, advertising, offering for sale, sale and distribution of jewelry and watches or the extension of consumer credit or the collection of accounts resulting from the retail sale of products or services, or of his affiliation with a new business or employment in which his own duties and responsibilities involve the manufacture, advertising, offering for sale, sale and distribution of jewelry and watches or the extension of consumer credit or the collection of accounts resulting from the retail sale of products or services. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising out of the order.

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

Complaint

89 F.T.C.

IN THE MATTER OF

MELVIN S. LANDOW, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2886. Complaint, May 9, 1977—Decision, May 9, 1977*

This consent order, among other things, requires the former controlling officers of a now bankrupt appliance store chain (Kennedy and Cohen, Inc.) to cease misrepresenting pricing and savings claims; and cease using bait and switch tactics, or any other unfair or deceptive strategy to promote sale of goods and services. Additionally, respondents are required to conspicuously post disclosure notices and maintain relevant records as prescribed in the order.

Appearances

For the Commission: *H. Marshall Korschun and Thomas D. Wilson, Jr.*

For the respondent: *Harris J. Buchbinder, Reiseman & Buchbinder, Miami, Fla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, as amended, the Federal Trade Commission, having reason to believe that Melvin S. Landow and Dean Willman, individually, hereinafter referred to as respondents, have violated the provisions of said 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:

PARAGRAPH 1. Respondents Melvin S. Landow and Dean Willman are individuals and were officers and/or directors of Kennedy and Cohen, Inc., a Florida corporation. The said individual respondents formulated, directed and controlled the acts and practices of Kennedy and Cohen, Inc., including the acts and practices hereinafter set forth. The address of respondent Melvin S. Landow is 4340 North Bay Road, Miami Beach, Florida. The address of respondent Dean Willman is 7105 Miami Lakes Drive, West, Miami Lakes, Florida.

The aforementioned respondents cooperated and acted together in the carrying out of the acts and practices hereinafter set forth.

PAR. 2. Respondents have been engaged in the advertising, offering for sale, sale and distribution of household appliances and home entertainment products, including, but not limited to, televisions, stereo equipment, washers and dryers, refrigerators and air condi-

tioners, hereinafter referred to collectively as household appliances. Respondents operated and controlled one of the largest household appliance retailers in the United States, with sales from Kennedy and Cohen, Inc.'s retail outlets in 1974 approximating \$50 million.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused advertising layouts, sales memoranda, policy directives and other documents and communications to be transmitted by the United States mail to and from respondents' offices and said retail stores located in various States of the United States.

In the further course and conduct of their business, respondents sold and distributed household appliances in commerce by causing said appliances to be shipped from places of business of their several suppliers, located in various States of the United States, to storage points and to said retail stores for sale to the purchasing public, located in states other than those from which said shipments originated.

In the further course and conduct of their business, respondents caused advertisements for household appliances to be published in media of interstate circulation and to be broadcast by television and radio stations having sufficient power to carry such broadcasts across state lines, which were designed and intended to induce persons to purchase said household appliances.

Thus, respondents' volume of business was substantial and their acts and practices, as hereinafter set forth, were in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their household appliances, respondents made numerous statements and representations by means of television and radio broadcasts, by means of advertisements inserted in newspapers and by means of oral statements and representations of their salesmen and other agents and employees to prospective purchasers with respect to their products and services.

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

(1)

18" Diagonal COLOR TV PORTABLE
At Huge Warehouse Savings!
\$138

RCA 25" Diagonal COLOR TV CONSOLE
Has AccuColor for Sharp, Crisp Picture
in Life-Like Color

Complaint

89 F.T.C.

Automatic Fine Tuning
100% Solid State
\$397

25" Diagonal COLOR TV CONSOLE
Contemporary Style
Black Matrix Picture Tube
Automatic Fine Tuning
Instant-On Picture
\$267

General Electric DRYER AND WASHER
\$248
When You Buy the Pair

LAUNDRY

Kennedy and Cohen carries top brands
like GENERAL ELECTRIC, WHIRLPOOL,
and others all at special savings with
a WHIRLPOOL ELECTRIC DRYER AND
AUTOMATIC WASHER priced as low as
\$94 each.

When You Buy the Pair.

GUARANTEED LOWEST PRICES IN THIS AREA

16 Cubic-Foot Refrigerator
\$197

(2)

14 HOUR SALE!
Saturday 10:00 A.M. to Midnight

(3)

GRAND OPENING

We're getting bigger to serve you better!
Our new Houston Warehouse Showroom
means even bigger purchasing power!
We're celebrating chain-wide with extra
markdowns on a huge variety of famous
brands of appliances and TV's. Come in
and save!

EMERGENCY SALE

Unavoidable construction delays at our new
Miami Complex have caused merchandise
that arrived too soon to pile up on our
loading docks! We're repricing a huge
variety of TV's, appliances and audio
components. Famous brands like RCA,
ZENITH, GE, WHIRLPOOL, FISHER save
you even more!

(4)

Complaint

HOLIDAY MARATHON

Special! Two Days Only. 12" Black and White Portable TV, \$9, When You Buy Any Color TV, Air Conditioner, Refrigerator, Range/Oven, Washer, Dryer or Audio System.

(5)

DIRECT TO CONSUMER

(6)

"JULY SALES JAMBOREE"



COLOR PORTABLES

Kennedy and Cohen carries Top Brands like GENERAL ELECTRIC, RCA, ZENITH and others all at special savings with a Kenco 18" diagonal COLOR TV PORTABLE priced as low as

\$169

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral

statements and representations of respondents' salesmen to customers and prospective customers, respondents represented, directly or by implication, that:

1. Respondents were making a bona fide offer to sell the advertised household appliances at the price and on the terms and conditions stated in the advertisement.

2. Respondents had available sufficient quantities of the advertised appliances to meet reasonably anticipated demand.

3. By and through the use of their advertising illustrations, in connection with the special "sale" events, that:

a. advertised household appliances could be purchased at reduced prices and purchasers were thereby afforded savings from respondents' regular selling prices;

b. household appliances were available at these special selling prices for a limited period of time and would return to and, for a reasonable period of time, remain at some substantially higher amount after the expiration of the limited period.

4. By and through the use of the term "14 HOUR SALE!", as set out in Paragraph Four (2), and other terms of similar import and meaning not specifically set out herein, that the price at which such household appliances were being offered constituted a significant reduction from respondents' previously established regular selling price.

5. By and through the use of the terms "Grand Opening," "Emergency Sale," as set out in Paragraph Four (3), and other words of similar import and meaning not specifically set out herein, that respondents reduced prices as a consequence of the unusual sale event and, thereby, implied that the public should act immediately to take advantage of these unusual circumstances.

6. By and through the use of an advertisement such as set out in Paragraph Four (4), and others of similar import and meaning not specifically set out herein, that respondents offered a black and white portable television for the price of \$9 when the customer bought any color television, air conditioner or other similar household appliance.

7. By and through the use of the words "DIRECT TO CONSUMER," as set out in Paragraph Four (5), that respondents did not buy through normal distribution channels, that respondents operated as wholesale distributors and that respondents sold at less than retail prices.

8. By and through the use of advertising illustrations, as set out in Paragraph Four (6), and other advertisements of similar import and meaning not specifically set out herein, that respondents were

selling a variety of color portable televisions, including Zenith, RCA and GE, for the advertised price.

PAR. 6. In truth and in fact:

1. Most, if not all, of respondents' offers were not bona fide offers to sell said household appliances at the price and terms and conditions stated in the advertisement. To the contrary, some of said offers were made for the purpose of obtaining leads to persons interested in the type of household appliance so advertised. Members of the purchasing public who responded to said advertisements were shown other appliances, usually at a higher price and a higher margin of profit. Respondents' salesmen made little or no effort to sell the advertised appliances, and in some instances disparaged the advertised appliances in an attempt to sell other appliances with a higher margin of profit. Respondents used a method of compensating their salesmen designed to encourage sale of the higher profit margin items.

2. Respondents failed, in numerous instances, to have available sufficient quantities of the advertised product to meet reasonably anticipated demands.

3. Respondents' household appliances were not being offered for sale at "special" or reduced prices. To the contrary, in a substantial number of instances:

a. respondents' advertised selling prices and their regular selling prices were the same or substantially the same, and respondents used the aforementioned statements to mislead prospective customers into believing there is a savings, in a not insignificant amount, from respondents' regular selling price;

b. many of respondents' represented "special" selling prices were not returned to, or if returned did not for a reasonable period of time remain at, some other substantially higher amount. Instead, said prices remained at or near, or subsequently returned to or near, the represented "special" prices. Thus, the period during which the "special" prices were available was not, in these instances, limited as stated in said advertisements.

4. Many of respondents' represented reduced prices were not reduced. Where respondents did reduce their regular selling prices, the amount of the reduction was, in many instances, insignificant.

5. Respondents did not reduce prices as a consequence of the special events. Rather, said sale events were used by respondents for

the purpose of creating in the purchasing public a false sense of urgency.

6. Respondents did not offer the black and white television for an actual price of \$9 in connection with another major purchase. Rather, respondents uniformly increased the prices of the appliances connected with the \$9 television offer, thereby misleading the purchasing public as to the true cost of the advertised television.

7. Respondents were not wholesale distributors and did not always sell at less than retail prices.

8. Respondents did not offer a variety of color portable televisions at the advertised price. Rather, a color portable television made especially for respondents is the only television which is offered at the advertised price, although the advertisement implied the consuming public may have purchased a "name brand" television at the stated price.

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

PAR. 7. In connection with respondents' sale of household appliances, respondents sold service contracts for continuing maintenance and repair of the purchased appliances. Respondents encouraged their salesmen to sell said contracts by methods of compensation, and respondents provided their salesmen with materials to assist in the sale of said service contracts.

In many instances, said sales materials contained false and misleading information such as, but not limited to, the following: (1) the frequency of repair statistics, (2) cost of repair statistics, (3) cost comparison with service contracts offered by other appliance dealers.

PAR. 8. The acts and practices of respondents as alleged in Paragraph Seven of using false and misleading information in the sale of service contracts, and using methods of compensation to encourage their salesmen to sell said service contracts, had the tendency and capacity to mislead the consuming public as to the advisability of purchasing such a service contract for their appliances.

Therefore, the acts and practices of respondents as set forth in Paragraph Seven were unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale and distribution of household appliances of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts, as aforesaid, has had 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 at higher prices than said members of the purchasing public had intended to pay by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents as herein alleged were all to the prejudice and injury of the public and respondents' competitors and constituted 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 Atlanta 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, as amended; 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in 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. Respondents Melvin S. Landow and Dean Willman were

officers and/or directors of Kennedy and Cohen, Inc., a corporation. They formulated, directed and controlled the policies, acts and practices of said corporation. The address of respondent Melvin S. Landow is 4340 North Bay Road, Miami Beach, Florida. The address of respondent Dean Willman is 7105 Miami Lakes Drive, West, Miami Lakes, Florida.

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 Melvin S. Landow and Dean Willman, individually, their 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 household appliances, or of any other products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of household appliances or any other product, merchandise or service.

2. Making representations, directly or by implication, orally or in writing, purporting to offer any product, merchandise or service for sale when the primary purpose of the representation is not to sell the offered product, merchandise or service but to obtain leads or prospects for the sale of another product, merchandise or service.

3. Representing, directly or by implication, orally or in writing, that any product, merchandise or service is offered for sale when such offer is not a bona fide offer to sell such product, merchandise or service according to the terms of the represented offer.

4. Disparaging in any manner, discouraging the purchase of, or refusing to sell and deliver, any product, merchandise or service which is advertised or offered for sale.

5. Failing to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless:

a. The advertisement clearly and adequately discloses the specific quantity of each item advertised that is available at each designated outlet; or

b. The advertisement clearly and adequately identifies those outlets at which merchandise is not immediately available.

6. Failing to maintain and produce for inspection and copying, on demand by the Federal Trade Commission or its representatives, adequate records which reveal for every advertisement disseminated in print or broadcast media, for a period of three (3) years from the date of its publication:

a. The volume of sales made of each advertised product, merchandise or service at the advertised price; and

b. The net profit from the sale of each advertised product, merchandise or service at the advertised price.

7. Using the word "Sale" or any other word or words of similar import or meaning not set forth specifically herein, unless:

a. The price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent regular course of their business;

b. Respondents clearly and adequately disclose the time period during which the advertised prices will be available; provided that, where the termination point of the "sale" has been advertised in good faith, respondents shall not be prohibited from extending the availability of the advertised prices, making further reductions, or reinstating terminated price reductions;

c. Products, which are included in the advertisement but do not meet the requirements of 7(a), *supra*, are clearly and adequately identified as not having had a reduction in price.

8. Representing, directly or by implication, orally or in writing, that respondents have lowered prices as a result of some unusual circumstances, unless the circumstances are true and the prices are significantly lower than respondents' usual prices.

9. a. Representing, directly or by implication, orally or in writing, that by purchasing any of respondents' products, merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price, unless such products, merchandise or services have been sold or offered for sale in good faith at the former price by respondents for a

reasonably substantial period of time in the recent regular course of their business.

b. Representing, directly or by implication, orally or in writing, that by purchasing any of respondents' products, merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and some other reference price or identical products, merchandise or services in the trade area where such representation is made unless the nature of the reference price is explicitly identified and respondents have a reasonable basis to substantiate the reference price.

c. Representing, directly or by implication, orally or in writing, that by purchasing any of respondents' products, merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable products, merchandise or services, unless substantial sales of products, merchandise or services of like grade and quality are being made in the trade area where such representation is made at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in said trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with products, merchandise or services of like grade and quality.

10. Failing to maintain and produce for inspection or copying on demand by the Federal Trade Commission or its representatives, for a period of one (1) year from the date of the representation, adequate records:

a. Which disclose the facts upon which any savings claims, sales claims or other similar representations as set forth in Paragraphs 7, 8 and 9 of this order are based; and

b. From which the validity of any savings claims, sales claims and similar representations can be determined.

11. Using any sales or advertising plan in which the purchase of an advertised "special" is dependent upon the purchase of another item, unless:

a. The terms and conditions of the offer are clearly and adequately disclosed in the advertisement; and

b. The recent regular selling price of the item which must be purchased is clearly and accurately disclosed in the advertisement (if advertised) and at the point of sale.

12. Misrepresenting, directly or by implication, orally or in writing, that respondents are wholesalers, sell at wholesale prices, or misrepresenting in any manner the nature, status, connections or scope of respondents' business.

13. Using or providing to salesmen or others materials containing false and misleading information, such as repair and cost comparison statistics, pertaining to the sale of service contracts for continuing maintenance and repair of purchased household appliances.

14. Failing to conspicuously post in the selling areas of each retail sales outlet the following notice:

NOTICE

THIS COMPANY'S POLICY IS TO SELL WHAT IT ADVERTISES. SHOULD YOU ENCOUNTER ANY DIFFICULTY IN PURCHASING AN ADVERTISED ITEM, CALL (place here the telephone number of the local manager or other appropriate and correct telephone numbers).

15. Failing to maintain and produce for inspection and copying on demand by the Federal Trade Commission or its representatives, for a period of one (1) year from the date of communication, adequate records to disclose facts pertaining to the receipt, handling and disposition of each communication from a customer, oral or written, concerning difficulty in purchasing an advertised item.

16. Failing to 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 for the purpose of obtaining leads for the sale of household appliances or utilized in the advertising, promotion or sale of household appliances and other merchandise.

It is further ordered. That the record keeping provisions of this order (Paragraphs 6, 10 and 16) do not pertain to any corporation or partnership not controlled, directly or indirectly, by any respondent.

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

It is further ordered. That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten years from

the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under 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.

