

Complaint

IN THE MATTER OF

BILL CROUCH FOREIGN, INC., d/b/a BILL CROUCH
IMPORTS, INC. (formerly MAZDA OF BOULDER, INC.)

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

Docket C-3030. Complaint, July 31, 1980—Decision, July 31, 1980

This consent order requires, among other things, a Boulder, Colo. retail dealer for new Honda automobiles to cease from charging customers more than its actual cost for transporting vehicles to its showroom; misrepresenting that optional equipment is installed by the manufacturer or required by law; and failing to disclose to customers any additional charges that would be included in the purchase price of the automobile. The order further requires the firm to make refunds, in a prescribed manner, to eligible Honda Accord customers who had paid more than \$30.00 above the actual cost for freight; and retain specified records for a period of two years.

Appearances

For the Commission: *John H. Evans* and *Allen R. Franck*

For the respondent: *Miles C. Cortez, Jr.* and *Debra R. Lappin*,
Welborn, Dufford, Cook & Brown, Denver, Colo.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*, as amended), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bill Crouch Foreign, Inc., dba Bill Crouch Imports, Inc. (formerly Mazda of Boulder, 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 thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado with its principal office and principal place of business located at 2555 Thirtieth St., Boulder, Colorado.

PAR. 2. Respondent is now, and for some time has been, engaged in the advertising, offering for sale, and sale of new automobiles, and the parts and equipment thereof, to retail customers. Respondent is an authorized dealer for the Honda Automobile Company.

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

COUNT I

The allegations contained in Paragraphs One through Three are incorporated by reference herein as if fully set forth verbatim.

PAR. 4. In the course of offering for sale and selling new Honda automobiles to retail customers, respondent regularly has listed on purchase orders and bills of sale, and has collected from customers as part of the total purchase price, a charge for "Freight." This terminology represents that the charge is intended to reimburse the respondent for its actual costs or outlays to third parties for the transportation of new automobiles to the dealership from the point where they are delivered by the manufacturer.

PAR. 5. In truth and in fact, in many instances the charges referred to in Paragraph Four, which respondent has listed and collected from customers for "Freight," have exceeded respondent's actual outlays to third parties for the transportation of new automobiles.

PAR. 6. The practices described hereinabove have had the capacity and tendency to mislead and deceive new automobile consumers and have induced customers to make payments which they might not have made but for respondent's aforesaid representations.

PAR. 7. Respondent's conduct as alleged in Count I was and is to the detriment and injury of the purchasing public and constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. Furthermore, respondent's retention of funds collected from customers by means of such conduct constituted, and now constitutes, an unfair or deceptive act or practice in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

The allegations contained in Paragraphs One through Seven are incorporated by reference herein as if fully set forth verbatim.

PAR. 8. In the further course of selling new Honda automobiles to retail customers, respondent or respondent's agents regularly have represented to customers that the application or installation of

several dealer-installed items, including, but not limited to, "undercoating" and "Polyglycoat" (a chemical paint polish and sealant), is recommended, required, or performed by the automobile manufacturer or that the respondent has no control over the installation or application of these items.

PAR. 9. In truth and in fact, the items referred to in Paragraph Eight are installed or applied at the direction of respondent to new automobiles which come into respondent's possession. Furthermore, the manufacturer of these new automobiles neither recommends, requires, nor performs the installation or application of these items.

PAR. 10. Respondent's representations as set forth in Paragraph Eight were and are false and misleading. Relying upon such representations, customers have been misled into accepting and paying for items that they might otherwise not have purchased.

PAR. 11. Respondent's conduct as alleged in Count II was and is to the detriment and injury of the purchasing public, and constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Denver 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 hereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the

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 Bill Crouch Foreign, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 2555 Thirtieth St., in the City of Boulder and State of Colorado.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For purposes of this Order:

1. "New automobile" shall mean any passenger car or station wagon the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
2. "Optional equipment" shall mean, with respect to any new automobile, any equipment or features not included within the manufacturer's suggested retail price, as defined in 15 U.S.C. 1232(f)(1).

I

It is ordered. That respondent Bill Crouch Foreign, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any sale, offering for sale, advertising or distribution of new automobiles, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Listing on stickers affixed to any new automobile, or on purchase orders, bills of sale, or sales contracts, and collecting from consumers, any freight, transportation or destination charges that exceed respondent's cost as determined herein for the shipment of the new automobile from any port-of-entry to respondent's showrooms. For purposes of this Order, respondent's cost shall be deemed to be the amount shown on the most recent invoice received by respondent covering the shipment of comparable automobiles from a

comparable port-of-entry to respondent's showrooms plus five dollars (\$5.00).

