IN THE MATTER OF

HERBERT R. GIBSON, SR., ET AL.

Docket 9016. Interlocutory Order, May 18, 1978

Request for subpoena enforcement denied without prejudice to renew.

ORDER DENYING REQUEST FOR SUBPOENA ENFORCEMENT WITHOUT PREJUDICE TO RENEW

On April 20, 1978, the administrative law judge, pursuant to Commission Rule 3.22 certified complaint counsel's Request for Court Enforcement of the Subpoena Served on Commission Witness Nix. For the reasons discussed below, we deny complaint counsel's request without prejudice to renewal at a later date.

The subpoena in question was dated March 16, 1978, served on Mr. Nix on March 22, 1978, with a return date of April 11, 1978. On April 10, 1978, complaint counsel received a letter from Mr. Nix indicating that he would not be able to comply with the subpoena because of illness. Attached to his letter is a statement to that effect from his physician, Dr. William deVlaming. Additionally, Mr. Nix indicated that he could not remember much of the information about which he spoke with complaint counsel and remarked on the fact that complaint counsel had previously indicated that he would not be called to testify.

Complaint counsel takes issue with each of Mr. Nix's assertions and points out that "failing memory is not a valid basis for failing to appear." Moreover, complaint counsel argues that the testimony of Mr. Nix

> is crucial for several reasons. He is one of the few witnesses that will testify as to the issues raised under Count III of the Complaint. His testimony is expected to directly contradict the testimony previously presented by respondent, Gerald P. Gibson. His testimony is finally expected to link respondents, H.R. Gibson Sr., H.R. Gibson, Jr. and Gerald P. Gibson, to payments and receipt of illegal brokerage.

Nevertheless, the administrative law judge has recommended that the request be denied because of the length of time that may be involved in an enforcement proceeding and because of the likelihood that no substantive evidence will be elicited if Mr. Nix cannot recall the events in question. At the same time, the administrative law judge notes that Mr. Nix could possibly be a "crucial witness on whom complaint counsel placed considerable reliance."

We have determined that the best way to reconcile the needs of all parties is to deny without prejudice, complaint counsel's request with instructions that the administrative law judge and the parties consider the procedures of Commission Rule 3.33. Rule 3.33(a) provides that:

At any time during the course of a proceeding . . . the Administrative Law Judge, in his discretion, may order the taking of a deposition and the production of documents by the deponent.

Furthermore, Section 3.33(f) provides for the introduction into evidence of a deposition if the administrative law judge finds "that the deponent is unable to attend or testify because of age, sickness, infirmity or imprisonment."

In this way, Mr. Nix will not be removed from the care and supervision of his doctor, or otherwise inconvenienced to the possible detriment of his health.[1] Moreover, complaint counsel will have the benefit of whatever recollection Mr. Nix can bring to bear on the situation, and Mr. Nix's memory lapses will be duly noted on the record under oath.

By its action today, the Commission should not be seen as invalidating the outstanding subpoena against Mr. Nix. The procedure suggested is an alternative to lengthy enforcement proceedings and at the same time adheres to the needs of Mr. Nix. Whether enforcement proceedings will ultimately be required as to the presently outstanding subpoena we have no way of knowing. Nevertheless, complaint counsel will not be prejudiced in renewing the request if it is determined that Section 3.33 is not feasible or if Mr. Nix again refuses to comply. Accordingly,

It is ordered, That complaint counsel's Request for Court Enforcement of the Subpoena Served on Commission Witness Nix be, and the same hereby is, denied without prejudice to renewal at a later date;

It is further ordered, That the parties and the administrative law judge consider proceedings pursuant to Commission Rule 3.33.

