

Complaint

87 F.T.C.

IN THE MATTER OF
UNITED COMPUCRED COLLECTIONS, INC., ET AL.

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

Docket C-2806. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976

Consent order requiring a Cincinnati, Ohio, debt collection agency, among other things to cease misrepresenting the nature, import, or urgency of communications used in the collection of delinquent debts; misrepresenting the initiation of legal action for nonpayment of alleged debts or the effect of nonpayment on credit status of the alleged debtor; and furnishing means and instrumentalities of misrepresentation or deception. Further, the order requires respondent to disclose in correspondence to alleged debtors that respondents do not accept payments nor ordinarily file suits.

Appearances

For the Commission: *Carthon E. Aldhizer.*

For the respondents: *James L. Cobb, Jr., Cobb, Combs, Beasley & Oldfield, Covington, Ky.*

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 United Compucred Collections, Inc., a corporation, and Wes Symmonds and Janet Symmonds, 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 United Compucred Collections, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 2780 Banning Rd., Cincinnati, Ohio.

Respondents Wes Symmonds and Janet Symmonds are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time in the past have been, engaged in the offering for sale and sale of a service to assist in the collection of alleged delinquent debts. This service consists of the

preparation by the respondents of a series of form notices and letters to be mailed to alleged debtors at regular intervals.

Two styles of forms are used in this series: (1) that which is titled SPEEDGRAM; and (2) that which bears the letterhead of United Compucred Collections, Inc.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of the United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the payment of alleged delinquent debts, the respondents mail or cause to be mailed to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative, but not necessarily all inclusive, of said forms and material are the following:

1. A yellow window envelope on which a return address is printed, with no name, in the upper left-hand corner.

2. A yellow printed form, styled SPEEDGRAM, designed to be inserted in the envelope described in subparagraph 1 of this Paragraph.

PAR. 5. By and through the use of the envelopes and forms described in subparagraphs 1 and 2 of Paragraph Four, respondents have represented, and are now representing, directly or by implication, that the communication is a telegraphic message.

PAR. 6. In truth and in fact, the communication is not a telegraphic message. Rather, it is a printed form letter, mailed to alleged delinquent debtors, which form by its color and appearance, styling, printing and format simulates a telegraphic message and which, by virtue of said simulation, misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the use by respondents of said envelopes and forms as set forth in Paragraph Four was and is false, misleading and deceptive.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

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UNITED COMPUCRED COLLECTION, INC.

* * * * *

* * * Your seriously delinquent account has been turned over to United Compucred Collections, Inc., by the First National Bank. If you wish to avoid further processing of this claim, please contact your creditor at once and make some satisfactory arrangement with them for payment of this account. Failure to do so may have an effect on your good credit and may result in your creditor's consulting his attorneys about legal action* * *.

* * * * *

* * * THE ABOVE CREDITOR HAS TURNED YOUR DELINQUENT ACCOUNT OVER TO US FOR COLLECTION* * *. ALL LAWFUL MEANS WILL BE TAKEN BY US TO COLLECT* * * YOUR CREDIT RECORD WILL ALSO BE PROTECTED BY PAYMENT NOW* * *.

* * * * *

* * * United Compucred Collections, Inc., is giving notice to your creditor that you have failed to pay your debt. If your creditor sues you, legal fees, court costs, etc., may be charged against you and added to your debt. A judgment in court may subject you to attachment or other legal steps permitted to collect the debt. This may harm your credit rating* * *.

* * * * *

* * * Attached find a partially completed note. We recommend you see your attorney at once regarding its completion. If you or your attorney reject this method, it is suggested that you or your attorney contact your creditor at once or remit payment to your creditor immediately. Otherwise, your creditor may take court action against you.

* * * * *

PAR. 8. By and through the use of the aforesaid statements and representations, including the use of the word "collections" in the corporate name, and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly or by implication that:

1. the said corporate respondent is a collection agency;
2. alleged delinquent debtors' accounts are referred to corporate respondent by creditors for collection;
3. legal action with respect to an alleged delinquent debt is about to be, or may be, initiated; and
4. if payment is not made in response to respondents' demands, the alleged delinquent debtor's general credit record may be adversely affected.