IN THE MATTER OF
GENESCO INCORPORATED

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

Docket 9019. Complaint, March 11, 1975 — Decision, May 17, 1977

This order, among other things, requires a Nashville, Tenn., operator of a retail clothing chain to cease writing off credit balances; failing to furnish statements advising customers of credit balances and their right to request and receive refunds. The order further requires the firm to refund monies due customers from January 1, 1972 to date and maintain prescribed information for a period of three years.

Appearances

For the Commission: *Alan D. Reffkin, Justin Dingfelder and John F. LeFevre.*

For the respondent: *Sanford M. Litvack, Kenneth E. Newman and Melanie S. Cutler, Donovan, Leisure, Newton & Irvine, New York City.*

COMPLAINT

[1] 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 Genesco Incorporated, a corporation, has 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 Genesco Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee with its principal office and place of business located at 111 7th Ave. North, Nashville, Tennessee. Respondent Genesco Incorporated formulates, controls and directs the policies, acts and practices, including those hereinafter set forth, of its retail apparel and footwear divisions, including its division, Bonwit Teller.

Bonwit Teller is a division of Genesco Incorporated. Its principal office and place of business is located at 56th St. and Fifth Ave., New York, New York.

PAR. 2. Respondent Genesco Incorporated, through its operating division, Bonwit Teller, operates a number of retail specialty clothing

stores in a number of states. Respondent also operates numerous other retail divisions for the retail sale of shoes and wearing apparel.

PAR. 3. Respondent sells and distributes merchandise in commerce by operating and controlling numerous retail specialty apparel and footwear stores in a number of states and by causing merchandise to be shipped from its warehouses and from the places of business of its various suppliers to its warehouses and retail specialty apparel [2] and footwear stores for distribution to and purchase by the general public located in states other than those from which such shipments originate. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in merchandise and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of its aforesaid business, respondent permits customers of many of its retail divisions, including its Bonwit Teller division, who qualify for credit to charge purchases. On occasion a customer's charge account balance reflects a credit on the customer's account which represents an amount of money owed to the customer by respondent, rather than an amount of money owed to respondent by the customer. This credit balance is the result of, among other things, overpayments by the customer or credits for returned merchandise.

PAR. 5. Typical and illustrative of respondent's practices in the handling of customer accounts are the following: Respondent customarily provides to each customer of Bonwit Teller having a charge account credit balance a monthly statement setting forth the amount of the credit balance. This statement is usually mailed at the end of the billing cycle during which the credit balance is created and at the end of each subsequent billing cycle during which the credit balance has not been cleared from the customer's account and a transaction on the customer's account occurs. No such statement is provided for any billing cycle during which the customer transacts no business on his charge account.

If a customer with a credit balance on his charge account does not specifically request that respondent pay him the amount of his credit balance but purchases merchandise or services on his charge account, respondent for a limited time only applies the amount of the credit balance to reduce or eliminate the customer's obligation created by the purchase of merchandise or services.

If the customer neither requests a refund in cash of the amount of the credit balance nor makes a purchase within a period of time allowed by respondent for activity to occur on the customer's account,

respondent, through bookkeeping entries, clears the amount of the credit balance from the customer's charge account. No cash payment is made to the customer at the time of the clearing of his credit balance from his charge account. Subsequent [3] periodic statements are not mailed until a later purchase is made. The outstanding credit balance that was previously reflected on a periodic billing statement is not applied to any purchase occurring after the credit balance has been cleared from the customer's account.

At no time is the customer informed of his right to request and receive a cash refund nor does respondent voluntarily refund cash representing outstanding credit balances without a specific customer request. Respondent has through such acts and practices eliminated substantial dollar amounts of credit balances as aforesaid from customer accounts in a substantial number of instances.

PAR. 6. By failing to notify customers with charge account credit balances that they have the right to request and receive cash payment of the amounts of their credit balances; by failing to furnish customers with statements reflecting the amount of their credit balances; by deleting credit balances from customers' accounts without refunding such amounts and by providing billing statements for subsequent purchases which do not reflect such credit balances, respondent has caused a substantial number of its charge account customers to be deprived of substantial sums of money rightfully theirs. Therefore, the acts and practices described in Paragraph Five above were and are unfair.

PAR. 7. The acts and practices of respondent set forth in Paragraphs Five and Six above were and are to the prejudice and injury of the public and constitute unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE
LAW JUDGE

DECEMBER 20, 1976

PRELIMINARY STATEMENT

[1] On March 11, 1975, the Commission issued its complaint in this matter charging that respondent Genesco Incorporated (hereinafter "Genesco"), through unfair acts and practices in connection with the handling of credit balances on charge accounts of its retail divisions' customers, has violated Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45) (Complaint, ¶ 7).

Specifically, the complaint alleges that Genesco formulates, con-

trols and directs the policies, acts and practices of its retail apparel and footwear divisions [2] (Complaint, ¶ 1). The complaint further alleges that, through such divisions, respondent has caused a substantial number of its retail charge account customers to be deprived of substantial sums of money rightfully theirs by:

(1) failing to notify customers with charge account balances that they have the right to request and receive cash payment of the amounts of their credit balances;

(2) failing to furnish customers with statements reflecting the amount of their credit balances for billing cycles during which no business is transacted on their charge accounts;

(3) deleting credit balances from customers' accounts after a limited time of inactivity without refunding such amounts; and

(4) providing billing statements for purchases made subsequent to such deletions which do not reflect such credit balances (Complaint, ¶¶ 5 and 6).

On May 14, 1975, in response to Genesco's Motion for a More Definite Statement, complaint counsel clarified the scope of the complaint by: (1) specifying that the time period to which the acts and practices alleged in the complaint relate is approximately January 1, 1972 to the present, and (2) limiting the alleged violative acts and practices to those charge account plans administered directly by Genesco or its divisions (Answer to Motion for a More Definite Statement, p. 1).

Thereafter, on July 14, 1975, respondent answered the complaint, denying the substantive allegations and asserting as affirmative defenses that the complaint failed to state a claim upon which relief could be granted, did not set forth facts which, if proved, would constitute a violation of the Federal Trade Commission Act, that the complaint and proceedings commenced thereby were not in the public interest, and that the issues presented by the complaint and this proceeding were moot.

Prehearing conferences were held on November 12, 1975, January 8, 1976, and May 13, 1976. At the November 12th and May 13th proceedings, deposition testimony was given by Mr. Larry B. Shelton, Vice Chairman and Chief Administrative [3] Officer of Genesco. Stipulations of fact (CX 89A-H) were entered into on July 2, 1976.

Hearings on complaint counsel's case-in-chief were held in Washington, D.C., on July 12-15 and July 22, 1976. On July 22, 1976, respondent commenced defense hearings which were held through July 23, 1976. Rebuttal hearings were held on August 4th and 18th, 1976. The record was closed for the reception of evidence by order dated August 23, 1976.

Complaint counsel called 9 witnesses during their case-in-chief and the stipulated testimony of a tenth witness was read into the record. Nine of complaint counsel's direct witnesses testified as to customer transactions with three Genesco divisions — Bonwit Teller (5 witnesses), Henri Bendel (2 witnesses), and Roos/Atkins (2 witnesses). The tenth direct witness called by complaint counsel was a staff accountant of the Federal Trade Commission. During rebuttal, complaint counsel called three additional witnesses, all Assistant General Credit Managers of respondent's competitors.

Respondent called four witnesses during defense hearings — an officer of Genesco, an officer of the Bonwit Teller division, the Manager of Customer Service and Bill Adjustment of the Bonwit Teller division and the Director of Accounting of the General Shoe Division of Genesco.

There were eight days of formal hearings and 142 exhibits, many multi-paged, received in evidence during the hearings.

Proposed findings of fact and supporting memoranda were filed by complaint counsel on October 6, 1976, and by respondent by October 7, 1976. Reply briefs were filed by complaint counsel on October 21, 1976, and by respondent on October 22, 1976.

This proceeding is before the undersigned upon the complaint, answer, testimony and other evidence of record, proposed findings of fact, conclusions and supporting memoranda filed by the parties. These submissions have been given careful consideration and, to the extent not adopted by this Initial Decision in the form proposed or in substance, are rejected as not supported by the record or as immaterial. Any motions not heretofore or herein [4] specifically ruled upon, either directly or by the necessary effect of the conclusions in this Initial Decision, are hereby denied. The findings of fact made herein are based on a review of the entire record and upon the demeanor of the witnesses who gave testimony in this proceeding.

The findings of fact made herein include references to the principal supporting evidentiary items in the record. Such references are intended to serve as convenient guides to the testimony and exhibits supporting the findings of fact, but do not necessarily represent complete summaries of the evidence considered in arriving at such findings.

FINDINGS OF FACT

I. IDENTITY AND BUSINESS OF RESPONDENT

1. Genesco is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its

principal office and place of business at 111 - 7th Ave., North, Nashville, Tennessee (Answer, ¶ 1). In addition to the manufacture of footwear, apparel, and materials and components thereof, Genesco sells and distributes merchandise in commerce and, through its divisions, operates retail specialty apparel and footwear stores in a number of states (Answer, ¶ 3; CX 1E).

2. During 1972 to 1974, Genesco was "engaged in commerce", as defined in the Federal Trade Commission Act (CX 89A).

3. Sales and earnings by Genesco's retail operations for the years 1972 through 1974 are reflected in the following chart:

	<i>NET SALES</i>	<i>PRETAX EARNINGS</i>
1972	\$429,445,000	\$9,102,000
1973	\$438,488,000	\$12,458,000
1974	\$441,319,000	\$11,113,000

[5] Genesco's retail operations in 1974 accounted for 30.9 percent of net sales and 27.5 percent of pretax earnings (CX 3A¹).

4. During the period 1972 to 1974, eighteen (18) divisions of Genesco maintained charge account plans whereby customers who qualified were permitted to charge their purchases (CX 89B; Answer, ¶ 4). These divisions were Baron's, Bonwit Teller ("Bonwit"), Burkhardt-Davidson's, Burkhardt's, Gidding-Jenny, Gilbert's, Graves-Cox, Hall-Brown, Henri Bendel ("Bendel"), I. Miller, Interstate Shoe ("Interstate"), L. Strauss, McFarlin's, Plymouth, R.A.M., Roos/Atkins ("Roos"), Tate-Brown, and Valmart. Two of these divisions, I. Miller and L. Strauss, discontinued their credit plans during 1974 (CX 89B, C). Charge account plans within the scope of the complaint encompass retail consumer open end credit or other retail consumer charge accounts, including, but not necessarily limited to, thirty (30) day charge accounts, created incident to the business of selling consumer merchandise and services at retail (Complaint, Notice Order; Complaint Counsel's Proposed Finding 20).

5. The total number of customer charge accounts, by divisions, believed to have been in effect during 1972-1974 were: [6]

Year

¹ These percentage figures are in relation to respondent's continuing business operations only. Such business falls into five major areas of operations: retailing, footwear men's apparel, women's apparel, and international operations (CX 2D, 3A).

	1972	1973	1974
Baron's	27,000	27,878	29,471
Bonwit Teller	1,037,931	1,107,104	1,154,236
Burkhardt-			
Davidson's	9,320	8,234	9,351
Burkhardt's	26,344	25,414	24,875
Gidding-Jenny*	40,000	40,000	35,000
Gilbert's	25,000*	19,652	28,316
Graves-Cox*	20,000	20,000	20,000
Hall-Brown*	12,000*	12,000*	16,748
Henri Bendel*	33,000	33,000	33,000
I. Miller*	68,000	64,000	credit plan discontinued
Interstate Shoe*	35,000	35,000	30,000
L. Strauss	32,737	35,503	credit plan discontinued
McFarlin's*	35,000	35,000	41,500
Plymouth*	200,000	200,000	130,000
R.A.M.*	43,500	38,390	44,469
Roos/Atkins	406,690	375,550	358,941
Tate-Brown*	16,300	16,300	16,300
Valmart*	2,000	2,000	1,500
Total	2,069,822	2,095,025	1,973,707

* Numbers indicated are approximations.

(CX 89B, C.)

6. At all times relevant to this action, Genesco had the authority to formulate, control and direct the policies, acts and practices regarding the handling of credit balances of its retail divisions (CX 89A; Respondent's Post-Trial Memorandum, fn., p. 10).

II. CREATION AND HANDLING OF CREDIT BALANCES

7. The term "credit balance" means an amount reflected as owing to a customer in connection with a retail consumer charge account of the type covered by the complaint. A credit balance can be created by, among other things, a [7] return of merchandise or an overpayment (Answer, ¶ 4; CX 89A).¹

8. On occasion, the balance on customer charge accounts administered by Genesco's retail divisions reflected credit balances which represented an amount of money owed by respondent to the customer (Answer, ¶ 4; CX 89D, E, F). Prior to 1974, the method of handling

¹ An invalid credit balance may also be created by double crediting of a payment or other accounting errors. Such invalid credit balances are not within the scope of acts and practices challenged in the complaint.

these credit balances was left to the sole discretion of each division's local management (CX 89D).²

9. From 1972 to 1974, charge customers were notified of the existence of a credit balance by a billing statement sent by respondent's retail divisions at the end of the billing period in which the credit balance was created and for each subsequent billing period in which there was activity on the account (CX 89F-G). In some divisions, *e.g.*, Interstate, billing statements were sent on accounts in which a credit balance existed regardless of whether or not there had been activity on the account (CX 89G).

10. Billing statements used by respondent's retail divisions during the 1972 calendar year indicated the existence of a credit balance by placing a dash (-) (CX 9, 88C) or the letters "CR" (CX 4A, 5A, 7A, 11A, 13, 76A) immediately to the right of the figure appearing in the "Balance," "New Balance," "Present Balance" or "Now Due" column of the statement. On some 1972 statements, this was the sole indication of the existence of a credit balance (CX 4A, 7A, 11A, 88C). Other 1972 statements contained [8] the additional notation "CREDIT BALANCE" (CX 5A); "DO NOT PAY CREDIT BALANCE DUE YOU" (CX 9); "DO NOT PAY THIS BILL. THE FINAL RED FIGURE indicates a credit balance, against which future purchases may be charged" (CX 13);³ or statements of similar import (CX 76A).

11. Billing statements used by respondent's retail divisions during the 1973 calendar year indicated the existence of a credit balance by placing a dash (-) (CX 12A, 31D) or the letters "CR" (CX 7B, 11B, 38B, 78A) immediately to the right of the figure appearing in the "New Balance" or "Now Due" column of the statement. On some 1973 statements, this was the sole indication of the existence of a credit balance (CX 4B, 7B, 12A, 38B, 78A). Other 1973 statements contained the additional notation "THIS IS A CREDIT BALANCE PLEASE DO NOT PAY" (CX 11B) or "YOU HAVE A CREDIT BALANCE" (CX 31D).

12. Billing statements used by respondent's retail divisions during the 1974 calendar year indicated the existence of a credit balance by placing a dash (-) (CX 4C, 10, 12B, 30A, 34, 36A; RX 2A, 3A, 6A), asterisk (*) (CX 8) or the letters "CR" (CX 6A, 7C, 11C, 66A, 67) immediately to the right of the figure appearing in the "Balance," "New Balance," "Now Due" or "Balance Due" column of the

² Evidence was not received as to the nuances of each division's credit balance practices. However, it is not a prerequisite to the issuance of a cease and desist order that all divisions of respondent be in violation of Section 5. For purposes of this proceeding, the evidence is sufficient if a finding of violation can be made based on the acts and practices of some of Genesco's retail divisions.