[1] Apparently, Mr. Nix is not completely incapacitated by his illness as we note that on April 7th he was said to be

IN THE MATTER OF

SAFEWAY STORES, INCORPORATED

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

Docket 9053. Complaint, Sept. 3, 1975—Decision, May 18, 1978

This consent order, among other things, requires an Oakland, Calif. retail food store chain to cease over-pricemarking and failing to sell advertised items at or below advertised prices. Further, food stores are required to conspicuously post advertisements and notices encouraging customers to check prices of advertised items. The order additionally obligates the firm to maintain business records for a period of three years, and to establish a surveillance program designed to ensure compliance with the terms of the order.

Appearances

For the Commission: *Robert Eliot Easton, Sr.* and *James J. Angelone.*

For the respondent: *James F. Rill, Collier, Shannon, Rill, Edwards & Scott,* 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 Safeway Stores, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

COUNT I

(Alleging violations of Section 5 of the Federal Trade Commission Act.)

PARAGRAPH 1. Respondent, Safeway Stores, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 4th and Jackson Sts., Oakland, California.

PAR. 2. Respondent is engaged in the operation of a chain of retail food stores, operating approximately 1950 stores in 27 states and the District of Columbia. Its volume of business is substantial, totalling approximately 6.77 billion dollars in retail food sales in 1973. In the operation of its retail food stores, respondent offers and sells to its customers an extensive line of groceries and other merchandise,

including food, drugs, cosmetics and devices as those terms are defined in the Federal Trade Commission Act, all of which are sometimes referred to hereinafter as "items." Some of said items are manufactured or processed by respondent at its manufacturing and processing plants located in various states. However, many of said items are purchased from numerous independent suppliers located throughout the United States.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, directly or indirectly, the aforesaid items to be shipped and distributed from its manufacturing and processing plants or from its other sources of supply to its warehouses, distribution centers, or retail food stores located in various states other than the state or origination, distribution or storage of said items. In the further course and conduct of its business, respondent transmits contracts, business correspondence, monies and other documents from its stores, offices, and divisions located in states other than the states in which such contracts, correspondence, monies and other documents originated. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in the distribution, advertising, offering for sale, and sale of the items described in Paragraph Two, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for some time last past, respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the said items by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said items from responent; and respondent has been and is now disseminating, and causing the dissemination of, advertisements concerning said items by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the attempted or actual purchase from respondent of the said items in commerce, as "commerce" is defined in the Federal Trade Commission Act. Many of those advertisements list or depict the said items and also contain statements and representations concerning the price or terms at which said items would be offered for sale. Many of the aforesaid advertisements contain further direct and express statements and representations concerning the time periods during which the offers would be in effect and the locations of respondent's food stores at which the offers would be made.

PAR. 5. Through the use of such advertisements disseminated in various areas of the United States served by respondent's retail food stores, respondent has represented, directly or by implication, that in those stores covered by such advertisements, during the effective periods of the advertised offers, the items listed or depicted in such advertisements would be sold to persons who attempted to purchase such items at prices at or below the advertised prices for such items.

PAR. 6. In truth and in fact, in a significant number of respondent's retail food stores covered by such advertisements, during the effective periods of the advertised offers, certain numbers of items listed or depicted in the said advertisements were marked with prices higher than the advertised prices, and, as a result, a substantial number of items marked with a higher price were sold to persons who purchased such items at prices higher than the advertised prices. Therefore, the statements and representations as referred to herein, were false, misleading and deceptive.

PAR. 7. By disseminating or causing the dissemination of advertisements which offer or present for sale items at specific prices, by permitting the units of certain numbers of said items to remain marked with prices higher than the advertised prices and by selling a substantial number of items so marked to customers at prices higher than the advertised prices, during the effective periods of such advertised offers at a significant number of stores covered by said advertisements, respondent has been and now is engaged in unfair acts and practices.

PAR. 8. In the course and conduct of its business, and at all times referred to herein, respondent has been and now is in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail food and grocery business.

PAR. 9. The use by respondent of the aforesaid unfair and 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 the said statements and representations were and are true, and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices.

PAR. 10. The acts and practices as aforesaid were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

(Alleging violations of the Federal Trade Commission Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices (16 C.F.R. 424), and Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four, and Eight: respectively, of Count I hereof are incorporated by reference in Count II as if fully set forth verbatim.)