PAR. 9. In truth and in fact:

1. the said corporate respondent is not a collection agency;
2. alleged delinquent debtors' accounts are not referred to corporate respondent by creditors for collection; on the contrary, during this

series of letters and notices, the respondents merely exhort alleged delinquent debtors to pay their alleged creditors;

3. legal action with respect to an alleged delinquent debt is neither about to be, nor may it be, initiated; on the contrary, while respondents' service is being used, it is virtually certain that no legal proceedings are being initiated on the basis of alleged debtors' failure to respond to respondents' communications; and

4. if payment is not made in response to respondents' demands, the alleged delinquent debtor's general credit record will not be adversely affected.

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

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now in substantial competition, in commerce, with corporations, firms and individuals engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 11. The use by respondents of the envelopes and forms as set forth in Paragraph Four hereof, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that the said communication is a telegraphic message. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has, the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to induce the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 12. 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 and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedures prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent United Compucred Collections, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 2780 Banning Rd., Cincinnati, Ohio.

Respondents Wes Symmonds and Janet Symmonds are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, United Compucred Collections, Inc., a corporation, its successors and assigns, and its officers, and Wes Symmonds and Janet Symmonds, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, or placing in the hands of others for use, envelopes, letters, forms or any other materials which by their appearance misrepresent a telegraphic communication.

2. Using, or placing in the hands of others for use, envelopes, letters, forms, or any other materials which misrepresent the nature, import, purpose or urgency of any communication; *provided*, that it shall not be a violation of this order for respondents to use within the message of any communication, in the same type size as is otherwise employed in the message, a truthful reference to or implication of urgency.

3. Representing, directly or by implication, that:

(a) respondents are prepared to recommend, initiate or cause to be initiated legal proceedings in the collection of an alleged delinquent debt;

(b) legal action with respect to an alleged delinquent debt has been, or is about to be initiated; or misrepresenting that legal action is imminent, will be or may be initiated;

(c) nonpayment of the alleged delinquent debt in response to respondents' demands will adversely affect the credit rating, record or status of the debtor with respect to any consumer reporting agency or any other third party; or misrepresenting the impact or effect of nonpayment upon the debtor's credit rating, record or status.

Provided, however, That it shall be a defense in any enforcement proceeding initiated under this Paragraph Three for the respondents to establish that such representations are factually correct.

4. Failing clearly and conspicuously to disclose in each letter, form or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. United Compucred Collections, Inc., does not accept payment. United Compucred Collections, Inc., does not ordinarily file suit.

This statement shall be made in prominent type, of a size no smaller than the basic body copy in the letter, form or notice, and in a color which contrasts with the color of the stationery and writing or printing in the body of the letter, form or notice.

Provided, however, That the portion of the above statement, either as to accepting payment or the filing of suit, or both, shall not be required where respondent indicates specifically in a particular letter, form or notice that it will accept payment, file suit or institute legal proceedings and respondent does, in fact, accept payment, file suit or institute legal proceedings in that particular case, unless, suit was not filed due to subsequent instructions from the creditor or subsequent information from the debtor indicating nonexistence of the alleged debt.

5. Making any statement in any letter, form or notice to alleged delinquent debtors which is inconsistent with, negates or contradicts the affirmative disclosure required by Paragraph Four.

6. Placing in the hands of others the means and instrumentalities to represent any of the matters prohibited in Paragraph Three or which fail to comply with the requirements of Paragraphs Four and Five of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives, or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their business or employment with United Compucred Collections, Inc. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

IN THE MATTER OF
TRANS NATIONAL CREDIT CORPORATION, ET AL.

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

Docket C-2807. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976

Consent order requiring a Hazleton, Pa., debt collection agency, among other things to cease misrepresenting the nature, import, or urgency of communications used in the collection of delinquent debts; misrepresenting the initiation of legal action for nonpayment of alleged debts or the effect of nonpayment on credit status of the alleged debtor; and furnishing means and instrumentalities of misrepresentation or deception. Further, the order requires respondent to disclose in correspondence to alleged debtors that respondents do not accept payments nor ordinarily file suits.