³ Due to the method used in reproducing exhibits received in evidence, it is impossible to discern whether the existence of a credit balance was also indicated by red, or a similarly distinct, color of ink. The reference in CX 13 would indicate that this method of indicating a credit balance was used by some divisions but the prevalence of this practice cannot be determined from the exhibits. (See also CX 66A.)

statement. On some 1974 statements, this was the sole indication of the existence of a credit balance (CX 6A, 7C, 12B, 66A, 67). Other 1974 statements contained the additional notation "YOU HAVE A CREDIT BALANCE" (CX 4C, 30A, 34, 36A; RX 2A, 3A, 6A) or "CREDIT BALANCE DUE YOU * * *" (CX 8).

13. Billing statements similar to those described in Findings 10-12 were used by respondent's retail divisions during the 1975 calendar year (CX 5B, 6C, 35A, 37A, 39, 40B, 41A).

[9] 14. A few billing statements used in late 1974 and 1975, which were received into evidence, apparently reflect the mid-1974 change in corporate policy regarding the handling of credit balances (see *infra*, Finding 37). CX 6B, dated October 20, 1974, contains the notation "THIS CREDIT BALANCE WILL BE REFUNDED TO YOU AT YOUR REQUEST." Some billing statements used during November of 1974 contained the following notations regarding credit balances:

THIS IS A CREDIT BALANCE PLEASE DO NOT PAY IF YOU WISH A
REFUND OF THIS AMOUNT, PLEASE ADVISE. THANK YOU

[CX 11C.]

YOU MAY REQUEST A REFUND OF THE NEW BALANCE BELOW AT
ANYTIME OR YOU MAY LEAVE THE BALANCE ON YOUR ACCOUNT
TO REDUCE THE AMOUNT DUE ON FUTURE PURCHASES

[CX 10.]

Some billing statements used in 1975 contained the following notation:

* * NO PAYMENT IS REQUIRED * *

YOUR NEW BALANCE IS MONEY WE OWE YOU. YOU MAY
REQUEST A REFUND BY RETURNING THIS FORM TO OUR STORE
IN PERSON OR BY MAIL. IF YOU DO NOT CHARGE AGAINST THIS
CREDIT OR REQUEST A REFUND, A CHECK WILL BE MAILED TO
YOU AFTER 6 MONTHS. [CX 4E; RX 33.]

(See also, CX 6D and 7D which notify customer that existing credit balance will be refunded upon request.)

15. Prior to the 1974 corporate policy change, there was no policy or practice to notify charge account customers formally of their right to request and receive cash refunds of an outstanding credit balance (CX 89G).

16. During the period prior to Genesco's adoption of a centralized corporate policy for handling credit balances, certain divisions routinely transferred credit [10] balances from customer accounts where there had been no activity on the account for varying periods

Initial Decision

89 F.T.C.

of time. Activity on the account, as used herein, includes, among other things, purchases, returns or payments (CX 89D).

17. The evidence offered by complaint counsel at trial focused on the pre-1974 practices of four Genesco divisions — Bonwit, Bendel, Interstate and Roos. The periods of time of inactivity during which credit balances were retained on these divisions' individual customer charge accounts prior to transfer were as follows:

	<i>Minimum</i>	<i>Maximum</i>
Bonwit	6 Months	17 Months
Bendel	18 Months	20 Months
Interstate	6 Months	
Roos	6 Months	11 Months

[CX 89F, G.]

18. Although the individual divisions established minimum periods of inactivity prior to deletion of credit balances, witnesses called by complaint counsel testified that the Bendel division during pre-1974 failed to follow its official policy in this regard requiring a minimum of 18 months inactivity and deleted credit balances in periods of two to five months (Sixsmith, Tr. 207-216; Steiner, Tr. 371-384; Lewis, Tr. 560-63). Respondent admits that an employee of Bendel failed to follow company policy by prematurely transferring credit balances (see Finding 41, *infra*), but asserts that such isolated deviations do not negate the existence of the stipulated company policy.

19. The total dollar amounts of customer credit balances (and number of accounts affected, where available) transferred from customer accounts by Genesco divisions during the periods shown were: [11]

Dollar Amounts and No. of Accounts
(in parentheses where available) per year

<i>Division</i>	<i>1972</i>	<i>1973</i>	<i>1974</i>	<i>1975</i> <i>(to 3/31/75)</i>
Baron's	\$ 0 (0)	\$ 0 (0)	\$ 4,038.78 (134)	\$ 0 (0)
Bonwit Teller	158,939.19	151,501.20	103,198.42	0
Burkhardt-Davidson's	0 (0)	0 (0)	1,340.19 (198)	0 (0)
Burkhardt's	3,520.32	86	364.14	0
Gidding-Jenny	0 (0)	0 (0)	3,113.17 (130)	0 (0)
Gilbert's	0 (0)	747.19 (271)	6,011.36 (698)	76.29 (30)
Graves-Cox	0	0	0	0

Initial Decision

	(0)	(0)	(0)	(0)
Hall-Brown	\$ N/A	\$ N/A	\$ 2,327.74	\$ 0
			(183)	
Henri Bendel	35,226.31	32,896.09	26,413.54	182.29
	(1,059)	(1,189)	(871)	(3)
I. Miller	0	0	0	0
	(0)	(0)	(0)	(0)
Interstate Shoe	18,253.17	12,381.73	2,824.66	0
	(3,968)	(2,588)	(710)	(0)
L. Strauss	0	0	24,760.75	0
	(0)	(0)	(1,120)	(0)
McFarlin's	3,722.91	3,614.02	5,574.91	88.51
Plymouth	651.00	51,520.20	8,739.47	54.47
R.A.M.	N/A	N/A	6,450.82	0
Roos/Atkins	48,145.46	54,429.40	48,927.62	0
	(2,982)	(3,672)	(2,254)	(0)
Tate-Brown	0	0	2,722.00	0
Valmart	9.45	65.69	36.95	18.15
	(1)	(64)	(18)	(15)
		(CX 89D, E.)		

[12] The amounts set forth above include credit balances which were valid as well as invalid. Some of these credit balances set forth above were subsequently reinstated on the customer's account or refunded to the customer (CX 89F).

20. When a credit balance was transferred from charge accounts, an accounting entry was made debiting the customer's account (Shelton, Tr. 41-42; Rowe, Tr. 588; Owen, Tr. 686; CX 15A-B, 16A-K, 17A-Z(3), 18A-U, 20A-U, 22A-E, 23, 24, 25A-I, 26A-F, 28A-K, 29A-Z(102)). As the chart reproduced in Finding 19 demonstrates, the total debits made to customer accounts from 1972-1974 were substantial, *i.e.*:

	Total Amount Debited by Genesco Retail Divisions*
1972	268,467.81
1973	308,017.65
1974	246,844.52
	<hr/>
	823,329.98

21. Prior to Genesco's adoption in mid-1974 of a corporate policy regarding the handling of credit balances, there was no policy or practice in any of the divisions to notify charge account customers that credit balances routinely would be transferred out of accounts in which no activity occurred during specified periods of time (CX 89G).

* Debits included some invalid credits on customer accounts as well as amounts subsequently reinstated on an account or refunded to customers.

22. Prior to Genesco's adoption in mid-1974 of a corporate policy regarding the handling of credit balances, credit balances which were transferred were not thereafter automatically reinstated on the customer's account, offset against future purchases or refunded without a request from the customer (CX 89G). [13]

III. REFUND POLICY

23. In general, prior to the 1974 corporate policy, requests for refunds or for reinstatement of valid credit balances, or that such balances be applied against future purchases, were to be honored (CX 89G).

24. As evidenced by the billing statements used by respondent's retail divisions, charge account customers were not explicitly advised of their right to make such requests (see Findings 10-12 and CX 89G).

25. Although the existence of the refund policy set forth in Finding 23 was not challenged, three charge customers of the Bonwit division called by complaint counsel testified they had experienced difficulties in obtaining reinstatement of credit balances transferred from their accounts. These customers testified that two to four months elapsed between their initial requests and reinstatement of their credit balances and that a series of written and verbal requests were required to effectuate such reinstatement (Stauffer, Tr. 278-317; Goldberg, Tr. 342-46; Taub, Tr. 527-539).

26. Under Bonwit's current system for handling customer requests for refund of credit balances, approximately 90 percent of these requests are processed within two days and the remainder are processed within five days. If no request is received within six months, a refund is automatically sent to the charge customer (Lempfert, Tr. 656). An aging system has been established within Bonwit's Customer Service and Bill Adjustment Department so that, after one week has elapsed, the handling of any inquiry or complaint, especially dealing with a credit balance, is given immediate priority (Lempfert, Tr. 656-57).

IV. ACCOUNTING PROCEDURE UTILIZED FOR TRANSFER OF CREDIT BALANCES

27. As noted above, in order to effectuate a transfer of a credit balance, a customer's charge account would be debited and a corresponding credit would be entered in a corporate account such as the "Due Customers" or "Reserve [14] for Bad Debts" accounts (Shelton, Tr. 41-42; Rowe, Tr. 588; Owen, Tr. 675-76, 686). The actual effect, if any, of these bookkeeping entries on divisional or corporate income cannot be conclusively determined from the expert testimony

received. It is unnecessary to demonstrate a positive effect on income, however, since the issue in this proceeding is the effect of such transfers on consumers, rather than on Genesco's corporate income.

28. Ronald Rowe, a Commission staff accountant, testified that in his opinion, based on generally accepted accounting principles which are the standards of the accounting profession, transferring credit balances to a "reserve for bad debts" account would eventually be reflected in a division's income as of the close of that division's accounting period (Tr. 587-88, 591). Mr. Rowe further testified that closing entries would have to be made for such effect to occur, but stated that corporate auditors would normally require that such entries be made, unless the amounts under consideration were immaterial, to avoid accumulating a larger offset against accounts receivable than needed (Tr. 595-96, 723-25).

According to Mr. Rowe, if a transfer was made to a "due customers" account rather than a "reserve," no effect on the profit and loss statement of the division would occur (Tr. 599-600). Such transfer would, however, be an unusual bookkeeping entry since both affected entries are liability accounts (Tr. 600).

Mr. Rowe's testimony was based entirely on his knowledge of accounting principles and the prior testimony of Mr. Shelton (Tr. 591).

29. Larry Shelton, Vice Chairman and Chief Administrative Officer of Genesco, testified that, prior to 1974, the accounting entries made by retail divisions to transfer credit balances from customer accounts varied, but that such credits would generally have been transferred to a balance sheet account which would not have had any impact on the individual division's income or profit and loss statement (Tr. 135-36, 747). The balance sheet account used would have been a suspense account or the "reserve for bad debts" account (Tr. 135-36). Transfers to suspense accounts would, in all likelihood, eventually end up in the "reserve for bad debt" accounts. Mr. Shelton further [15] testified that at some point in a company's history an adjustment would be made to transfer excess amounts out of "reserve for bad debts" accounts (Tr. 139-140). To Mr. Shelton's knowledge, credit balance transfers during 1972-1974 were never put into a division's income (Tr. 141).

30. Robert Green, the Senior Vice President and Chief Financial Officer of Bonwit, testified that, during 1972 to 1974, Bonwit transferred credit balances from customer accounts to a "reserve for bad debts" account. Amounts so transferred remained in the reserve account and were never used in any way which would affect Bonwit's income (Tr. 696-97). It is Mr. Green's understanding, based on a

review of Bonwit's accounting practices, that no adjustment was made in Bonwit's "reserve" due to the accumulation of credit balance transfers (Tr. 706).

31. Ted Owen, the executive in charge of Interstate's accounting matters, testified that, prior to mid-1974, credit balances on Interstate's customer charge accounts were transferred to a "Due Customer" account (Tr. 675-77), 685-86). Such transfers would have had no effect on Interstate's income, according to Mr. Owen (Tr. 682).

In discussing the "reserve for bad debts" account used by the Bonwit division, Mr. Owen testified that, if transferred credit balances were not considered in arriving at the required reserve balance, such transfers would not affect company income (Tr. 677-78). Mr. Owen stated that, based on generally accepted accounting principles, there is no limitation on the length of time transfers can be retained in the reserve account (Tr. 677-79).

V. ADOPTION OF CORPORATE POLICY FOR HANDLING CREDIT BALANCES

32. A major consolidation and restructuring of Genesco was undertaken in March 1973 (CX 2B). According to the 1973 Annual Report, "new internal controls designed to strengthen the financial reporting of decentralized operations" were instituted in February 1973. Elaborating on these changes, Mr. F. M. Jarman, then Chairman and Chief Executive Officer of Genesco, stated:

[16] New procedures and reporting relationships have been established in both accounting and auditing. One significant change was to make operating company controllers accountable to the chief accounting officer of the corporation. This gives us greater centralized control for a more effective performance reporting system. At the same time, the internal audit department is being significantly expanded to provide thorough follow-up on the accuracy of operating company financial reporting and compliance with central accounting policies. [CX 2C.]

Genesco's 1974 Annual Report under the heading "New Organization" advised stockholders that "the installation of a new organization structure designed to more clearly establish responsibility and accountability," which had previously been announced, was "completely implemented" and "working smoothly at every level" (CX 3C).

33. Mr. Shelton, Chief Administrative Officer of Genesco, testified that in 1973, as part of this reorganization effort, he instructed Mr. White, Genesco's Chief Accounting Officer, to develop a structure that would make the divisional accountants' reporting more manageable. Mr. White was also assigned the task, once control in the field had been developed, of meeting with Genesco's internal auditors and

thereafter issuing, subject to Mr. Shelton's approval, policy directives to bring about a degree of standardization in accounting practices used by the divisions (Shelton, Tr. 737-39).

34. CX 62A-B, a letter dated April 11, 1974, from an Assistant Director for Special Statutes, Bureau of Consumer Protection, addressed to the former President of Bonwit, a division of Genesco, was received to establish the date of initial contact by the Federal Trade Commission with Genesco regarding the violation alleged in this proceeding (Tr. 480). This letter states, in part:

It has come to our attention that certain retail stores * * * as a matter of policy, delete unused credit balances * * * from open end credit accounts or other charge accounts * * * when the account remains dormant for a period of time.

* * * * *

[17] We are interested in the nature and extent of this practice. Therefore, we request that you furnish to this office details of how your business handles an unused account which reflects a credit balance over a period of time.

Thirteen items or areas of information requested are thereafter specified and Bonwit was requested to furnish such information within 30 days from receipt of the Commission's request.

35. Respondent, citing the Memoranda Initiating Investigation dated June 28, 1974 in Commission files Nos. 742 3313 (Associated Dry Goods, et. al.); 742 3314 (Genesco Inc.); 742 3315 (Gimble Bros., Inc.); 742 3317 (McRory Corp., et al.); 742 3318 (Carter Hawley Hale Stores, Inc., et al.), maintains that no investigation of credit balance practices was commenced until some time after April 1974. A Memorandum Initiating Investigation is filed only after "it has been determined by preliminary investigation or otherwise, that a detailed investigation is needed or that complaint should issue, or an attempt should be made to obtain a consent order * * *" (FTC Operating Manual, Chapter 3.1). The June 28th date cited by respondent, therefore, is not relevant to reaching a determination of when respondent was apprised of the Commission's investigation of the handling of credit balances by retail stores.

36. Mr. Shelton testified that, in the late spring of 1974, Genesco's Chief Accounting Officer proposed that a corporate policy regarding the handling of credit balances by all respondent's retail operating divisions be adopted (Tr. 740). Respondent maintains this proposal was a part of the reorganization effort discussed in Finding 32 and totally unrelated to the Commission's letter of April 11, 1974.