2. Affirmatively representing that any optional equipment is recommended, required, or installed by the manufacturer or is required by law, unless such is in fact the case; *provided, however*, that this requirement shall not be construed to impose a duty on respondent or its agents to affirmatively disclose information regarding such optional equipment, including but not limited to the nature or source of or requirement for such equipment, except in response to a specific consumer inquiry.

3. Failing to disclose clearly and conspicuously, prior to signing of a completed purchase order, if the total purchase price exceeds the manufacturer's suggested retail price, the precise amount of any handling, service, or similar charges which will be included in the purchase price of a new automobile.

II

It is further ordered, That:

1. The respondent shall submit to the Commission, within fifteen (15) days after the date this Order is served on respondent's corporate president (hereinafter "date of service"), a notarized affidavit, executed by the president of respondent to the effect that the respondent has made or has caused to be made a good faith search of documents that pertain to purchasers of new Honda Accord automobiles from the respondent and that the respondent, to the best of its knowledge, has previously or simultaneously with said affidavit submitted to the Commission the names of all purchasers of such automobiles covered by this Order.

2. The respondent shall submit to the Commission, within sixty (60) days after the date of service, all necessary documents, including but not limited to, purchase orders, bills of sale, buyer's orders, freight invoices and billings, internal worksheets, and invoices and all other materials necessary for the Commission to determine the amount paid by the respondent to third parties for freight. Based upon the information supplied to the Commission by the respondent pursuant to this paragraph and Paragraph II(1), the Commission or its designee shall deliver to respondent a list of all purchasers of new Honda Accord automobiles who are "eligible class members," setting forth the amount of refund due from the respondent to each such class member, derived in accordance with Part II of this Order, which list shall be served on the respondent.

3. On the ninetieth (90th) day after service on the respondent of

the list of eligible class members as provided in Paragraph II(2) above, the respondent shall make refunds to eligible class members in the following manner:

(a) except as provided in subparagraph (b) below, submit to the Commission or its designee a refund check, undated, drawn on the account of respondent made payable to each eligible class member or his or her legal representative in the amount provided by the Commission;

(b) in the event a refund check for any eligible class member is not so submitted, submit to the Commission or its designee a list of "disputed eligible class members" stating the reasons why the purchaser whose name is shown on the list prepared by the Commission is not an eligible class member or is not entitled to the refund in the amount specified by the Commission, as the case may be. If necessary, counsel for the Commission and counsel for the respondent shall thereafter confer and determine if and/or in what amount a refund is due and owing to any such disputed eligible class member.

4. Thereafter, the Commission or its designee shall send to each eligible class member, by registered mail, with return receipt requested, and with copy to respondent, a letter in the language, manner, and form shown in Appendix A, with an enclosed stamped envelope showing the address of the Commission or its designee. Upon receipt of the executed Receipt and Waiver form from an eligible class member, as provided in Appendix A, the Commission or its designee shall thereafter enter a current date on the appropriate refund check submitted to the Commission by respondent in accordance with Paragraph II(3) above and forward the check to such eligible class member.

5. On or before the three-hundredth (300th) day after date of service, the Commission or its designee shall serve on respondent (a) a list of names, addresses and received refunds in accordance with the provisions of this Part II, and (b) a list of names, addresses and refund amounts of those eligible class members whose initial mailing in the form of Appendix A or refund check was returned by the United States Postal Service. The Federal Trade Commission shall have one year from the date of service of this list to locate such eligible class members. At such time as any class member is located, the Federal Trade Commission shall follow the procedure authorized in Paragraph II(4) above with respect to the initial mailing of a letter in the form of Appendix A and subsequent mailing, if appropriate, of a refund check to such eligible class member.

6. The respondent shall, on the three-hundred and thirtieth (330th) day after the date of service, file with the Commission a report in writing setting forth the manner and form in which it has complied with Part II of this Order.

7. At the end of the one-year period described in Paragraph II(5) above, the Commission shall return to the respondent all refund checks payable to eligible class members whom the Commission is unable to locate and respondent shall thereupon be relieved of any further obligation to make payments to such eligible class members.

8. Except as modified by Paragraph II(9) below, "eligible class members" means those persons who purchased any new Honda Accord automobile at the respondent's showrooms between July 15, 1976 and the date of service of this Order, and who paid any amount for "freight," or charge of similar import, in excess of respondent's actual outlays to third parties to transport the automobile from the port-of-entry to respondent's showrooms, if such actual outlays are known, or, if unknown, in excess of respondent's outlays as computed pursuant to subparagraph 10(b) below.