Appearances

For the Commission: *Carthon E. Aldhizer.*

For the respondents: *Daniel Smith, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. Bart E. Ecker, Laputka, Bayless, Ecker & Cohn, Hazleton, Pa.*

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 Trans National Credit Corporation, a corporation, and Robert F. Mitchell and Pat L. Bangor, 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 Trans National Credit Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at Citizens Bank Bldg., Hazleton, Pennsylvania.

Respondents Robert F. Mitchell and Pat L. Bangor are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time in the past have

been, engaged in the advertising, offering for sale and sale of a service to assist in the collection of alleged delinquent debts. This service consists of the preparation by the respondents of a series of form notices and letters to be mailed to alleged delinquent debtors at regular intervals.

Three styles of forms are used in this series: (1) that which is titled TELEGRAM; (2) that which bears the letterhead of Trans National Credit Corporation; and (3) that which bears the letterhead of Credit Control Systems.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of the United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail or cause to be mailed to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative of said forms and material, but not necessarily all inclusive, are the following:

1. A yellow window envelope on which a return address is printed just below the initials "TNC," the envelope having bold black diagonal lines across its face. The word DISPATCH is printed in large black type over the window.

2. A yellow printed form, styled TELEGRAM, designed to be inserted in the envelope described in subparagraph 1 of this Paragraph.

PAR. 5. By and through the use of the envelopes and forms described in subparagraphs 1 and 2 of Paragraph Four, the respondents have represented, and are now representing, directly or by implication, that the communication is a telegraphic message.

PAR. 6. In truth and in fact, the communication referred to in Paragraph Four is not a telegraphic message. Rather, it is a printed form letter, mailed to alleged delinquent debtors, which form by its color and appearance, styling, printing and format simulates a telegraphic message and which, by virtue of said simulation, misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the use by respondents of said envelopes and forms as set forth in Paragraph Four was and is false, misleading, and deceptive.

PAR. 7. In the course and conduct of their business and for the

purpose of inducing the payment of alleged delinquent debts, the respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations, are the following:

* * *COLLECTION DEPARTMENT* * *

* * * * * * * *

URGENT MESSAGE:

CONTACT ABOVE CREDITOR NOW! SATISFACTORY PAYMENT ARRANGEMENTS IMPERATIVE TO AVOID FURTHER ACTION AVAILABLE TO CLAIMANT UNDER THE PROVISIONS OF THE STATE STATUTE, IF FULL SETTLEMENT IS NOT MADE WITHIN 48 HOURS UPON RECEIPT OF THIS TELEGRAM CONSULT YOUR ATTORNEY AT ONCE TO DETERMINE YOUR LEGAL LIABILITY* * *.

* * * * * * * *

* * *IF YOUR ACCOUNT IS NOT BROUGHT CURRENT, WE WILL HAVE TO DIRECT IT FROM OUR AUDIT DEPARTMENT TO OUR COLLECTION DEPARTMENT. SHOULD THIS OCCUR THERE MAY BE ADDITIONAL COSTS. YOU MAY AVOID SUCH ADDITIONAL COSTS AND POSSIBLE IMPAIRMENT OF YOUR CREDIT RATING ONLY BY SETTLEMENT NOW* * *.

* * * * * * * *

* * *WE ARE RECOMMENDING THAT PROCEEDING BE INSTITUTED IF SETTLEMENT OF THIS ACCOUNT IS NOT MADE AND IF LIABILITY WARRANTS SUCH ACTION. EXPENSES INCIDENTAL TO SUCH LITIGATION MAY BE CHARGED TO THE DEBTOR INCLUDING COLLECTION EXPENSES, COURT COST(S) AND SUCH OTHER CHARGES AS THE SUIT MAY ENTAIL* * *.

* * * * * * * *

* * *THIS IS A COURTESY NOTICE TO INFORM YOU THAT YOUR DELINQUENT ACCOUNT WITH THE ABOVE-NAMED CREDITOR HAS BEEN REFERRED TO TRANS NATIONAL CREDIT CORPORATION FOR COLLECTION. YOUR CREDITOR REQUESTS THAT YOU BE ALLOWED SEVEN DAYS TO SETTLE THIS ACCOUNT BEFORE WE BEGIN COLLECTION PROCEDURES* * *. IT IS THE INTENTION OF THE CREDITOR TO EXHAUST EVERY LEGAL MEANS TO COLLECT THIS DELINQUENT ACCOUNT. THESE PROCEDURES MAY BE EXTREMELY COSTLY TO YOU. YOU MAY AVOID SUCH ADDITIONAL COSTS AND IMPAIRMENT OF YOUR CREDIT RATING ONLY BY MAKING SETTLEMENT NOW* * *.