PAR. 11. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and the provisions of Subpart B, Part 1, of the Commission's Procedures and Rules of Practice, 16 C.F.R. 1.11, *et seq.*, conducted a proceeding for the promulgation of a trade regulation rule regarding retail food store advertising and marketing practices. Notice of this proceeding, including a proposed rule, was published in the Federal Register on November 14, 1969 (34 FR 18252). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views and arguments, and to appear and orally express their views as to the proposed rule and to suggest amendments, revisions, and additions thereto.

The Commission considered all relevant matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the Notice as indicated in the accompanying Statement of Basis and Purpose (36 FR 8777 (May 13, 1971)) and as prescribed by law, determined that the adoption of the trade regulation rule was in the public interest, and, accordingly, promulgated the Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices on May 13, 1971, effective July 12, 1971.

PAR. 12. Respondent is a member of the retail food store industry, and its acts and practices in connection with the sale and offering for sale of food and grocery products or other merchandise subject to the jurisdiction of Section 5 of the Federal Trade Commission Act are within the intent and meaning of, and are subject to, the provisions of the aforesaid Trade Regulation Rule.

PAR. 13. In connection with its advertisements disseminated as aforesaid, respondent, in a substantial number of instances, has failed to comply with Paragraph (2) of the Trade Regulation Rule by offering products for sale at stated prices by means of advertisements disseminated in areas served by certain of its stores which are covered by such advertisements and by failing in those stores to charge out to

such advertised products at prices at or below the advertised prices during the effective periods of the advertisements, thereby failing to make said advertised items conspicuously and readily available for sale at or below the advertised prices.

PAR. 14. Respondent's aforesaid violations of the Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices constitute unfair methods of competition and unfair or deceptive acts or practices violative of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint based upon alleged acts and practices of Safeway Stores, Incorporated, a corporation, also trading and doing business as Safeway, hereinafter referred to as respondent, and having served such complaint upon respondent and having withdrawn the proceeding from adjudication based upon a joint motion for withdrawal from adjudication filed by complaint counsel and counsel for respondent; and

The respondent and counsel for the Commission having executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid 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 had 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 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 pursuant to Sections 2.34 and 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Safeway Stores, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 4th and Jackson Sts., Oakland, California.

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

DEFINITIONS

"Retail Food Store" means any of respondent's stores within the United States engaged primarily in the sale of foods for home consumption, excluding convenience-type stores with less than 4,000 square feet of building area.

"Item" means any article of merchandise which differs from any other article as to commodity, product, brand, variety, style or form, grade, type of package or label, size or weight, provided, that size or weight is to be disregarded with respect to articles priced by a standard measure of weight or count.

"Scanned Item" means an item bearing a symbol, printed on or affixed to the packaging or container of such item, in any store in which it is electronically scanned by equipment which identifies and prints on a cash register tape the price of that item.

"Unit" means one consumer package of a packaged item or the smallest advertised quantity that a consumer may purchase of an unpackaged item, provided, for that purpose of paragraph I.A. (2) of the order, a unit of a multiple priced item (*e.g.*, three for 41 cents) shall consist of that quantity, count or weight to which the multiple price applies.

"Over-pricemarked Items" means an advertised item of which more than five (or in the event a display contains fewer than 20 units, more than one-fourth) of the units in any one display bear a marked price higher than the advertised price.

"Unmarked Item" means an advertised item of which no more than five (or in the event a display contains fewer than 20 units, not more than one-fourth) of the units in any one display are legibly marked with a price.

"Overcharged Item" means an over-pricemarked item or an unmarked item of which one or more units are charged out at higher than the advertised price.