9. If at the time of sale the charge made by the respondent for "freight" to a person who purchased a new Honda Accord automobile between July 15, 1976 and the date of service of this Order was a "good faith estimate" of the respondent's actual freight outlays to third parties, such person shall not be an "eligible class member" within the meaning of this Consent Order. Any charge for freight made by the respondent shall be deemed a "good faith estimate" by the respondent if such charge cannot be shown to have exceeded the respondent's subsequent actual outlays, or, if unknown, its estimated outlays, as determined under subparagraph 10(b) below, to third parties for transportation of the automobile from the port-of-entry to the respondent's showrooms by more than thirty dollars (\$30.00).

10. The respondent shall make refund payments to each eligible class member as follows:

(a) each eligible class member shall receive as a refund one-half (1/2) of that amount by which the charge paid by the class member to the respondent for "freight" exceeded the respondent's actual outlays to third parties for transportation of the automobile purchased by the class member from the port-of-entry to respondent's showrooms.

(b) if such actual outlay is unknown, each eligible class member shall receive as a refund one-half (1/2) of that amount by which the charge paid by the class member to the respondent for "freight" exceeded the average sum paid by the respondent to third parties to

transport automobiles comparable to that purchased by the class member from comparable ports-of-entry to respondent's showrooms during the three (3) calendar months preceding the month of sale to the class member.

The amount of each refund under this section shall be determined by the Commission on the basis of the information supplied by the respondent under Paragraph II(2) above.

11. The respondent shall maintain records and documents for two (2) years after the filing of the report referred to in Paragraph 6 of Part II of this Order, which demonstrate that the respondent has complied with Part II of this order.

12. If any duty required to be performed on a certain day under Part II of this Order falls upon a non-business day, the respondent herein shall perform such duty on the next following business day.

III

It is further ordered, That:

1. Respondent shall notify the Commission at least thirty (30) days prior to any proposed changes 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 changes in the corporation which may affect compliance obligations arising out of the Order.

2. Respondent shall forthwith deliver a copy of this Order to each of its operating divisions and to each of its present and future officers; and forthwith deliver a summary of this Order, stating that the respondent is subject to an order of the Commission and enumerating the requirements of Part I of this order, to each employee or agent who is engaged in the sale of new automobiles, or who, directly or indirectly, has any responsibility relating in any way to the pricing of new automobiles, or who is engaged in any aspect of the preparation, creation, or placing of advertising; and the respondent shall secure a signed statement acknowledging receipt of said order or summary from each such person.

3. Respondent shall retain each of its sales contracts and freight invoices for new automobiles for two (2) years after the date of the sales transaction, and shall make such records available for inspection and copying upon reasonable request by the Commission or any of its duly authorized representatives.

4. Respondent shall, at reasonable times, afford the Commission, or any of its duly authorized representatives, access to such records,

memoranda, and other documents relating to the provisions contained herein as may be appropriate to enable the Commission to determine respondent's compliance with the Order.

5. Respondent shall within sixty (60) days after service of this Order upon respondent 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
BENEFICIAL CORPORATION, ET AL.

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

Docket C-3032. Complaint, August 5, 1980—Decision, August 5, 1980

This consent order requires, among other things, a Wilmington, Del. firm and Beneficial Management Corp. of Morristown, N.J. to cease, in connection with the extension of consumer credit and purchase of consumer contracts, from misrepresenting the effect of state laws and consumer's right to assert against contract holder any claim or defense arising from the contract. The order further bars respondents from using past notice to defeat any valid consumer claim and requires them to notify all active account consumers who received the notice that their claims and defenses have not been waived.

Appearances

For the Commission: *Ivan L. Orton* and *Randall H. Brook*.

For the respondents: *John P. Howland*, for Beneficial Management Corporation, Morristown, N.J.

COMPLAINT

The Federal Trade Commission, having reason to believe that Beneficial Corporation and Beneficial Management Corporation have violated Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding is in the public interest, issues this complaint.

PARAGRAPH 1. Respondent Beneficial Corporation ("Beneficial") is a Delaware corporation with its office and principal place of business at 1300 Market St., Wilmington, Delaware.

Respondent Beneficial Management Corporation ("Beneficial Management") is a Delaware corporation with its office and principal place of business at 200 South St., Morristown, New Jersey.

Beneficial directs and controls the Beneficial Finance System comprised of wholly owned subsidiaries including local loan offices and Beneficial Management. Beneficial Management provides centralized accounting, auditing and legal services to these consumer finance subsidiaries.

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

PAR. 2. Beneficial through Beneficial Finance System is engaged in the extension of consumer credit to the general public. It purchases

installment contracts and other consumer credit agreements from retailers in addition to making direct consumer loans.