* * * * * * * *

* * *YOU HAVE FAILED TO DISCHARGE THE DEBT SUBMITTED TO US FOR COLLECTION BY THE ABOVE NAMED CREDITOR. THE SEVEN-DAY

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COURTESY PERIOD HAS EXPIRED. THEREFORE, WE ARE RECOMMENDING THAT PROCEEDINGS BE INSTITUTED IF SETTLEMENT OF THIS ACCOUNT IS NOT MADE IF LIABILITY WARRANTS SUCH ACTION.

* * * * *

* * * WE ARE, THEREFORE, RECOMMENDING THAT THE CREDITOR FILE SUIT TO RECOVER THE FULL AMOUNT OF HIS CLAIM IF OBLIGATION WARRANTS THIS ACTION. PROCESSING OF A CLAIM TO THE LAWSUIT STAGE MAY BE COMMENCED IN ONE WEEK * * *.

* * * * *

* * * WE SHALL RECOMMEND THAT OUR CLIENT ADVANCE COURT COSTS AND IMMEDIATELY ENTER SUIT AND GARNISHMENT PROCEEDINGS IN FAVOR OF CREDITOR ACCORDING TO PROVISION OF THE STATE STATUTES, IF THE AMOUNT OWED WARRANTS THIS ACTION * * *.

PAR. 8. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not expressly set out herein, the respondents have represented, and are now representing, directly or by implication:

1. that the said corporate respondent is a collection agency;
2. that alleged delinquent debtors' accounts are referred to corporate respondent by creditors for collection;
3. that corporate respondent recommends or is prepared to recommend, that legal action be initiated;
4. that legal action with respect to an alleged delinquent debt is about to be, or may be, initiated; and
5. that if payment is not made in response to respondents' demand, the alleged delinquent debtor's general credit record may be adversely affected.

PAR. 9. In truth and in fact:

1. the said corporate respondent is not a collection agency;
2. alleged delinquent debtors' accounts are not referred to corporate respondent by creditors for collection;
3. corporate respondent neither recommends nor is it prepared to recommend legal action be initiated.

On the contrary, respondents' sole business is the preparation and mailing of form letters and notices to alleged delinquent debtors, exhorting them to pay their alleged creditors;

4. legal action with respect to the alleged delinquent debt is neither about to nor may it be initiated. On the contrary, while respondents' service is being used, it is virtually certain that no legal proceedings will be initiated on the basis of alleged debtors' failure to respond to respondents' communications; and
5. if payment is not made in response to respondents' demands, the

alleged delinquent debtor's general credit record will not be adversely affected.

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

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are now in substantial competition, in commerce, with corporations, firms and individuals engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 11. The use by respondents of the envelopes and forms as set forth in Paragraph Four hereof, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that the said communication is a telegraphic message. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has, the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to induce the payment of substantial sums of money by reasons of said erroneous and mistaken belief.

PAR. 12. 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 and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having

provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedures prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Trans National Credit Corporation, 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 Citizens Bank Bldg., Hazleton, Pennsylvania.

Respondents Robert F. Mitchell and Pat L. Bangor are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Trans National Credit Corporation, a corporation, its successors and assigns, and its officers, and Robert F. Mitchell and Pat L. Bangor, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms, or any other materials which by their appearance misrepresent a telegraphic communication.

2. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which misrepresent the nature, import, purpose or urgency of any communication; *provided*, that it shall not be a violation of this order for respondents to use within the message of any communication, in the same type size as is otherwise employed in the message, a truthful reference to or implication of urgency.

3. Representing, directly or by implication, that:

(a) respondents are prepared to recommend, initiate or cause to be initiated, legal proceedings in the collection of an alleged delinquent debt,

(b) legal action with respect to an alleged delinquent debt has been or is about to be initiated; or misrepresenting that legal action is imminent, will be or may be initiated,

(c) nonpayment of the alleged delinquent debt in response to respondents' demands will adversely affect the credit rating, record or status of the debtor with respect to any consumer reporting agency or any other third party; or misrepresenting the impact or effect of nonpayment upon the debtor's credit rating, record or status.