37. After consultation with its internal auditors and the legal department, in approximately the summer of 1974, Genesco adopted

a corporate-wide policy for handling credit balances by its retail divisions (CX 89G; Shelton, Tr. 740-41). This policy provides:

Each charge customer having a credit balance of One Dollar (\$1) or more will, so long as it remains outstanding, receive a statement showing [18] credit balance for each of the six (6) immediately succeeding billing cycles. Each such statement will also notify the customer that he may request and receive a refund at anytime. If no request is made and the credit balance remains at the time the next (7th) statement would normally go out, then a check for the balance should be forwarded to the customer at that time. The check should reflect the fact that it represents payment of the credit balance or a notice should be enclosed with the check to that effect. If the size of the credit balance does not warrant six notices, the refund may be made sooner.

[RX 11.]

38. As is apparent from the above cited summary of Genesco's corporate policy for handling credit balances, no provision was or has been made to notify retail customers whose credit balances were transferred from their charge accounts prior to full implementation of the current policy of their continuing right to request and receive a full refund or reinstatement of such credit balances (RX 11; Finding 21).

VI. COMPLIANCE WITH CURRENT POLICY

39. Compliance on the part of all Genesco retailing divisions with the corporate policy for handling credit balances adopted in mid-1974 was and is mandatory (CX 89G).

40. In order to insure that Genesco's current policy for handling credit balances is fully implemented by all retail divisions, internal auditors, during their auditing of individual companies, check for compliance with this policy. Any non-compliance with centrally-directed accounting procedures, such as the handling of credit balances, would be included in their audit report. To date, no deviations from this particular policy have been reported (Shelton, Tr. 749-750).

41. During the investigation incident to this proceeding, respondent became aware that an employee of the Bendel division had violated the corporate policy adopted in mid-1974 by transferring credit balances [19] from customer accounts, and had also ignored Bendel's prior policy regarding the handling of such balances. When the failure to comply with the current policy was discovered, the unidentified employee was dismissed (Shelton, Tr. 745-46, 752-53).

42. Despite Genesco's adoption of an official corporate policy in mid-1974 requiring that statements sent to customers whose accounts show a credit balance bear a legend that such credit balance exists

and that the customer may request and receive a refund of such balance at any time, billing statements used by the Bonwit division from mid-1974 through March 1975 failed to notify charge customers with an existing credit balance of this right (CX 34, 35A, 37A, 39, 40B, 41; RX 3A, 6A). Some billing statements used by the Bendel, Plymouth, Gidding/Jenny and Interstate (Guarantee) divisions, after adoption of the current policy, also failed to notify charge customers of their right to request and receive refunds of existing credit balances (CX 5B, 6A, 6B, 6C, 7C, 11C).

VII. INDUSTRY PRACTICE

43. During and prior to the early 1970's, the practice of transferring customer credit balances out of inactive accounts was widespread in the retail industry. Letters received by the Federal Trade Commission from other members of the retail industry during the preliminary investigation of credit balance practices describe practices similar to Genesco's, which were followed by many members of the industry (CX 104; RX 14-23, 26-28). Complaints issued against other members of the retail industry, and consent agreements entered as a result thereof attest to the prevalence of such credit balance practices (CX 96-103). In addition, industry witnesses called during rebuttal testified that, prior to 1971 or 1972, similar credit balance practices were followed by the companies for which they worked (Pike, Tr. 815; Drew, Tr. 852, 854; *see also*, Green, Tr. 693, and Drew, Tr. 858-861).

[20] CONCLUSIONS

A. FACTUAL SUMMARY

The complaint charges Genesco, a Tennessee corporation, with unfair acts and practices in connection with its retail divisions' handling of credit balances existing in customer charge accounts. These practices, it is alleged, caused a substantial number of Genesco's charge account customers to be deprived of substantial sums of money rightfully theirs (Complaint, ¶¶ 5, 6). Genesco had the authority to establish and monitor the allegedly unfair acts and practices of its retail divisions throughout the relevant time period, although it did not choose to exercise this authority until mid-1974 (Findings 6, 36-37).

Genesco, in addition to its other corporate endeavors, operates retail specialty apparel and footwear stores in a number of states (Finding 1). As an adjunct to such retail operations, respondent's retail divisions permit qualifying customers to charge purchases on charge account plans maintained by Genesco (Finding 4).

Occasionally these charge accounts, through return of merchandise, overpayment, or other transactions, reflected credit balances which represented an amount of money owed by respondent to its customers (Finding 8). Some such credit balances resulted from accounting errors; however, the handling of these credit balances is not challenged in the complaint (Fn., Finding 7). Likewise, credit balances subsequently credited against customer purchases or refunded are not encompassed within the category of credit balances under consideration in this proceeding.

When a credit balance was created, billing statements reflecting such balance were sent to customers by some of Genesco's retail divisions only for the billing period during which the credit balance was created and for subsequent billing periods in which activity on the account occurred (Finding 9). However, other divisions also sent billing statements to customers whose accounts reflected a credit balance during billing periods in which no activity occurred.

[21] Various notations were made on billing statements used by Genesco's retail divisions to indicate the existence of a credit balance. These notations ranged from a cryptic dash (-) or "CR" next to the account balance figure to a stamped or printed legend notifying the customer that a credit balance existed (Findings 10-13).

Prior to mid-1974, all requests for the refund of credit balances were honored (Finding 23). However, all of the billing statements used by Genesco's retail divisions during 1972-1973, and many such statements used during 1974-1975, failed to advise customers of their right to request and receive a refund of their credit balances. Additionally, these statements failed to advise charge customers that, if they took no action, such credit balances ultimately would be transferred from their account without notification to, or authorization by, the customer (Findings 15, 21).

Commencing in late 1974, some billing statements used by Genesco's retail divisions informed customers that credit balances reflected on their accounts would be refunded upon request or that such balances could be left on their accounts to reduce the amount due on future purchases. A few billing statements received in evidence which were used by respondent during 1975 also advised retail charge customers that, after a prescribed time period (*e.g.*, 6 months), outstanding credit balances would be refunded automatically (Finding 14).

Prior to the adoption in mid-1974 of a corporate policy regarding the handling of credit balances, several of Genesco's retail divisions routinely transferred such balances from customer accounts after a set period of inactivity on the account of from 6 to 18 months

(Findings 16-17). During the period 1972-1974, a total of \$823,329.98 in credit balances was transferred from customer charge accounts (Finding 20). In order to accomplish transfer of a credit balance from a customer's charge account, bookkeeping entries were made by the retail divisions debiting the customer's account and crediting a corporate account with the amount of the credit balance (Finding 27). Once such transfer had been effectuated, no attempt was made to refund or reinstate such credit balances unless a specific request to do so was received from the customer (Finding 22).

[22] Variations in divisional handling of credit balances and deviations from established divisional policy occurred during the time period under consideration (Findings 17-18, 25). Such aberrational occurrences are not, however, of major significance in the context of the overall divisional practices challenged as unfair in the complaint. Also, the fact that all divisions did not transfer credit balances in the same manner or throughout the relevant time period does not preclude a determination that the handling of credit balances in the manner described by some retail divisions of Genesco constituted an unfair act or practice violative of Section 5 of the Federal Trade Commission Act.

In mid-1974, as part of a major consolidation and restructuring of Genesco, a corporate policy for the handling of credit balances of customer charge accounts for all retail divisions was adopted (Findings 36-37). This corporate policy was adopted subsequent to the receipt by Genesco of a letter from the Federal Trade Commission seeking information about the credit balance handling practices of Genesco's Bonwit division (Findings 32-37).

While the current corporate policy provides for automatic refund of all credit balances in excess of \$1.00, no provision was made at the time the policy was instituted to inform customers, whose credit balances in the past had been transferred, that, by making a request, they could still obtain full refunds or reinstatement of credit balances which had been transferred from their accounts (Findings 21, 37-38).

Although compliance with the mid-1974 corporate policy was made mandatory, evidence was received indicating that some retail divisions violated such policy during 1974 and 1975 (Findings 39-42). The mid-1974 policy ostensibly followed by all Genesco divisions is not, however, in issue in the instant proceeding. At most, the current method employed by Genesco in handling credit balances and the degree of compliance therewith bear on the question of what remedy is necessary to effectively eradicate any violations found to exist.

Other members of the retail industry followed practices in respect to charge customers' credit balances similar to the practices followed

by Genesco in the pre-1974 period (Finding 43). This fact, however, does not preclude a determination that Genesco's practices were unlawful. [23]

B. RESPONDENT'S CREDIT BALANCE ACTS AND PRACTICES WERE PROHIBITED BY SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

As a consequence of stipulations as to the credit balance practices followed by many of Genesco's retail divisions prior to 1974, and receipt into evidence of numerous billing statements used by respondent which demonstrate the form of notice provided charge customers with credit balances, no controlling factual issues are in dispute. Respondent has conceded that, in many of its retail divisions' normal course of dealing with charge customers, substantial sums of money in the form of credit balances were transferred from customers' accounts to corporate accounts without notice to or authorization by the customer.

Respondent does not dispute facts showing that its retail divisions failed to send charge customers with credit balances periodic billing statements apprising them of the existence of such balances, failed to inform such customers of their continuing right to request and receive a refund before or after transfer of a credit balance from their charge account had been effected, and failed to advise charge customers that credit balances, without notice, would be routinely transferred from charge accounts after periods of inactivity.

Given this factual consensus, the critical determination necessary to decide if a violation has occurred is whether respondent's conduct constitutes an unfair act or practice in commerce prohibited by Section 5 of the Federal Trade Commission Act. As has repeatedly been noted in judicial opinions addressing the question of "fairness," Congress intentionally refrained from explicitly delimiting the acts or practices prohibited, choosing instead to delegate to the Commission the power to "give definition and content to the term 'unfair practices.'" *Pfizer Inc.*, 81 F.T.C. 23, 60 (1972); see also, *Federal Trade Commission v. Standard Education Society*, 86 F.2d 692, 696 (2d Cir. 1936), *rev'd on other grounds*, 302 U.S. 112 (1937); *Federal Trade Commission v. Brown Shoe Co.*, 384 U.S. 316, 320-21 (1966).

[24] While the concept of fairness enunciated in Section 5 may be elusive, the Commission has enumerated the factors which should be considered in determining whether a practice not otherwise prohibited as deceptive or violative of antitrust laws is nonetheless unfair. These criteria were repeated in a footnote to the Supreme Court's

opinion in *Federal Trade Commission v. Sperry and Hutchinson Co.*, 405 U.S. 233, 244-245 (1972), as follows:

(1) whether the practices, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive or unscrupulous, (3) whether it causes substantial injury to consumers (or competitors or other businessmen). “Statement of Basis and Purposes of Trade Regulation Rule 408 [Unfair or Deceptive Advertising and Labelling of Cigarettes in Relation to the Health Hazards of Smoking].” 29 Fed. Reg. 8324, 8355 (1964).

Although initially some question as to the scope of Congress’ delegation existed, it is now clear that the Commission’s jurisdiction in dealing with unfair commercial practices is not limited to activities which violate the common law or other criminal or antitrust statutes. The Commission, in the exercise of its delegated authority under Section 5, may, in the public interest, prohibit as “unfair” acts or practices which have severe adverse effects on consumers despite their seemingly technical legality. *Spiegel, Inc. v. Federal Trade Commission*, [Trade Reg. Rep. ¶ 61,006, at 69,450 (1976-2 Trade Cases)]; *Federal Trade Commission v. Sperry and Hutchinson Co.*, *supra*, at 239; *All-State Industries of North Carolina*, 75 F.T.C. 465, 490-494 (1969), *aff’d*, 423 F.2d 423 (4th Cir. 1970), *cert denied*, 400 U.S. 828 (1970).

A recent Commission decision, *Beneficial Corp.*, CCH [1973-1976 Transfer Binder] Trade Reg. Rep. ¶ 20,959, at 20,820 [86 F.T.C. 119], *enforced in part and vacated and remanded as to scope of order*, No. 75-2102 (3rd Cir. Sept. 8, 1976), summarized the fairness issues properly within the scope of Section 5 as follows: [25]

There is no doubt at this point that the Commission may adapt the substance of Section 5 to changing forms of commercial unfairness, and is not limited to vicariously enforcing other law.
* * * [T]hose who engage in commercial conduct which is contrary to a generally recognized public value are violating the Federal Trade Commission Act, notwithstanding that no other specific statutory strictures apply.

See also, Federal Trade Commission v. R. F. Keppel & Bro., Inc., 291

U.S. 304, 313 (1934); *Federal Trade Commission v. Sperry and Hutchinson Co.*, *supra*; *Pfizer Inc.*, *supra*.

No attempt was made, either in the complaint or during adjudication, to bring respondent's credit balance practices within any specific common law or statutory prohibition. This, however, does not preclude a determination that Genesco's activities were unlawful. The Commission, in fulfilling its responsibility to develop a progressive and evolutionary definition of "unfairness" under Section 5, may hold that respondent's credit balance practices were "contrary to a generally recognized public value" resulting in substantial harm to consumers and were, therefore, unfair acts and practices within the prohibition of this Section.

Applying the broad standard set forth in *Sperry and Hutchinson Co.*, *supra*, in analyzing respondent's credit balance practices, the conclusion that such practices are unfair, and thus unlawful, is inevitable. To unilaterally deprive charge customers of credit balances due them without any prior or contemporaneous notice of respondent's transfer practices is abhorrent to all generally recognized concepts of marketplace fairness. The fact that such balances might subsequently be refunded upon request does not serve to purge this practice of its inherent unfairness since the likelihood that subsequent requests for refunds will be made is diminished, if not eliminated, by respondent's failure to send periodic notices of credit balances to charge customers and its failure to disclose their continuing right to request and receive refunds of such balances.

Absent a clear notification and understanding to the contrary, respondent's charge customers were entitled to expect that their credit balances would be retained [26] in their accounts to be offset against future purchases, or ultimately refunded to them. Respondent's practices of transferring out credit balances without notice preyed on the vulnerability of its charge customers. This omission of material facts not only makes respondent's credit balance practices palpably unfair, but also deceptive.

Respondent clearly has a general commercial duty to disclose to its charge customers all material facts relating to the handling of credit balances which may exist in their accounts. *Beneficial Corp.*, *supra*, at 20,821. The "general commercial duty to disclose material facts" noted in the *Beneficial* decision is not unique. By analogy, the rationale requiring full disclosure of material facts in advertising and contract cases also supports the conclusion that Genesco had an affirmative duty to fully disclose all aspects of its credit balance

practices to its charge customers. *Pfizer Inc., supra*, at 60-63; *All-State Industries of North Carolina, Inc., supra*, at 489-490.⁵

Official recognition of the importance of full disclosure of material facts in credit transactions was taken by Congress in its enactment in 1968 of the Consumer Credit Protection Act (Pub. Law 90-321, 90th Cong., May 29, 1968). Regulations promulgated under this Act and amended through October 28, 1975 (12 C.F.R. 226) have reiterated the necessity of such disclosure in credit transactions. The stated purpose of a part of these regulations is "to assist the customer to resolve credit billing disputes in a fair and timely manner, to regulate certain billing and credit card practices, and to strengthen the legal rights of consumers." (12 C.F.R. 226, 226.1; see also, Sections 226.6-226.7.)

[27] Respondent has advanced no persuasive commercial or other justification which would lessen its duty to fully inform charge customers of its credit balance practices. The fact that other members of the retail industry employed similar practices does not exonerate respondent of its failure to make full disclosure to its charge customers. *Peacock Buick, Inc.*, CCH [1973-1976 Transfer Binder] Trade Reg. Rep. ¶ 21,083, at fn. 12, p. 20,951 [86 F.T.C. 1532 at 1563]. Whether or not credit balance transfers had an immediate impact on respondent's income also does not, as respondent maintains, mitigate the unfairness inherent in the failure to disclose to charge customers Genesco's credit balance practices.