PAR. 3. In connection with the extension of consumer credit and purchase of contracts, Beneficial and Beneficial Management has supervised the dissemination of legal forms and other printed materials throughout the country. This is done through the United States mails. Beneficial and Beneficial Management maintain a substantial course of trade in extending consumer credit and purchasing retail contracts in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course of purchasing consumer credit contracts, the Beneficial Finance System becomes a holder of these consumer credit contracts as "holder" is used in the FTC Trade Regulation Rule, Preservation of Consumer Claims and Defenses, 16 C.F.R. 433 (the "Holder Rule").

PAR. 5. These contracts usually, if not always, contain the following notice as required by the Holder Rule.

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

This notice is required by the FTC to preserve the consumer's legally sufficient claims and defenses so that they may be asserted against a creditor where a seller fails to keep its side of the bargain.

PAR. 6. Upon purchasing these contracts, the Beneficial Finance System sends "Notification of Purchase" forms to the consumers whose contracts were purchased. These notices contain the following language or language to the following effect:

THE FOLLOWING REFERENCES MAY APPLY TO THE STATE(S) INDICATED

ARIZONA—YOU HAVE NINETY (90) DAYS FROM THE DATE OF RECEIPT OF THE GOODS OR RENDERING OF SERVICES WITHIN WHICH TO NOTIFY US IN WRITING OF ANY COMPLAINTS, CLAIMS OR DEFENSES WHICH YOU MAY HAVE AGAINST THE SELLER. SUCH WRITTEN NOTICE MUST BE SENT BY CERTIFIED MAIL TO THE SELLER AND YOU SHOULD FORWARD A COPY TO US. IF SUCH WRITTEN NOTICE IS NOT RECEIVED WITHIN THE NINETY (90) DAY PERIOD, THE ASSIGNEE WILL HAVE THE RIGHT TO ENFORCE THE CONTRACT FREE OF ANY CLAIMS OR DEFENSE THE BUYER OR LESSEE MAY HAVE AGAINST THE SELLER OR LESSOR WHICH HAS ARISEN BEFORE THE END OF THE NINETY (90) DAY PERIOD.

DELAWARE—WITHIN 15 DAYS OF THE DATE OF MAILING OF THIS NOTICE YOU MUST NOTIFY THIS OFFICE IN WRITING OF ANY FACTS GIVING RISE TO ANY CLAIM OR DEFENSE THAT YOU MAY HAVE AGAINST THE SELLER OR ELSE SUCH CLAIM IS WAIVED.

IDAHO— . . . THREE (3) MONTHS . . .

Decision and Order

96 F.T.C.

INDIANA AND SOUTH DAKOTA— . . . 60 DAYS . . .*IOWA, NORTH CAROLINA, OKLAHOMA AND TENNESSEE*— . . . 30 DAYS . . .*MARYLAND*— . . . NINETY (90) DAYS . . .*PENNSYLVANIA AND WYOMING*— . . . 45 DAYS . . .*TEXAS*— . . . 3 DAYS . . .*WEST VIRGINIA*— . . . 180 DAYS . . .*WISCONSIN*— . . . 12 MONTHS . . .

PAR. 7. The representation that the consumer waives the right to assert claims or defenses if the Beneficial Finance System is not notified is false. Consumers continue to have this right as stated in the contract.

State laws like those referenced by the Beneficial Finance System on the "Notification of Purchase" forms might apply to contracts not governed by the Holder Rule. However, some of the references themselves misrepresent state law. All of the references misrepresent the impact of state law on contracts governed by the Holder Rule.

PAR. 8. The notice has the tendency and capacity to deter consumers from asserting valid claims and defenses against the Beneficial Finance System.

For example, consumers with valid warranty claims against a seller might feel that they had no claim against the Beneficial Finance System and had to continue making payments. This would undermine the purpose of the Holder Rule.

PAR. 9. For the reasons stated above, the acts and practices of Beneficial and Beneficial Management are to the prejudice and injury of the public and constitute false, misleading, deceptive and unfair 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 has initiated an investigation of certain acts and practices of the respondents Beneficial Corporation and Beneficial Management Corporation. The respondents have been furnished with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration. This complaint, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended.

The respondents, their attorney, and counsel for the Commission have executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the draft complaint, a statement that the signing of the 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.

The Commission considered the matter and determined that it had reason to believe that the respondents have violated the Federal Trade Commission Act, as amended, and that complaint should issue. It then accepted the executed consent agreement and placed it on the public record for a period of 60 days. Part III of the Order has been modified to follow the complaint allegations. The correction notice required by Part III must be sent only to accounts in the 15 states whose laws were misrepresented by Beneficial's original notice. Now, in conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission issues its complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent Beneficial Corporation is a Delaware corporation. Its office and principal place of business is located at 1300 Market St., Wilmington, Delaware.