"Survey" means a compliance survey conducted by or under the direction of the Federal Trade Commission of a sample of 50 or more retail food stores over a period of at least three different weeks with approximately equal numbers of stores surveyed during each week stores are surveyed. All store surveying shall be completed within a period of time not exceeding eight consecutive weeks. Stores to be surveyed shall be selected from at least three different Standard Metropolitan Statistical Areas (SMASs) with an approximately equal number of stores surveyed in each SMSA in which stores are surveyed.

with this definition, but which is otherwise to be determined at the discretion of the staff or the Commission. Respondent waives any rights it might have to challenge the admissibility into evidence of the results of the survey of the sample on the grounds that those results are not projectable to a universe greater than the sample. Respondent, however, retains the right to challenge the evidentiary weight to be given to or inferences to be drawn from the results of any such survey on any legally available basis. All data collected in the course of a survey are to be recorded.

ORDER

PROHIBITED PRACTICES

I. *It is ordered,* That respondent Safeway Stores, Incorporated, a corporation, its successors or assigns, its 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 items offered or sold in its retail food stores, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing dissemination of, any advertisement by any means which offers or presents any items for sale at a stated price, unless throughout the effective period of the advertised offer, at each retail food store covered by the advertisement:

(1) each unit of each such advertised item, any of which are marked with a price, is individually, clearly and conspicuously marked with a price no higher than the advertised price; provided that in the case of overpricemarked scanned items, clear and conspicuous posting of the advertised price of such items at the point of display will be deemed compliance with this requirement; and

(2) each unit of each such advertised item is charged out to customers at or below the advertised price; provided that in the case of advertised items the ultimate price of whose units are determined by the total dollar amount of the customer's order or the use of a coupon, or other similar conditional price arrangement, the prices at which the units are sold, and not the prices marked on the units, shall govern.

Provided further, it shall constitute a defense of a charge of over-pricemarking or overcharging if respondent can show that such over-pricemarking or overcharging was due to circumstances beyond respondent's reasonable control. It will be presumed that any instance of over-pricemarking or overcharging found was due to circumstances beyond respondent's reasonable control if respondent can show that

such over-pricemarking and overcharging occurred despite respondent's reasonable procedures to eliminate all over-pricemarking and overcharging, and that upon learning of any specific instance or instances of such over-pricemarking or overcharging, respondent immediately acted to eliminate them and took reasonable measures to assure that they did not recur.

For respondent's procedures to be reasonable, respondent shall have the burden of establishing that:

(i) it has a reasonable basis in fact for concluding that its procedures for pricemarking and charging out advertised items are properly designed to achieve compliance with this order;

(ii) it has in effect a continuing surveillance program adequate to reveal whether its retail food stores are conforming with this order; and

(iii) respondent regularly conducts a review and analysis of results of the surveillance program adequate to determine whether changes in market conditions, technology or other changes make it necessary for respondent to revise its procedures for pricemarking and charging out advertised items to maintain compliance with this order.

II. A. No enforcement action will be brought against respondent for any alleged instances of overpricemarking or overcharging on the basis of a survey unless Respondent is notified in writing within three months following the completion of that survey that the survey has been conducted. At the time of said notice the Commission shall furnish respondent copies of written instructions to the persons making in-store observations, and sufficient documentary material that will reasonably enable Respondent to identify the stores, items and prices surveyed.

B. If, in any enforcement action brought against respondent, the Commission offers evidence purporting to establish an over-pricemarking rate for respondent, such rate shall be calculated by taking, as of the date(s) of any survey and for the stores selected, the total number of items over-pricemarked as a percent of the total number of advertised items than in effect for those stores.

III. *It is further ordered,* That throughout the effective period of such newspaper advertisement, respondent shall post conspicuously at or near each doorway affording entrance to the public of each retail food store,

(a) copy of the advertisement effective for that store; and

(b) the following statement:

Notice to Our Customers

advertised item you purchase against the price indicated in our ad and report any errors to store personnel. If errors are not corrected to your satisfaction, please advise the store manager.