The final criteria cited by the Commission for consideration in determining whether a given trade practice is unfair — *i.e.*, substantial injury to consumers — is the unavoidable consequence of respondent's credit balance practices. Over three-quarters of a million dollars were transferred from charge customers' accounts by Genesco's retail divisions during 1972-1974. Although an unspecified portion of this amount could reflect credit balances which were never actually due the customer or which were subsequently refunded, the fact remains that a significant number of charge customers were deprived of substantial funds rightly theirs as a direct result of Genesco's credit balance practices.

Since respondent's credit balance practices were unfair, deceptive and caused substantial harm to consumers, it must be concluded that a violation of Section 5 of the Federal Trade Commission Act has occurred.

⁵ "The law appears to be working toward the ultimate conclusion that full disclosure of all material facts must be made whenever elementary fair conduct demands it." W. Prosser, *Law of Torts* 698 (4th Ed. 1971). See also, *Affiliated Ute Citizens of Utah, et al. v. United States*, 406 U.S. 128, 153-154 (1972).

C. RESPONDENT'S ADOPTION OF A CORPORATE POLICY FOR
HANDLING CREDIT BALANCES DOES NOT RENDER THIS
ADJUDICATION MOOT

Respondent, in asserting that this matter is moot, maintains that the corporate policy voluntarily adopted in mid-1974, mandating automatic refunds of credit balances after a prescribed period of inactivity and providing for monthly billing statements to charge customers with existing credit balances, comports fully with the [28] requirements of Section 5 of the Act and the major provisions of the proposed order. Respondent argues that, given this change in business policy, no legitimate purpose will be served by entering a cease and desist order.

In assessing the importance of respondent's discontinuance of the challenged credit balance practices, the voluntariness of such discontinuance must be determined. Commission decisions have repeatedly noted that:

It is well established * * * that discontinuance of an offending practice, particularly after initiation of governmental investigation, and in circumstances where resumption is possible, does not obviate the need for, or propriety of, an order. *Spiegel, Inc.*, CCH [1973-1976 Transfer Binder] Trade Reg. Rep. § 20,985, at 20,841 (FTC 1975).

See also, *Libby-Owens Ford Glass Co. v. Federal Trade Commission*, 352 F.2d 415, 418 (6th Cir. 1965); *Cotherman v. Federal Trade Commission*, 417 F.2d 587, 594-595 (5th Cir. 1969); *Coro, Inc. v. Federal Trade Commission*, 338 F.2d 149 (1st Cir. 1964), *Cert. denied*, 380 U.S. 954 (1965).

Reviewing the chronology of events leading up to respondent's adoption of its 1974 corporate policy, the most reasonable conclusion is that the Commission's initiation of an investigation of the handling of credit balance practices by respondent and other members of the retail industry was the precipitating factor in respondent's adoption of its current corporate policy.

Respondent points to the change in corporate management which commenced in March of 1973 and maintains that the eventual change in corporate policy with respect to the handling of customers' credit balances was part of the corporate reorganization initiated by this management. No evidence was received which indicates the degree of management changes which occurred in 1973. The testimony of Mr. Shelton, Genesco's Vice-Chairman and Chief Administrative Officer, [29] however, revealed that the management change was essentially a redistribution of corporate power to a segment of management already existing within the organizational structure. Although the

philosophy of this management group may have differed from the controlling management group it replaced, its impact on Genesco apparently had been felt prior to March 1973. The 1973 management change, arguably, was neither as extensive nor as radical as respondent's characterization of it implies. In this regard, it should be noted that no definite steps had been taken to reform the retail divisions' practices concerning the handling of credit balances until the late spring of 1974.

Genesco's current corporate policy concerning the handling of credit balances was first recommended to top management in the late spring of 1974 and officially adopted later that year. One of respondent's retail divisions received a Commission letter of inquiry concerning credit balance practices in April 1974. It is reasonable to conclude that Genesco's top management was immediately made aware of the Federal Trade Commission's investigation by this retail division.

Given this sequence of events, the most logical assessment of the underlying motivation for adoption of the 1974 corporate policy is that "Respondent stopped violating the law when it learned that the law's hand was already on its shoulder." *Coro, Inc.*, 63 F.T.C. 1164, 1201. Certainly, Genesco's change of corporate policy cannot be viewed as being born of spontaneous recognition of the error of its ways. Since Genesco's discontinuance of the challenged practices was not entirely voluntary or self-initiated, a cease and desist order may properly be entered. *Galter v. Federal Trade Commission*, 186 F.2d 810, 812-813 (7th Cir. 1951), *cert. denied*, 342 U.S. 818 (1951); *Coro, Inc. v. Federal Trade Commission, supra*; *Beneficial Corp., supra*, at 20,822.

Respondent, relying on *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F.2d 321, 331 (7th Cir. 1944), *cert. denied*, 323 U.S. 730 (1944) and subsequent Commission decisions, asserts that, even if discontinuance was not entirely voluntary, Genesco's current policy concerning credit balances fully comports with the requirements of Section 5 of the Federal Trade Commission Act and, therefore, no purpose will be served by entering a cease and desist order at this juncture.

[30] As discussed in the previous Section of this opinion, respondent's current corporate policy provides prospectively for automatic refunds of credit balances and periodic notices to customers of the existence of such balances. This policy, however, makes no provision for notification to charge customers who, unknowingly, already have had credit balances transferred from their accounts. Respondent claims an abiding intention to refund the full amount of any credit

balance previously transferred from a customer account if a request to do so is received from the customer, but denies that there exists any necessity to notify customers of this intention. Respondent's continuing violation, which the current corporate policy does not remedy, is the failure to inform charge customers that credit balances have been transferred from their accounts and that such balances will be refunded on request. In order to insure that charge customers are fully advised of respondent's willingness to refund any credit balance which has been transferred from their accounts, a cease and desist order must issue.

Since the mid-1974 change in corporate policy, some Genesco divisions failed to adhere to, or abide by, said policy. At a minimum, the record shows that some of respondent's divisions were very dilatory, or careless, in implementing the policy. A cease and desist order must also be entered to ensure the avowed corporate policy is fully implemented by all retail divisions.

As a corollary to respondent's argument that the current corporate policy comports fully with Section 5 of the Federal Trade Commission Act and this adjudication is therefore moot, respondent cites a recent change in prevailing industry practices and the enactment since 1975 of several state laws and federal regulations which would make resumption of the violative practices unlikely. In arguing that the instant proceeding is moot, respondent bears the heavy burden of demonstrating that "there is no reasonable expectation that the wrong will be repeated." *United States v. Aluminum Co. of America*, 148 F.2d 416, 448 (2d Cir. 1945); *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953); *Rubbermaid, Inc.*, CCH [1973-1976 Transfer Binder] ¶ 21,131 at 20,986 (FTC 1976). Respondent has not met this burden.

[31] Just as similar credit practices by members of the retail industry would not exonerate respondent of its violation of Section 5 (*Peacock Buick, Inc., supra*, at 20,951), recent changes in industry practices concerning the handling of customer credit balances does not prevent respondent from persisting in its failure to give adequate notice of its refund policy to charge customers who have already had balances transferred from their accounts. Likewise, practices followed by competitors would not preclude respondent from a resumption of their violative practices.

The recent enactment of state laws and federal regulations cited by respondent as evidence that violative practices will not be resumed is also unpersuasive. Although such enactments reach some activities challenged in this proceeding, e.g., failure to send periodic billing statements to charge customers with credit balances, other activities,

e.g., transfer of credit balances, would remain unrestrained if an order is not entered.

Based on the discussion set forth above, no basis exists for holding this adjudication moot.

D. THE ORDER ENTERED HEREIN IS WITHIN THE COMMISSION'S
AUTHORITY AND IS NECESSARY TO FULLY REMEDY THE
VIOLATIONS FOUND

Having determined that respondent has violated, and is violating, Section 5 of the Federal Trade Commission Act in handling credit balances of charge customers, the Commission has wide discretion in fashioning whatever order is necessary to insure the cessation of such unfair acts and practices. *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419, 428-430 (1957); *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 611 (1946); *Viviano Macaroni Co. v. Federal Trade Commission*, 411 F.2d 255, 260 (3d Cir. 1969). In addition to prohibiting future violative acts, the Commission may, where necessary, impose affirmative duties upon a respondent if such duties are an integral part of the remedy needed to fully remedy the violations found or their continuing effects. *Federal Trade Commission v. National Lead Co.*, *supra*, at 430; *Windsor Distribution Co. v. Federal Trade Commission*, 437 F.2d 443, 444 (3d Cir. 1971). Courts will not interfere [32] with such orders so long as a reasonable relationship between the remedy and the unlawful practice is found to exist. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 394-95 (1965); *Federal Trade Commission v. National Lead Co.*, *supra*, at 429; *Federal Trade Commission v. Rubbermaid Co.*, 343 U.S. 470, 475 (1952).

Paragraph I of the order is, substantially, a formalization of what respondent asserts is its current policy. Periodic billing statements are ordered to be sent to all charge customers with credit balances in their accounts, informing such customers of the amounts of such balances and of their right to receive an immediate refund upon request or an automatic refund, without request, after six months. Respondent has insisted throughout this proceeding that the provisions included within Paragraph I are unnecessary since the 1974 corporate policy provides identical consumer treatment. However, billing statements used by some of Genesco's retail divisions after adoption of the corporate policy did not contain the disclosures mandated by said policy. The clarification provided by the order will serve to eradicate such non-conformity in the future.

Additionally, the order provides that charge customers must be informed of the manner in which a request for an immediate refund

may be made, *i.e.*, by returning the statement reflecting a credit balance to the store in person or by mail. The corporate policy does not prescribe such a method nor does it require notification of such method to charge customers.

In order to cure respondent's continuing failure to notify charge customers of their continuing right to request and receive a refund of credit balances which have been transferred from their accounts, Paragraph IIA of the order requires that notice be sent to all charge customers who had credit balances transferred from their accounts during the period January 1, 1972 to March 11, 1975 (the date the complaint herein issued), and who have not received a refund or reinstatement of such balance of their continuing right to request and receive a cash refund. Paragraph IIB provides that all refund requests generated by the required notice are to be treated in accord with respondent's current credit balance policy. Respondent, however, is given [33] the option by this provision of making either cash or credit certificate refunds.

Respondent has taken the position that any order provision requiring the refund of credit balances transferred prior to March 11, 1975 would be improper. Relying on *Heater v. Federal Trade Commission*, 503 F.2d 321 (9th Cir. 1974), respondent maintains that the Commission lacks the power to order restitution in the form of a refund of previously transferred credit balances in the instant proceeding.

Since the order entered in this proceeding does not order restitution, it is unnecessary to resolve the issue of the Commission's restitutionary powers. It should be noted, however, that the Commission is not totally devoid of such power.⁶ As the Senate Committee on Commerce Report on the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act noted,

* * * there is no intent on the part of the Committee to disturb the Commission's power to compel restitution by its own order when such restitution is necessary to terminate a continuing violation of section 5 of the Federal Trade Commission Act.

S. Rep. No. 93-151, 93d Cong., 1st Sess. 28 (1973) (conference report).

This comment supports the position that, given the continuing violation present in the instant proceeding, the Commission, in fashioning an effective order, could order restitution.

A thorough reading of the order entered herewith discloses that restitution, although proper, has not been ordered. Respondent has insisted that the credit balances in issue were transferred to

⁶ The Commission has specifically stated that it does not agree with the holding of the *Heater* decision. *Holiday Magic, Inc.*, 85 F.T.C. 90 (1975).

corporate accounts, which had no effect on income, where they are held for ultimate refund should such a request be received. (Respondent's Proposed Findings 22, 39, 45-48; Respondent's [34] Post-Trial Memorandum, pp. 15, 20; Respondent's Post-Trial Reply Memorandum, p. 13.) Additionally, it has always been respondent's asserted policy to honor all valid requests for reinstatement or refund of transferred credit balances. (CX 89G; Respondent's Proposed Findings 23, 40; Respondent's Post-Trial Memorandum, p. 19.) The order provision dealing with transferred credit balances requires only that charge customers be advised of their credit balance and of respondent's continuing refund policy and the form a request for such refund should take.

Respondent insists that this notification requirement is oppressive and burdensome due to the difficulty inherent in compiling lists of affected charge customers from the retail divisions' accounting records. Lists of affected charge customers for some retail divisions were received into evidence during the course of this adjudication (CX 14, 28). Although some difficulty might be encountered in compiling the additional lists necessary to comply with the order, such difficulty does not relieve respondent of its duty to comply with the law, *i.e.*, to provide adequate notice to charge customers of their continuing right to request and to receive refunds of credit balances rightfully due them but unilaterally transferred from their accounts and now held by respondent.

Finally, Paragraph VI mandates that respondent maintain, for a period of three (3) years, records of customers who receive an automatic refund of a credit balance and of customers who request and are refused a credit balance refund, together with the reason for such refusal. The additional burden imposed by this provision will be slight indeed; at most, it will be an accumulation of records which must be created in complying with other provisions of the order. The Commission has for several years included record-keeping provisions in its orders to enable compliance checks to be made, and a three (3) year period is a reasonable requirement (see *Carpets "R" Us, Inc.*, Dkt. 8947, Initial Decision January 10, 1975; Commission Opinion February 26, 1976, CCH [1973-1976 Transfer Binder] Trade Reg. Rep. ¶ 21,108, at 20,969 [87 F.T.C. 303]).

All provisions of the order entered herewith are directed at, and reasonably related to, acts and [35] practices found to be unlawful and are necessary to prevent such violations in the future and to insure compliance therewith. Accordingly, the order is well within the authority of the Commission and is therefore an appropriate remedy in this proceeding.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over respondent and the subject matter of this proceeding.
2. Respondent Genesco Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee with its principal office and place of business at 111 - 7th Ave., North, Nashville, Tennessee. Respondent Genesco Incorporated sells and distributes merchandise in commerce and, through its retail divisions, operates retail specialty apparel and footwear stores in a number of states.
3. At all times relevant hereto, Genesco Incorporated has had authority to control the policies, acts and practices of its retail divisions in the handling of customer charge accounts.
4. The challenged acts and practices of respondent in connection with the handling of credit balances on charge accounts of its retail divisions' customers were, and are, unfair and deceptive. They had and now have the capacity and tendency to cause a substantial number of respondent's charge account customers to be deprived of substantial sums of money rightfully theirs.
5. These acts and practices of respondent were and are to the prejudice and injury of the public and constituted, and now constitute, unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.
6. The order entered herewith is proper in scope and is reasonably related to the violations charged in the complaint.

[36] ORDER

I

It is ordered, That respondent Genesco Incorporated, a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the handling of credit balances on retail consumer open and credit accounts or other retail consumer charge accounts created incident to the business of selling consumer merchandise and services at retail, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall:

- A. Mail or deliver to each charge account customer having a credit balance in excess of one dollar (\$1.00) created after the date of service of this order a periodic statement each billing period following the creation of the credit balance, clearly setting forth such

credit balance; *provided, however*, that no periodic statement need be sent once a credit balance is refunded or a fully offsetting purchase is made.

[37] B. Notify each charge account customer having a credit balance created after the date of service of this order of the customer's right to request and receive a cash refund in the amount of such credit balance, such notice to be accomplished by a clear and conspicuous disclosure on or enclosed with each periodic statement required by Paragraph IA and accompanied by a return envelope, if it is the customary practice of the division or unit to accompany periodic billing statements with return envelopes. Such first disclosure shall in all material respects be consistent with, but need not be identical to, the following:

NO PAYMENT REQUIRED

The Credit Balance shown on the enclosed statement represents money we owe you. You may obtain a refund by presenting (your) (this) statement at our store or by returning it in the enclosed envelope. If you do not charge against [38] this credit or request a refund, a check will be mailed to you within six (6) months. A credit balance of \$1 or less will not be refunded unless specifically requested, and it will not be credited against future purchases after expiration of a six (6) month period.