Respondent Beneficial Management Corporation is a Delaware corporation. Its office and principal place of business is located at 200 South St., Morristown, New Jersey.

Respondent Beneficial Corporation directs and controls the Beneficial Finance System comprised of wholly-owned subsidiaries including local loan offices and Beneficial Management.

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

3. The proceeding is in the public interest.

ORDER

This order applies to respondents Beneficial Corporation ("Beneficial") and Beneficial Management Corporation ("Beneficial Management"), their successors, assigns, officers, agents and employees, whether acting directly or through any corporation, subsidiary, division or other device, including any part of the Beneficial Finance System.

I.

It is ordered, That Beneficial and Beneficial Management cease

and desist from representing, directly or by implication, that a consumer's right to assert claims or defenses against a holder of the consumer's contract:

A. is contingent upon the consumer giving notice of the claim or defense to the holder within a stated time after the holder purchases the contract;

B. is in any other way limited by state law unless this is true.

II.

It is further ordered. That Beneficial not assert any defect in a consumer's assertion of a claim or defense against the Beneficial Finance System (or any part of it) when that defect is based on the consumer's failure to give prior notice to the Beneficial Finance System (or any part of it).

III.

It is further ordered. That Beneficial Management, within 30 days after service of this order, send the following notice to all active installment sales contract accounts in Arizona, Delaware, Idaho, Indiana, Iowa, Maryland, North Carolina, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, West Virginia, Wisconsin and Wyoming:

Dear Customer:

When we purchased your contract, we sent you a notice. This notice said you might not have the right to assert claims or defenses against us unless you notified us within a certain time period.

This statement was not correct.

You have always had the right to assert claims or defenses against us that you could assert against the seller. You have this right even if you have not previously told us of your claim or defense.

Beneficial Finance System
Affiliated Companies

IV.

It is further ordered. That respondents maintain complete business records relative to the manner and form of their compliance with this Order. Respondents shall retain each record for at least three years. Upon reasonable notice, respondents shall make any and all

the records available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

V.

It is further ordered, That Beneficial forthwith distribute a copy of this Order to each office of its respective domestic consumer finance subsidiaries.

VI.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in the corporation which may affect compliance obligations arising out of the Order.

VII.

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

IN THE MATTER OF
HERBERT R. GIBSON, SR., ET AL.

MODIFYING ORDER AND OPINION IN REGARD TO ALLEGED
VIOLATION OF SEC. 2 OF THE CLAYTON ACT AND THE FEDERAL
TRADE COMMISSION ACT

Docket 9016. Final Order, April 30, 1980—Modifying Order, Aug. 8, 1980

This order, granting in part, and denying in part, respondents' petitions for reconsideration, modifies the order issued on April 30, 1980, 45 FR 38352, 95 F.T.C. 564, by inserting the word "while" before the word "acting," in paragraph 1, line 2 of Section II; and by inserting a comma and the phrase "while acting as a buyer or acting for in behalf of or subject to the direct or indirect control of a buyer," after the word "respondent[s]," in paragraph 2, line 3 of Section II.

ORDER GRANTING IN PART, AND DENYING IN PART, RESPONDENTS'
PETITIONS FOR RECONSIDERATION

An opinion and final order in this matter having been issued on April 30, 1980; respondents having been served by mail with the said opinion and order on May 20, 1980 and May 21, 1980; respondents having petitioned for reconsideration of said opinion and order on June 12, 1980; and the Commission, for the reasons stated in the accompanying opinion, having determined to grant in part, and deny in part, respondents' petitions for reconsideration;

It is ordered, That the final order to cease and desist be, and hereby is, modified as follows:

In paragraph 1 of Section II of the Order, line 2, insert the word "while" in front of the word "acting"; and

In paragraph 2 of Section II of the Order, line 3, after the word "respondent[s]," insert a comma and the phrase "while acting as a buyer or acting for or in behalf of or subject to the direct or indirect control of a buyer,".

OPINION OF THE COMMISSION

BY CLANTON, *Commissioner*:

Respondents have filed two petitions for reconsideration of our recent opinion and order. Each petition asserts: (1) that the language and coverage of Section II of the Final Order should be changed; (2) that application of the opinion of the Court of Appeals in *Grolier, Inc. v. FTC*, 615 F.2d 1215 (9th Cir. 1980), requires disqualification of the administrative law judge ("ALJ"), Theodor P. von Brand, and hence