IV. Respondent shall not be subject to any of the provisions of this order to the extent that such provisions shall have been rendered inconsistent with the Trade Regulation Rule regarding Retail Food Store Advertising and Marketing Practices, 16 C.F.R. 424 (1977) because of any future amendment to that rule.

V. *It is further ordered,* That:

A. Respondent shall forthwith deliver a copy of this order to each of its officers (excluding assistant officers) and to other of its personnel in its Retail Divisions (down to the level of and including store managers) who, directly or indirectly, have any responsibilities relating to pricemarking and charging out of advertised items in respondent's retail food stores, and respondent shall secure a signed statement acknowledging receipt of said order from each such person.

B. Respondent shall maintain a surveillance program adequate to reveal whether the business practices of its retail food stores conform to this order and shall upon request inform the duly authorized representative of the Commission as to the nature of such program.

C. Respondent shall, for a period of three years subsequent to the date of this order:

(1) Maintain business records which show the efforts taken to achieve continuing compliance with the terms and provisions of this order; and

(2) Furnish to the Federal Trade Commission copies of the records to be maintained under subparagraph (1) above, upon written request by any of its duly authorized representatives.

D. Respondent shall, all other provisions of this order notwithstanding, within 90 days following the end of each year, for a period of three years from the date this order becomes final, file with the Commission a report setting forth in detail the manner and form in which it has complied with this order in the preceding year.

It is further ordered, That respondent shall notify the Commission at least thirty 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 respondent which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent herein shall within 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.

IN THE MATTER OF

USLIFE CREDIT CORPORATION, ET AL.

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

Docket 9057. Complaint, Sept. 26, 1975—Final Order, May 23, 1978

This order, among other things, requires a Schaumburg, Ill. finance company and its parent corporation to cease, in connection with the extension of consumer credit, failing to provide consumers with the material and disclosures required by Federal Reserve System regulations.

Appearances

For the Commission: *Michael E.K. Mpras* and *Robert L. Patterson.*

For the respondents: *Edward W. Keane* and *Bruce E. Clark, Sullivan & Cromwell.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 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 USLIFE Credit Corporation, a corporation, and USLIFE Corporation, a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation, 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 USLIFE Credit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 1300 North Meacham Road, Schaumburg, Illinois. Respondent USLIFE Credit Corporation is a wholly-owned subsidiary of USLIFE Corporation.

Respondent USLIFE Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 125 Maiden Lane, New York, New York.

Respondent USLIFE Credit Corporation operates through approximately two-hundred thirteen (213) wholly-owned subsidiary loan offices located in twenty (20) States of the United States. Each subsidiary is incorporated in the respective state in which it is located

Corporation, State Securities, Inc., Sterling Finance Company, Clermont Finance Company, Courtesy Finance Company, North American Finance Company, Best Finance Company and Midland Finance Company. [2]

Respondents USLIFE Corporation and USLIFE Credit Corporation formulate and control the policies, acts and practices of each of the wholly-owned subsidiaries, including the acts and practices hereinafter set forth.

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

PAR. 2. Respondents by and through their corporate subsidiary structure are now, and for some time last past have been, engaged in the offering to extend, and the extension of, consumer credit to the public.

PAR. 3. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business as aforesaid, have charged, and are now charging, for credit life and/or credit accident and health (disability) insurance a substantial number of consumers who obtained a consumer loan from respondents.

Typical and illustrative, but not all-inclusive of the circumstances in which such insurance charges are incurred by consumers, are the following:

1. During the consumer's contact with respondents, respondents' personnel orally quote a monthly repayment figure which includes charges for credit life and/or credit accident and health (disability) insurance.

2. Respondents' personnel automatically include charges for credit life and/or credit accident and health (disability) insurance on the Loan Agreement, and, unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

3. On that portion of the Loan Agreement which contains the statements "I desire credit life insurance," or "I desire credit life insurance and disability insurance," respondents' personnel, without the permission or authority of the consumer, place an "x" on the line for the borrower's signature. [3]

4. The Loan Agreement, filled out as indicated above, is presented

to the consumer for two signatures. The consumer is not told of the purpose of each signature. These signatures are intended (1) to indicate the consumer's desire for the insurance coverage, and (2) to acknowledge the consumer's receipt of the executed Loan Agreement.