Each subsequent periodic statement issued thereafter shall be identical in all respects to the first such statement except that each must show the time in months remaining before the refund or a credit against future purchases will be made. *Provided, however*, if respondent refunds without request credit balances of one dollar (\$1.00) or less, and credit amounts under one dollar (\$1.00) against future purchases, the disclosure may be amended to accurately reflect this practice.

The disclosure furnished in compliance with this paragraph shall not provide any additional information relating to credit balances, shall be set forth separately from any other written matter, and shall be made either entirely on the face of the periodic statement, or entirely on the reverse side of the periodic statement, or entirely on one side of a separate page. In the event such disclosure [39] is not on the face of the periodic statement, then the periodic statement shall state clearly and conspicuously on its face: "Credit balance. Do not pay. For refund see (enclosed instructions) OR (reverse side)."

C. Refund to each charge account customer with a credit balance of more than one dollar (\$1.00) created after the date of service of this order the full amount of said credit balance no later than thirty-one (31) days from the end of the sixth consecutive month during which a

credit balance exists and the customer neither transacts any business on the account nor requests a refund, unless such credit balance is not in fact owed to the customer.

II

It is further ordered, That respondent shall:

A. Within ninety (90) days after service [40] of this order notify each charge account customer whose credit balance was transferred from the customer's account at any time within the period January 1, 1972 to the issuance of the complaint herein on March 11, 1975, which credit balance has not been refunded to the customer as of the date of service of this order or the customer has not made a fully offsetting purchase as of the date of service of this order, of the amount of the credit balance that was transferred and of the customer's right to request and receive a cash refund in the amount of such credit balance, unless such credit balance is not in fact owed to the customer.

B. Refund to each charge account customer required to be notified by respondent of a credit balance pursuant to Paragraph IIA, who requests a refund, the full amount of such credit balance; [41] *provided, however,* that nothing contained herein shall prevent respondent from making such refund by giving a credit certificate(s), in the full amount of the credit balance which shall be redeemable, at the customer's option, in merchandise or cash. Such a certificate(s) or an accompanying notice attached to the certificate, shall clearly and conspicuously disclose that it is redeemable for cash if the customer so requests in person or if the customer returns the certificate(s) by mail with a request for cash redemption. Respondent shall comply with the provisions of this paragraph no later than thirty (30) days after receipt of a request for a refund from a customer.

III

It is further ordered, That each refund required to be made by this order shall be given to the customer either in person or by mailing a check (or credit [42] certificate(s) in the case of credit balances existing prior to the issuance of the complaint herein) payable to the order of the customer, to the last known address shown in respondent's records for said customer. Each periodic statement sent pursuant to the terms of this order shall be mailed to the customer at the last known address shown in respondent's records for said customer. In the event that any such statement or check is returned to respondent with a notification to the effect that the customer to

whom it was mailed is not located at the address to which it was sent, respondent shall remail the check or statement (or credit certificate) with an address correction request to the Post Office. For each check or statement (or credit certificate) in an amount of twenty-five dollars (\$25.00) or more which has been remailed and is returned to respondent, respondent shall then obtain from a credit bureau the most current address available for the customer by means of an in-file report or other report on information then existing in the credit bureau's file. If a new address is obtained, respondent shall remail the check or statement (or credit certificate) to the customer at such address. For all customers whose credit balances were created prior to issuance [43] of the complaint herein, and have not been located by any of the preceding methods, respondent shall have no further obligation under this order. For all customers whose credit balances have been created after service of this order, and have not been located by any of the preceding methods, respondent shall retain or reinstate the full amount of the credit balance on the customer's account, to remain thereon for one year from the date on which the remailed check or statement was returned so that offsetting purchases can be made, and respondent shall be relieved of any further obligation to send any additional notice and/or any refund with respect to the credit balance in question. *Provided, however,* that, in the event said customer should subsequently request a refund of any such credit balance, respondent shall treat such request in the manner provided in Paragraph IIB.

IV

It is further ordered, That a credit balance shall be deemed to be created at the end of the billing cycle in which the credit balance is first recorded on a customer's account and at the end of the billing cycle in which the recorded amount of an existing credit [44] balance is changed due to a customer's use of the account. Whenever the recorded amount of an existing credit balance is changed, respondent's obligations under this order with respect to the credit balance existing prior to such charge shall automatically be terminated and replaced by its obligations under this order with respect to the new credit balance created by said change.

V

It is further ordered, That, notwithstanding the foregoing, the provisions of this order shall not be applicable to credit balances on

accounts administered by third parties or to transactions arising out of lay-away plans or installment sales contracts.

VI

It is further ordered, That respondent shall maintain a list for each of its retail operating divisions which contains the following data: name and address of each customer who received an automatic refund of a credit balance; the date the credit balance was created and the date it was refunded; and the amount of the credit balance. Respondent shall also maintain for each such division a separate list which contains the following data: the names and addresses of all customers who [45] requested in person or by mail a refund of a credit balance but whose request was refused; the date the request was made; the date a refusal was sent to the customer; the amount of the credit balance; a copy of any written explanation of reason for the refusal sent to the customer; and, if no written explanation for the refusal was made, a statement of the reasons for the refusal.

VII

It is further ordered, That respondent shall retain the records required to be maintained by Paragraph VI of this order for a period of three (3) years and, upon request, produce said records for the purpose of examination and copying by representatives of the Federal Trade Commission.

VIII

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

IX

It is further ordered, That respondent notify the [46] 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.

X

It is further ordered, That respondent shall, within one hundred twenty (120) days after entry of this order, file with the Commission a

451

Final Order

report in writing setting forth in detail the manner and form in which it has complied with this order.

[1] FINAL ORDER

Both complaint counsel and respondent filed notices of an intention to appeal the initial decision, but filed a "Joint Motion to Withdraw Notices of Appeal" on February 7, 1977, while requesting the Commission to stay further proceedings pending consideration of a proposed order jointly submitted by the parties in lieu of the order recommended by the administrative law judge. The Commission has elected to treat this matter as an unappealed initial decision, and has placed this matter on its own docket for review of the limited question of the appropriateness of the order recommended by the administrative law judge, in conformity with Sections 3.51(a) and 3.54 of its Rules.

In response to the Commission's request for clarification of the parties' intentions, the respondent in a letter of March 3, 1977, advised us that it

would have no objection to * * * the Commission adopting the proposed order submitted by the parties and, in the event findings of fact and conclusions of law were deemed necessary and appropriate, adopting those set forth by the Administrative Law Judge in his initial decision.

[2] Such findings and conclusions are indeed necessary and appropriate under the Commission's Rules. We therefore accept respondent's offer and, pursuant to Section 3.51(a) of our Rules, "the initial decision shall become the decision of the Commission."

We also accept and hereby enter the jointly proposed order, which differs from the law judge's proposed order in several respects. These differences are described in complaint counsel's memorandum of February 7, 1977, in support of the "Joint Motion to Withdraw Notices of Appeal." We attach that memorandum as an appendix to this Final Order, since there is no need to repeat that analysis here.

This matter having been docketed for review by the Commission for the limited purpose of considering the appropriateness of the order recommended by the administrative law judge in his initial decision, and the Commission having considered the modifications of that order proposed by respondent and complaint counsel in their "Joint Motion to Withdraw Notices of Appeal" from the initial decision, and the Commission having concluded that the proposed modifications would be in the public interest:

It is ordered, That pages 1-35 of the initial decision be, and they

hereby are, the Findings of Fact and Conclusions of Law of the Commission.¹

It is further ordered, That the following Final Order to cease and desist be entered, to become effective on the date of service.

ORDER

I

It is ordered, That respondent Genesco Incorporated, a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the handling of credit balances on retail consumer open end credit accounts or other retail consumer charge accounts created incident to the business of selling consumer merchandise and services at retail, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall:

[3] A. Mail or deliver to each charge account customer having a credit balance in excess of one dollar (\$1.00) created after or existing as of the date of service of this order a periodic statement each billing period following the creation of the credit balance, clearly setting forth such credit balance; *provided, however*, that no periodic statement need be sent once a credit balance is refunded or a fully offsetting purchase is made.

B. Notify each charge account customer having a credit balance created after the date of service of this order of the customer's right to request and receive a refund in the amount of such credit balance, such notice to be accomplished by a clear and conspicuous disclosure on or enclosed with each periodic statement required by Paragraph IA and accompanied by a return envelope, if it is the customary practice of the division or unit to accompany periodic billing statements with return envelopes. Such first disclosure shall in all material respects be consistent with, but need not be identical to, the following:

NO PAYMENT REQUIRED

The Credit Balance shown on the enclosed statement represents money we owe you. You may obtain a refund by presenting (your) (this) statement at our store or by returning it in the enclosed envelope. If you do not charge against this credit or request a refund, a check will be mailed to you within six (6)

¹ With the proviso that "Tennessee" be modified to read "Tennessee" in the third line of the law judge's second "Conclusion of Law." [p. 35]

months. A credit balance of \$1 or less will not be refunded unless specifically requested, and it will not be credited against future purchases after expiration of a six (6) month period.

Each subsequent periodic statement issued thereafter shall be identical in all respects to the first such statement except that each must show the time in months remaining before the refund or a credit against future purchases will be made. *Provided, however,* if respondent refunds without request credit balances of [4] one dollar (\$1.00) or less, and credit amounts under one dollar (\$1.00) against future purchases, the disclosure may be amended to accurately reflect this practice.

The disclosure furnished in compliance with this paragraph shall not provide any additional information relating to credit balances, shall be set forth separately from any other written matter, and shall be made either entirely on the face of the periodic statement, or entirely on the reverse side of the periodic statement, or entirely on one side of a separate page. In the event such disclosure is not on the face of the periodic statement, then the periodic statement shall state clearly and conspicuously on its face: "Credit balance. Do not pay. For refund see (enclosed instructions) OR (reverse side)."

C. Refund to each charge account customer with a credit balance of more than one dollar (\$1.00) created after the date of service of this order the full amount of said credit balance no later than thirty-one (31) days from the end of the sixth consecutive month during which a credit balance exists and the customer neither transacts any business on the account nor requests a refund, unless such credit balance is not in fact owed to the customer; *provided, however,* that nothing contained in this paragraph shall prevent such a refund being made by giving a credit certificate(s) in the full amount of the credit balance which shall be redeemable, at the customer's option, in merchandise or cash. Such a certificate(s) or an accompanying notice attached to the certificate shall clearly and conspicuously disclose that it is redeemable for cash if the customer so requests in person or if the customer returns the certificate(s) by mail with a request for cash redemption.

D. Refrain from writing off or deleting or transferring any credit balance of more than one dollar (\$1.00) created after the date of service of this order from a customer's account before a refund has [5] been made or the customer has made a fully offsetting purchase, unless such credit balance is not in fact owed to the customer or unless there has been compliance with Section III of this order.

Final Order

89 F.T.C.

II

It is further ordered, That respondent shall:

A. * Within one hundred and twenty days (120) after entry of this order notify each charge account customer from whose account a credit balance of more than one dollar (\$1.00) was transferred at any time within the period January 1, 1972 to the date of service of this order which credit balance has not been refunded to the customer as of the date of service of this order or the customer has not made a fully offsetting purchase as of the date of service of this order, of the amount of the credit balance that was transferred and of the customer's right to request and receive a refund in the amount of such credit balance, unless such credit balance is not in fact owed to the customer. Such notice shall contain language, which is consistent with, but not necessarily identical to, the following:

NO PAYMENT REQUIRED

The amount shown is a credit balance in your favor as a result of a past transaction. You may obtain a refund of this balance by signing the notice and returning it in the enclosed envelope. If you do not request a reinstatement or a refund it will not be placed on your account for use against future purchases.

The notice furnished in compliance with this paragraph shall be clear and conspicuous and shall be set forth separately from any other written matter except that it should be in close conjunction with [6] the amount of such credit balance as disclosed therein. Such notice shall be accompanied by a return envelope.

B. Refund to each charge account customer, required to be notified by respondent of a credit balance pursuant to Paragraph IIA, who requests a refund, the full amount of such credit balance by check or credit certificate.

III

A. *It is further ordered,* That each refund required to be made by this order shall be given to the customer either in person or by mailing a check or credit certificate(s) payable to the order of the customer. Each check or periodic statement sent pursuant to the terms of this order and each notice sent pursuant to Paragraph IIA of this order shall be mailed to the customer at the last known address shown in respondent's records for said customer with the notation "Address Correction Requested" appropriately placed on the envelope. In the event that any such statement, check or notice reflecting a credit in the amount of ten dollars (\$10.00) or more is returned to respondent by reason of the fact that the customer to whom it was

mailed is not located at the address to which it was sent, respondent shall then obtain from a credit bureau the most current address available for the customer by means of an in-file report or other report on information then existing in the credit bureau's file. If a new address is obtained, respondent shall remail the check, statement, notice or credit certificate to the customer at such address. For all customers whose credit balances were created prior to the date of service of the order herein, and have not been located by any of the preceding methods, respondent shall have no further obligation under this order. For all customers whose credit balances have been created after service of this order, and have not been located by any of the preceding methods, respondent shall retain or reinstate the full amount of the credit balance on the [7] customer's account, to remain thereon for one year from the date on which the remailed check or statement was returned so that offsetting purchases can be made, and respondent shall be relieved of any further obligation to send any additional notice and/or any refund with respect to the credit balance in question. *Provided, however,* that, in the event said customer should subsequently request a refund of any such credit balance, respondent shall treat such request in the manner provided in Paragraph IIIB.

B. When a customer requests, in person or by mail, a refund of a credit balance in any amount which had been reflected at any time on such customer's account, respondent shall, within thirty (30) days from receipt of such request, either refund the entire amount requested, if owed, or furnish the customer with an individualized written explanation, with supporting documentation, when requested and available, of the reason(s) for refusing to refund the amount requested.

IV

It is further ordered, That a credit balance shall be deemed to be created at the end of the billing cycle in which the credit balance is first recorded on a customer's account and at the end of the billing cycle in which the recorded amount of an existing credit balance is changed due to a customer's use of the account. Whenever the recorded amount of an existing credit balance is changed, respondent's obligations under this order with respect to the credit balance existing prior to such charge shall automatically be terminated and replaced by its obligations under this order with respect to the new credit balance created by said change.

Final Order

89 F.T.C.

v

It is further ordered, That, notwithstanding the foregoing, the provisions of this order shall not be applicable to credit balances on accounts administered by third parties or to transactions arising out of lay-away plans or installment sales contracts.

[8] vi

It is further ordered, That respondent shall maintain a list for each of its retail operating divisions which contains the following data: name and address of each customer who received an automatic refund of a credit balance; the date the credit balance was created and the date it was refunded; and the amount of the credit balance. Respondent shall also maintain for each such division a separate list which contains the following data: the names and addresses of all customers who requested in person or by mail a refund of a credit balance but whose request was refused; the date the request was made; the date a refusal was sent to the customer; the amount of the credit balance; a copy of any written explanation of reason for the refusal sent to the customer; and, if no written explanation for the refusal was made, a statement of the reasons for the refusal.

vii

It is further ordered, That respondent shall retain the records required to be maintained by Paragraph VI of this order for a period of three (3) years and, upon request, produce said records for the purpose of examination and copying by representatives of the Federal Trade Commission.

viii

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

ix

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 this order.

[9] x

It is further ordered, That respondent shall, within one hundred twenty (120) days after entry of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

AMERICAN CONSUMER SERVICE, INC., ET AL.

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

Docket C-2887. Complaint, May 23, 1977 — Decision, May 23, 1977

This consent order, among other things, requires a Carmel, Ind., buying club to cease misrepresenting and/or failing to disclose relevant information regarding benefits, shopping assistance, and savings experienced by club members; misrepresenting, in sales personnel recruitment, the size and true nature of their business, types of jobs offered, and potential earnings of sales personnel. The order further requires the firm to maintain specific files and to furnish prospective customers a 120-day cancellation period in membership agreements.

Appearances

For the Commission: *Peggy H. Summers.*

For the respondents: *Elroy H. Wolff, Sidley & Austin, Washington, D.C.*

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 American Consumer Service, Inc., a corporation, and Mark F. Thorne and Thomas P. Sheehan, 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 American Consumer Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 101 East Carmel, Carmel, Indiana.

Respondents Mark F. Thorne and Thomas P. Sheehan are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the buying and in the door-to-door offering for sale, sale and distribution of memberships in a shopping service. The shopping

service provides instructions, booklets, pamphlets and other literature regarding merchandise which may be purchased through the shopping service. Respondents' salesmen and/or agents prepare at the purchasers' home contracts for the purchase of such memberships in the shopping service.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents through the sale of memberships now cause, and for some time last past have caused various types of consumer products to be shipped and distributed to purchasers of such memberships from suppliers located in various States of the United States other than the state in which the sale of the membership was made. Respondents' sale of memberships have also caused the dissemination, transmittal and receipt of sales promotional materials, invoices, checks, collection notices and various other commercial documents in the course of advertising, selling, distributing and collecting payments for products sold to such membership by the shopping service or by numerous other suppliers, among and between the several States of the United States. In addition, the shopping service mails to enrolled purchasers in the State of Indiana price lists, instructions, booklets, pamphlets and other literature regarding merchandise which may be purchased through the shopping service.

Thus, respondents maintain, and at all times herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the further course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of memberships in the shopping service, respondents' salesmen and/or agents utilize various types of promotional materials in conjunction with an oral sales presentation furnished by respondents and have made and are making numerous oral statements and representations to purchasers and to prospective purchasers with respect to their purpose in contacting such purchasers in their homes, the nature of the shopping service and the savings that result to members of such service.

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

Complaint

89 F.T.C.

Hi, my name is _____ and I am with American Consumer Union. We are interested in having people fill out some questionnaires concerning their opinion on the high cost of living. Would you take a few minutes to help me?

We are looking for people in the area right now to write a couple of testimonial letters for us, so our offer is a special membership for people who are willing to do that.

To guarantee some savings immediately * * * and also to pay for you writing the letters, we include with your membership at no additional cost, a complete and unlimited 2 year supply of all cleaning agents.

Out of every dollar spent in the store, an average of close to 40 percent goes for markup.

We put the individual members in a position to * * * eliminate a high percentage of the retail markup.

You can save as much as 60 percent on some items.

In one year you can make up the major portion cost of the membership.

The \$499 * * * most people prefer to pay for it over a period of time and let the monthly savings pay for it as they go.

How do members get things? It's quite simple.

We tell people to shop the market. To look through the stores and see the make and model number that suits them. Then, request the same make and model number from the buying service. It's delivered to the home with full manufacturer's warranties and guarantees.

We're talking about first quality name brand merchandise at low prices all the time whenever the member wants it.

I will be your personal representative and we will work very close to help you save * * * I will explain to you in detail how to use your membership so you can start saving right away.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning not specifically set forth herein, in connection with the oral sales presentation used variously by their sales representatives, respondents have represented, and are now representing, directly or by implication, that:

- (1) Respondents' sales representatives are contacting persons in their homes primarily for the purpose of conducting a survey.
- (2) Respondents are offering membership in a shopping service at a special price only to those individuals who are willing to write testimonial letters.

(3) Respondents are offering a complete and unlimited two year supply of all cleaning agents to prospective purchasers of the shopping service at no additional cost.

(4) The supply of soap respondents offer prospective purchasers of the shopping service guarantees substantial savings immediately.

(5) Members of the shopping service will be able to eliminate a high percentage of retail markups and will realize substantial savings ranging up to 60 percent off of the regular retail prices of all consumer products that are made available for purchase through the shopping service.

(6) Individuals who purchase respondents' shopping service will recover the major portion of their initial investment within a year of purchase.

(7) Brand name consumer products can be purchased simply and easily through the shopping service by submitting the desired product's make and model number to the service which then delivers the product to the home.

(8) Brand name consumer products that appear in local retail stores are available all the time through the shopping service.

(9) Respondents and their sales representatives will be available after the date of sale to answer any questions and provide any help needed by members to make use of the shopping service.

PAR. 6. In truth and in fact:

(1) Respondents' sales representatives are not contacting persons in their homes primarily for the purpose of conducting a bona fide survey, but solely for the purpose of selling memberships in a shopping service.

(2) Respondents are not offering memberships in a shopping service at a special price to those individuals who are willing to write testimonial letters. The cost of the shopping service is the same for all individuals regardless of whether or not they write testimonial letters.

(3) Respondents are not offering a complete and unlimited two year supply of all cleaning agents at no additional cost to prospective purchasers of the shopping service. Respondents merely use these conditions to confuse and mislead such persons into believing that the amount of their monetary obligation to respondents does not include the cost of all merchandise obtained from respondents. In addition, the supply of cleaning agents given to individuals at the time of purchase does not last two years and to obtain additional cleaning agents members will incur additional expenses.

(4) The supply of soap respondents offer prospective purchasers of

the shopping service does not guarantee substantial savings immediately. Savings cannot be obtained until members have purchased enough products through the shopping service at a discount from the sale price of local retail stores so that the discounts they received exceed the total cost of their investment in the service.

(5) Members of the shopping service will not be able to eliminate a high percentage of retail markups and will not realize substantial savings ranging up to 60 percent off of the regular retail prices of all consumer products that are made available for purchase through the shopping service.

(6) Individuals who purchase respondents' shopping service may not recover the major portion of their initial investment within a year of purchase. Few, if any, members of American Consumer Service, Inc. have ever recovered the major portion of their purchase price.

(7) Brand name consumer products cannot be purchased simply and easily through the shopping service by submitting the desired product's make and model number to the service which then delivers the product to the home. Frequently additional information is requested by the shopping service which consumers find difficult to obtain by comparison shopping at local retail stores.

(8) Brand name consumer products that appear in local retail stores are not available all the time through the shopping service. Members are frequently informed that requested items are not available through the shopping service.

(9) Respondents and their sales representatives will not be available after the date of sale to answer any questions and provide any help needed by members to make use of the shopping service. In most cases members' attempts to call or write to respondents for information as to how to use the shopping service are ignored.

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

PAR. 7. In the further course and conduct of their business as aforesaid, respondents, in connection with the representations set forth in Paragraphs Seven, Eight and Nine above, have failed to disclose to prospective purchasers that:

A. Some firms represented as being a source of discounts available only to members of the shopping service actually provide identical products at the same prices to all members of the general public who place orders through their mail order catalogues.

B. Shipping costs are not included in the price quoted to the

member, and purported savings achieved through the use of the service are frequently cancelled out by the cost of shipment to the member's home.

C. The contract of purchase will not be retained by the shopping service, but will be sold to a finance company.

The aforesaid failure to disclose such material facts to prospective purchasers of the shopping service has the tendency and capacity to mislead or deceive such persons with respect to the shopping service. The aforesaid material facts, if known to consumers, would be likely to affect their decision as to whether or not to purchase a membership in the shopping service.

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

PAR. 8. In the further course and conduct of their business and for the purpose of recruiting employees to sell their products, respondents now cause, and for some time last past have caused, advertisements for employment to appear in newspapers of general and interstate circulation. Said advertisements contain numerous statements and representations with respect to the size and nature of respondents' firm and the salaries available to employees thereof for the purpose of inducing, and which were likely to induce, directly or indirectly, the recruitment of door-to-door salesmen for the sale of respondents' memberships.

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

CAN YOU EARN \$100,000 NEXT YEAR? * * * For the opportunity of a lifetime with a prestige national company * * *

PART-TIME WORK \$400 EXTRA * * * I can show you people here making up to \$500 a week full time* * *

MAJOR CORPORATION NEEDS WOMEN

We are looking for young energetic men and women who want an exciting summer with a national super company. AMERICAN CONSUMER UNION

PAR. 9. By and through the use of the above quoted statements and representations, and others of similar import and meaning not specifically set forth herein, respondents have represented, and are now representing, directly or by implication, that:

(1) Respondents are offering positions in a major national corporation.

(2) Respondents are offering persons incomes ranging from \$500 per week up to \$100,000 per year.

PAR. 10. In truth and in fact:

(1) Respondents are not offering positions in a major national corporation. To the contrary, respondents are recruiting persons as door-to-door salesmen in a small newly established local corporation.

(2) Persons engaged by respondents do not receive the incomes as represented. Conditions and limitations imposed upon the receipt of the stated incomes result in few, if any, being paid the represented incomes.

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

PAR. 11. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in and 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. 12. 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 induced the purchase of substantial quantities of respondents' services by reason of said erroneous and mistaken belief.

PAR. 13. 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 initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations 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 such 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 American Consumer Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 101 East Carmel, Carmel, Indiana.

Respondents Mark F. Thorne and Thomas P. Sheehan are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above-stated address.

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

ORDER

I

DEFINITIONS

"Product line" as used in this order shall mean one of the following categories: subcompact size automobiles; compact size automobiles; intermediate size automobiles; full size automobiles; luxury automobiles; trucks; stoves-ovens; refrigerators; freezers; disposals; air conditioners; dishwashers; washers; dryers; other appliances; televisions; record players; radios; recorders; wearing apparel; pharmaceuticals; jewelry; furniture; upholstered furniture; bedding; carpeting.

"Shopping service" as used in this order shall mean any service that provides instructions, booklets, pamphlets and any other information regarding merchandise that is purportedly made available for purchase through such service at less than normal retail prices.

II

It is ordered. That respondents American Consumer Service, Inc., a corporation, its successors and assigns, and its officers, and Mark F. Thorne and Thomas P. Sheehan, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device in connection with the offering for sale, sale, and distribution of any memberships in a shopping service, or the door-to-door sale or distribution of any other products or services; or in the recruitment of sales representatives for said products or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' agents, representatives or employees are visiting the homes of families for the purpose of conducting surveys or opinion polls or for any purpose other than the sale of memberships in the shopping service, or misrepresenting in any manner, the nature of any prospective customer contact or situation.

2. Representing, directly or by implication, that memberships in the shopping service are being offered at a special price only to those individuals agreeing to write testimonials, or misrepresenting in any manner the terms and conditions of membership in the shopping service.

3. Representing, directly or by implication, that any article of merchandise is being given free or as a gift, or without cost or charge, in connection with the purchase of other merchandise, unless the stated price of the merchandise required to be purchased in order to obtain said article is the same or less than the customary and usual price at which such merchandise has been sold separately by respondents for a substantial period of time in the recent and regular course of their business, provided, however, that respondents may offer other products or services as included in the cost of membership in the shopping service.

4. Representing, directly or by implication, that purchasers of memberships in a shopping service will save any stated dollar or percentage amount through use of the shopping service, unless respondents clearly and conspicuously disclose in connection with any savings representations that purchasers will not enjoy such savings until they have made enough purchases through the shopping service to result in savings that exceed the initial cost of membership in the service.

5. Representing, directly or by implication, to any prospective

purchaser of a shopping service, that members of a shopping service will be able to purchase consumer products at prices that are below the local retail selling prices of such products, unless respondents clearly and conspicuously disclose, in connection with such claims, in a written form containing the following information, and that said form shall be retained by each prospective member:

(a) The number of local purchase transactions that have been made from each said product line through the shopping service;

(b) A comparison, expressed as an average percent, by product line of the local retail selling price of consumer products with the cost of the identical consumer products purchased through the shopping service including shipping, postage, and delivery as experienced by members of the shopping service who have purchased said consumer products through the shopping service during a specified period of time; and that

(c) Savings can only be enjoyed by the member if the shopping service is used; some people never use the shopping service and never enjoy any savings as a result.

6. Failing to disclose to all prospective purchasers, prior to purchase of a membership, in complete and accurate detail, all steps necessary to purchase all products available through the shopping service by every method such products are available to be purchased, or misrepresenting in any manner the ease with which the service can be used.

7. Representing, directly or by implication, that purchasers of memberships in a shopping service have recovered or will recover their cost of joining the shopping service within any specified period of time, unless respondents clearly and conspicuously disclose in connection with such representation, that to recover the cost of joining the shopping service members will have to obtain savings on purchases that equal their cost of joining the shopping service, and the percentage of members of the shopping service who have recovered the cost of joining the shopping service within the specified period of time.

8. Misrepresenting in any manner the type or duration of advice and assistance that respondents of their sales representatives will offer to members of the shopping service.

9. Representing, directly or by implication, either orally or in writing, that:

(a) Respondents are offering employment positions in a major,

national corporation, or misrepresenting in any manner the size or nature of respondents' firm; and

(b) Individuals who reply to respondents' employment advertisements can or will receive a stated weekly or yearly income, unless the stated incomes have actually been achieved by at least 50 percent of past or current employees engaged in identical duties as those being advertised for, and such incomes are reasonably likely to be achieved by the person to whom the representation is made.

10. Failing to disclose, clearly and conspicuously, in all advertising for sales representatives, that:

(a) Respondents are recruiting persons for the sole purpose of soliciting or selling;

(b) Such soliciting or selling will be on a door-to-door basis, if such method of sale is included, to any extent, in the position for which persons are being recruited; and

(c) Compensation for persons so engaged is to be on a commission basis only, if such is the fact, or, if an income is advertised, the conditions and limitations thereto or upon the receipt of said income.

It is further ordered. That respondents shall establish a Consumer Service Representative who shall be responsible for answering inquiries from members of the shopping service with regard to the use of the service and for providing general assistance to such persons in connection with their use of the shopping service. Respondents shall employ at least one person to serve as a Consumer Service Representative and shall continue to employ at least one such person for at least one year after the date of respondents' last sale of a membership in a shopping service.

It is further ordered. That respondents disclose the following information clearly and conspicuously in all of respondents' sales presentations to prospective purchasers:

A. Membership in a shopping service is not necessary in order to make purchases from some of the mail order firms whose catalogs are made available by the shopping service to its members.

B. All orders placed through the shopping service must be paid for in advance by certified check or money order. The shopping service neither accepts nor extends credit.

C. Prospective purchasers of memberships in the shopping service will be required to sign a retail installment contract that may be assigned to a finance company if the full cost of the membership is not paid to respondents in one installment.

It is further ordered, That respondents shall accord to each member who signs a contract the right to cancel his membership within 120 days of the effective date of the membership contract. Upon notice of cancellation of a contract within 120 days of the effective date of the contract, respondents shall not receive, demand or retain more than an initial registration fee of \$70.

It is further ordered, That respondents shall include in the contract in boldface type of at least ten (10) points the following provision:

CANCELLATION AND REFUND

You are free to cancel your membership at any time within 120 days of the date of this contract. You will have to pay only an initial registration fee of \$70.

You may cancel the contract by mailing or delivering to American Consumer Service, Inc. a signed and dated copy of the "Notice of Cancellation" given to you at the time of purchase or by mailing or delivering to American Consumer Service, Inc. your own written letter of cancellation. Cancellation will be effective on the date of mailing. If, prior to cancellation, you have paid more than \$70, the excess will be refunded to you within ten (10) business days.

It is further ordered, That respondents shall include in the contract a completed form in duplicate, which shall be attached to the contract and easily detachable, and which shall contain in boldface type of at least ten (10) points the following information:

NOTICE OF CANCELLATION

I hereby cancel this contract.

(Date)

Buyer's Signature

It is further ordered, That respondents, upon receipt of notice of cancellation within 120 days of the effective date of the contract, shall refund to the member all monies received in excess of \$70 within ten (10) business days of receipt of the Notice of Cancellation.