5. Respondents' personnel place the charges for credit life and/or credit accident and health (disability) insurance in the "Record of Disbursements" section of the Loan Agreement, and these charges become part of the "amount financed," but are not included in the finance charge and thus the annual percentage rate is improperly computed.

PAR. 5. By and through the acts and practices described in Paragraph Four, and others of similar import, meaning and consequence, but not specifically set forth herein, respondents, in a substantial number of instances, obtain consumers' signatures through practices which operate, directly or indirectly, to defeat the elective language of the insurance authorization disclosures by obscuring from consumers knowledge about the option, by misrepresenting to consumers that their signatures are necessary solely for the purpose of consummating the credit transaction, and by discouraging the declination of the coverage when it is questioned. These practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain credit life and/or credit accident and health (disability) insurance.

Therefore, respondents, in a substantial number of instances, induce their customers to incur charges for credit life and credit accident and health (disability) insurance without said customers making a knowing, affirmative election to have such insurance and, thereby, respondents have failed to obtain from each of their customers a "specific dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a)(5) of Regulation Z, in spite of the existence of language to the contrary in the loan disclosure statement.

PAR. 6. By and through the acts and practices described in Paragraphs Four and Five hereof, respondents have failed to include the charges for credit life and/or credit accident and health (disability) insurance in the finance charge when a specific dated and separately signed affirmative written indication of the consumer's desire for such insurance has not been obtained as required by Section 226.4(a)(5) of Regulation Z, and thereby respondents: [4]

1. Failed to compute and disclose accurately the "finance charge," as required by Sections 226.4 and 226.8 of Regulation Z; and

2. Failed to compute and disclose accurately the "annual [illegible]

ge rate" to the nearest quarter of one percent, as required by Sections 26.5 and 226.8 of Regulation Z.

PAR. 7. In the further course and conduct of their business as foresaid, respondents obtain borrowers' signature on that portion of he Loan Agreement which contains the statements "I desire credit life nsurance," or "I desire credit life insurance and disability insurance," nd said signatures are not specifically dated as required by Section 26.4(a)(5) of Regulation Z.

PAR. 8. Pursuant to Section 103(q) of the Truth in Lending Act, espondents' aforesaid failure to comply with Sections 226.4, 226.5 and 26.8 of Regulation Z constitute violations of that Act and, pursuant to ection 108 thereof, respondents have thereby violated the Federal rade Commission Act.

INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE LAW JUDGE

JANUARY 27, 1977

PRELIMINARY STATEMENT

In a complaint dated September 26, 1975, the Federal Trade Commission (Commission) charged respondents, USLIFE Credit Corporation (USLIFE Credit) and its parent, USLIFE Corporation (USLIFE), with violations of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*), the Truth in Lending Act (15 U.S.C. 1601, *et seq.*) and its implementing regulation (Regulation Z – 12 C.F.R. 226) (Complaint, ¶¶ One and Eight). The gravamen of the charges is that in offering to extend and in extending consumer credit to the public: [2]

(1) Prospective borrowers were orally quoted a monthly repayment figure which included charges for credit life and/or credit accident and health (disability) insurance (Complaint, ¶ Four, 1);

(2) Charges for credit life and/or credit accident and health (disability) insurance were automatically included in loan agreements unless the borrower specifically objected to their inclusion (Complaint, ¶ Four, 2);

(3) X's were placed on loan agreements on the lines calling for the borrower's signature to indicate he or she wished to have credit life and/or disability insurance without the borrower's permission or authority (Complaint, ¶ Four, 3);

(4) When loan agreements, filled out as indicated above, were presented to the borrower, he was not told the purpose of the two signatures called for (*i.e.*, one to indicate insurance was desired and the