It is further ordered, That the cancellation provisions of this Order shall not affect any obligation upon respondents under the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales.

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or

employment whose activities include the sale of shopping services, or of his affiliation with a new business or employment in which his own duties and responsibilities involve participation in the development of a sales presentation for use in the sale of shopping services. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That respondents maintain at all times in the future, for a period of not less than three (3) years, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relative to the manner and form of their continuing compliance with all the above terms and provisions of this order.

It is further ordered, That respondents distribute a copy of this order to all operating divisions of said corporation, and also distribute a copy of this order to all corporate officers and all of respondents' personnel, agents or representatives concerned with advertising, promotion, solicitation, sale or distribution of a shopping service by respondents and secure from each such person a signed statement acknowledging receipt of said order.

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

It is further ordered, That 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.

505

Decision and Order

IN THE MATTER OF

GULF COAST BUILDERS EXCHANGE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2888. Complaint, May 24, 1977 — Decision, May 24, 1977*

This consent order, among other things, requires a Sarasota, Fla., trade association to cease entering into agreements or taking any other action which requires members and signatories to deal exclusively with association's bid depository, and imposes sanctions on those fail to do so. The order further mandates that the firm immediately reinstate those participants previously suspended.

Appearances

For the Commission: *Thomas D. Wilson, Jr. and Truett M. Honeycutt.*

For the respondents: *Martin A. Harkavy, Harkavy, Moxley & Mitchell, Sarasota, Fla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party respondent named or designated in the caption hereof, and hereinafter more particularly named, designated, described and referred to as respondent, has violated the provisions of the 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 Gulf Coast Builders Exchange, Inc. hereinafter referred to as respondent corporation or GCBE, is a non-profit corporation, organized and existing under the laws of the State of Florida, with its principal office located at 1490 First St., Sarasota, Florida.

Respondent GCBE was organized for, and serves its members as, an instrumentality which promotes cooperative activity among its member contractors, collects business data from its members and generally purports to assist them in the operation of their businesses. One of the functions of respondent GCBE is the operation of a bid depository. Said respondent GCBE's membership represents a substantial, if not dominant, part of the construction industry contractors in the central Gulf Coast area of the State of Florida.

For the purposes of this complaint, the participants in the bid

depository operated by respondent GCBE consist of two groups: "members" and "signatories." The "members" group is composed of construction industry contractors who belong to the respondent GCBE and who generally perform general, electrical, plumbing, heating and air conditioning or roofing contracting services in Sarasota and Manatee Counties, Florida. The "members" group is entitled, among other things, to vote for the Board of Directors of the respondent corporation and to participate in, upon becoming signatory to, the bid depository operated by respondent GCBE. The "signatory" group is composed of all non-member contractors who wish to avail themselves of the bid depository service offered by respondent GCBE as hereinafter described. This group has no vote and is limited only to participation in the bid depository service.

The control, direction and management of respondent GCBE is vested in a Board of Directors elected by and from the members of said respondent corporation. The Board of Directors then elects or appoints corporate officers from among the members of the said Board of Directors. The officers of the respondent corporation include a president, a first vice president, a second vice president, a secretary and a treasurer.

PAR. 2. In the course and conduct of its business, respondent corporation has actively operated a bid depository which has aided, abetted, guided and assisted its membership in the unlawful acts and practices herein alleged. Several companies or firms which are signatories to, or members of, the bid depository of respondent corporation and which maintain their principal places of business in states other than the State of Florida submit or solicit bids through said bid depository which are, or may be, used by such companies or firms to award or be awarded building construction contracts. Furthermore, a considerable amount of the materials used in the construction that is the subject of said depository bid submissions and solicitations is shipped from various States of the United States into the State of Florida. Such activity and conduct engaged in by the membership of respondent corporation during the time periods described herein result in a constant current of trade in or affecting commerce in said services or materials between and among the various States of the United States. Accordingly, the acts and practices of the respondent corporation, including, but not limited to, the operation of said bid depository, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 3. Since at least 1974, respondent GCBE, its officers and directors, and the signatories to and members of its bid depository

have agreed to engage, and have engaged, in unfair and unlawful acts, policies and practices, the result of which is, or may be, to unlawfully hinder, restrain or destroy competition in providing electrical, plumbing, heating and air conditioning, roofing contracting, general contracting and other services related to building construction in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

Pursuant to, and in furtherance of, said agreement, respondent has engaged in the following acts, policies and practices, among others:

(1) Providing a bid service or depository which purportedly assists members and signatories of the bid depository of respondent corporation in the awarding and securing of electrical, plumbing, heating and air conditioning and roofing contracting services provided by electrical, plumbing, heating and air conditioning and roofing contractors for the benefit of participating general contractors.

Pursuant to rules and regulations which govern the operations and administration of the bid depository and which rules and regulations were formulated, approved and implemented by the Board of Directors of the respondent corporation, participating members and signatories of said respondent corporation agree to submit bids exclusively through the aforesaid bid depository, and members and signatories to said bid depository agree to receive only those bids submitted through said bid depository.

Participating electrical, plumbing, heating and air conditioning and roofing contractors who submit electrical, plumbing, heating and air conditioning and roofing contracting bids to general contractors not signatories to or members of said bid depository of respondent corporation are subject to suspension from the use of said bid depository and fine for such conduct.

Likewise, member and signatory general contractors who receive bids from electrical, plumbing, heating and air conditioning and roofing contractors not members or signatories to respondent corporation's bid depository, are subject to suspension from the use of said bid depository and fine for such conduct.

(2) Suspending from participation in the bid depository:

(a) numerous member and signatory contractors for submitting bids to non-member or non-signatory general contractors, in violation of said bid depository rules and regulations; and

(b) numerous member and signatory general contractors for awarding contracts based upon bids received from electrical, plumbing, heating and air conditioning and roofing contractors who have not submitted bids through said bid depository.

The aforesaid suspensions which have been imposed for as long as

ten years have caused, and are now causing, substantial injury to those firms laboring under said suspensions and resulting in a substantial lessening of competition and restraint of trade.

PAR. 4. The capacity and tendency of the acts, policies and practices of the respondent as alleged in Paragraph Three have been, are or may be, to unlawfully restrict, restrain, hinder and destroy competition in providing electrical, plumbing, heating and air conditioning, roofing and general contracting services in connection with building construction projects in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, within the intent and meaning of Section 5 of said Act.

PAR. 5. The policies, acts and practices of the respondent, as hereinbefore set forth, are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition within the intent and meaning 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 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, making the following jurisdictional findings, and enters the following order:

1. Respondent Gulf Coast Builders Exchange, Inc. is a non-profit

corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1490 First St., Sarasota, Florida.

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 Gulf Coast Builders Exchange, Inc., its officers and directors, and the successors, assigns, agents, representatives and employees of said respondent, directly or indirectly, through any corporate or other device, or through any member of or signatory to its bid depository, in connection with the receipt, solicitation, use, submission or transmission of bids which are, or may be, employed in the awarding of building construction contracts and subcontracts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any course of action, undertaking or agreement:

1. Which requires or provides that any member, signatory, company, firm or individual that employs or uses the bid depository of respondent corporation shall receive or solicit bids from, or submit bids to, only those companies, firms or individuals that are also members, signatories or participants in said bid depository;

2. Which subjects any member, signatory, company, firm or individual that employs or uses the bid depository of respondent corporation to suspension from participation in said bid depository or fine or any other kind of sanction, or the threat thereof, for receiving or soliciting bids from, or submitting bids to, any company, firm or individual that is not a member of said respondent corporation, is not a signatory to said bid depository or that does not employ or use said bid depository;

3. (a) To suspend from participation in said bid depository, to fine or to impose any other sanction upon any member, signatory, company, firm or individual for submitting bids to any company, firm or individual that is not a member of respondent corporation, is not a signatory to said bid depository or that does not employ or use said bid depository;

(b) To suspend from participation in said bid depository, to fine or to impose any other sanction upon any member, signatory, company, firm or individual for awarding contracts based upon bids received from any company, firm or individual that is not a member of

respondent corporation, is not a signatory to said bid depository or that does not employ or use said bid depository.

It is further ordered, That respondent immediately reinstate any member, signatory, company, firm or individual suspended from participation in said bid depository, which suspension resulted from conduct engaged in by respondent which hereinafter would amount to a violation of this order.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions and to all present and future members, signatories, companies, firms or individuals that participate in said bid depository.

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

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

511

Complaint

IN THE MATTER OF

FLORIDA WEST COAST CHAPTER, NATIONAL ELECTRICAL
CONTRACTORS ASSOCIATION, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2889. Complaint, May 24, 1977 — Decision, May 24, 1977*

This consent order, among other things, requires a Tampa, Fla., building trade association to cease entering into agreements or taking any action that would require members and signatories to deal exclusively with association-operated bid depository, and would penalize participants who fail to do so. Further, the order mandates immediate reinstatement for those recalcitrant parties previously suspended from participation.

Appearances

For the Commission: *Thomas D. Wilson, Jr.*, and *Truett M. Honeycutt*.

For the respondent: *Stephen W. Sessums, Albritton, Sessums & DiDio*, Tampa, Fla.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party respondent named or designated in the caption hereof, and hereinafter more particularly named, designated, described and referred to as respondent, has violated the provisions of the 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 Florida West Coast Chapter, National Electrical Contractors Association, Inc., hereinafter referred to as respondent corporation or FWCCNECA, is a nonprofit corporation, organized and existing under the laws of the State of Florida, with its principal office located at 2103 West Cass St., Tampa, Florida.

Respondent corporation was organized for, and serves its members as, an instrumentality which promotes cooperative activity among its member electrical contractors, collects business data from its members and generally purports to assist them in the operation of their business. One of the functions of respondent corporation is the operation of a bid depository. Said respondent corporation's membership represents a substantial, if not dominant, part of the electrical

contracting services industry in the central Gulf Coast area of the State of Florida.

For purposes of this complaint, the participants in the bid depository operated by respondent corporation consist of two groups: "members" and "signatories." The "members" group is composed of electrical contractors who belong to the respondent corporation and who generally perform electrical contracting services in Hillsborough, Pinellas, Pasco and Hernando Counties, Florida. The "members" group is entitled, among other things, to vote for the Board of Directors of the respondent corporation. The "signatory" group is composed of general contractors and nonmember electrical contractors who wish to avail themselves of the bid depository service offered by the respondent corporation as hereinafter described. This group has no vote and is limited only to participation in the bid depository service.

The control, direction and management of respondent FWCCNECA is vested in a Board of Directors elected by and from the members of said respondent corporation. The Board of Directors then elects or appoints corporate officers from among the members of the respondent corporation and, in the selection of the secretary-manager and assistant manager, from outside the class of said members. The officers of this respondent corporation include a governor, president, vice president, treasurer, secretary-manager and assistant manager.

PAR. 2. In the course and conduct of its business, respondent corporation has actively operated a bid depository which has aided, abetted, guided and assisted its membership in the unlawful acts and practices herein alleged. Several companies or firms which are signatories to or members of the bid depository of respondent corporation and which maintain their principal places of business in states other than the State of Florida submit or solicit bids through said bid depository which are, or may be, used by such companies or firms to award, or be awarded, building construction contracts. Furthermore, a considerable amount of the materials used in the construction that is the subject of said depository bid submissions and solicitations is shipped from various States of the United States into the State of Florida. Such activity and conduct engaged in by the membership of respondent corporation during the time period described herein result in a constant current of trade in or affecting commerce in said services or materials between and among the various States of the United States. Accordingly, the acts and practices of the respondent corporation, including, but not limited to, the operation of said bid depository, are in or affect commerce, as

"commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 3. Since at least 1973, respondent FWCCNECA, its officers and directors, and the members of and signatories to its bid depository have conspired to engage, and have engaged, in unfair and unlawful acts, policies and practices, the result of which is, or may be, to unlawfully hinder, restrain or destroy competition in providing electrical contracting, general contracting and other services related to building construction in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

Pursuant to, and in furtherance of, said conspiracy, said respondent has engaged in the following acts, policies and practices, among others:

(1) Providing a bid service or depository which purportedly assists members and signatories of the bid depository of respondent corporation in the awarding and securing of electrical contracting services provided by participating electrical contractors for the benefit of participating general contractors.

Pursuant to rules and regulations which govern the operation and administration of the bid depository and which rules and regulations were formulated, approved and implemented by the Board of Directors of the respondent corporation, participating members of said respondent corporation agree to submit bids exclusively through the aforesaid bid depository, and signatories to said bid depository agree to receive only those bids submitted through said bid depository.

Participating electrical contractors who submit electrical contracting bids to general contractors not signatories to said bid depository of respondent corporation are subject to suspension from the use of said bid depository and fine for such conduct.

Likewise, signatory general contractors who receive bids from electrical contractors not members or signatories to respondent corporation's bid depository are subject to suspension from the use of said bid depository and fine for such conduct.

(2) Suspending from participation in the bid depository:

(a) numerous electrical contractors for submitting bids to non-signatory general contractors, in violation of said bid depository rules and regulations, and

(b) numerous general contractors for awarding contracts based upon bids received from electrical contractors who have not submitted bids through said bid depository.

The aforesaid suspensions which have been imposed for as long as one year and in some cases for an indefinite duration have caused,

and are now causing, substantial injury to those firms laboring under said suspensions and resulting in a substantial lessening of competition and restraint of trade.

PAR. 4. The capacity and tendency of the acts, policies and practices of the respondent as alleged in Paragraph Three have been, are or may be, to unlawfully restrict, restrain, hinder and destroy competition in providing electrical and general contracting services in connection with building construction projects in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, within the intent and meaning of Section 5 of said Act.

PAR. 5. The policies, acts and practices of the respondent, as hereinbefore set forth, are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition within the intent and meaning 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 Florida West Coast Chapter, National Electrical

Contractors Association, Inc. is a nonprofit corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2103 West Cass St., Tampa, Florida.

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 Florida West Coast Chapter, National Electrical Contractors Association, Inc., its officers and directors, and the successors, assigns, agents, representatives and employees of said respondent, directly or indirectly, through any corporate or other device, or through any member of or signatory to its bid depository, in connection with the receipt, solicitation, use, submission or transmission of bids which are, or may be, employed in the awarding of building construction contracts and subcontracts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from entering into, continuing, cooperating in or carrying out any course of action, conspiracy, undertaking or agreement:

1. Which requires or provides that any member, signatory, company, firm or individual that employs or uses the bid depository of respondent corporation shall receive or solicit bids from, or submit bids to, only those companies, firms or individuals that are also members, signatories or participants in said bid depository;

2. Which subjects any member, signatory, company, firm or individual that employs or uses the bid depository of respondent corporation to suspension from participation in said bid depository or fine or any other kind of sanction, or the threat thereof, for receiving or soliciting bids from, or submitting bids to, any company, firm or individual that is not a member of said respondent corporation, is not a signatory to said bid depository or that does not employ or use said bid depository;

3. (a) To suspend from participation in said bid depository, to fine or to impose any other sanction upon any member, signatory, company, firm or individual for submitting bids to any company, firm or individual that is not a member of respondent corporation, is not a signatory to said bid depository or that does not employ or use said bid depository;

(b) To suspend from participation in said bid depository, to fine or to impose any other sanction upon any member, signatory, company, firm or individual for awarding contracts based upon bids received

from any company, firm or individual that is not a member of respondent corporation, is not a signatory to said bid depository or that does not employ or use said bid depository.

It is further ordered, That respondent immediately reinstate any member, signatory, company, firm or individual suspended from participation in said bid depository, which suspension resulted from conduct engaged in by respondent which hereinafter would amount to a violation of this order.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions and to all present and future members, signatories, companies, firms or individuals that participate in said bid depository.

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

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