Provided, That it shall be a defense in any enforcement proceeding initiated under Paragraph 3 for respondents to establish that such representations are factually correct.

4. Failing clearly and conspicuously to disclose in each letter, form or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. Trans National Credit Corporation does not accept payment. Trans National Credit Corporation does not ordinarily file suit.

This statement shall be made in prominent type, of a size no smaller than the basic body copy in the letter, form or notice and in a color which contrasts with the color of the stationery and writing or printing in the body of the letter, form or notice.

Provided, however, That the portion of the above statement, either as to accepting payment or the filing of suit, or both, shall not be required where respondent indicates specifically in a particular letter, form or notice that it will accept payment, file suit or institute legal proceedings and respondent does, in fact, accept payment, file suit or institute legal proceedings in that particular case, unless, suit was not filed due to subsequent instructions from the creditor or subsequent information from the debtor indicating nonexistence of the alleged debt.

5. Making any statement in any letter, form or notice to alleged delinquent debtors which is inconsistent with, negates or contradicts, the affirmative disclosure required by Paragraph 4.

6. Placing in the hands of others the means and instrumentalities to represent any of the matters prohibited in Paragraph 3 or which fail to comply with the requirements of Paragraph 4 or 5 of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives, or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection, or

attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment with Trans National Credit Corporation and of their affiliation with a new business or employment. Such notice shall include respondents' new business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

IN THE MATTER OF

CONTINENTAL COLLECTION BUREAU OF AMERICA,
INC., ET AL.

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

Docket C-2808. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976

Consent order requiring an Atlanta, Ga., debt collection agency, among other things to cease misrepresenting the nature, import, or urgency of communications used in the collection of delinquent debts; misrepresenting the initiation of legal action for nonpayment of alleged debts or the effect of nonpayment on credit status of the alleged debtor; and furnishing means and instrumentalities of misrepresentation or deception. Further, the order requires respondent to disclose in correspondence to alleged debtors that respondents do not accept payments nor ordinarily file suits.

Appearances

For the Commission: *Roger J. Fitzpatrick.*

For the respondents: *Pro se.*

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 Continental Collection Bureau of America, Inc., a corporation, and William M. Weinberg, Peter J. Vann, and Lavail Clements, 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 Continental Collection Bureau of America, Inc. is a corporation organized, existing and doing business under and by virtue of laws of the State of Alabama, with its principal office and place of business located at 3384 Peachtree Rd., N.E., Atlanta, Georgia.

Respondents William M. Weinberg, Peter J. Vann and Lavail Clements are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time in the past have

been, engaged in the advertising, offering for sale and sale of a service to assist in the collection of alleged delinquent debts. This service consists of the preparation by the respondents of a series of form notices and letters to be mailed to alleged delinquent debtors at regular intervals. Two styles of forms are used in this series: (1) that which is titled SPEED-O-GRAM and (2) that which bears the letterhead of Continental Collection Bureau.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of the United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said business in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, the respondents mail, or cause to be mailed to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative but not necessarily all inclusive of said forms and material are the following:

1. A yellow window envelope on which a return address is printed with no name. The word SPEED-O-GRAM is printed in large black type over the window.

2. A yellow, printed form styled SPEED-O-GRAM, designed to be inserted in the envelope described in subparagraph 1 of this Paragraph.

PAR. 5. By and through the use of the envelopes and forms described in subparagraphs 1 and 2 of Paragraph Four, respondents have represented, and are now representing, directly or by implication, that the communication is a telegraphic message.

PAR. 6. In truth and in fact the communication is not a telegraphic message. Rather, it is a printed form letter, mailed to alleged delinquent debtors, which form by its color and appearance, styling, printing and format simulates a telegraphic message and which, by virtue of said simulation, misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the use by respondents of said envelopes and forms as set forth in Paragraph Four was and is false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed to alleged delinquent debtors various

printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

* * * * *

CONTINENTAL COLLECTION BUREAU (letterhead)

* * * * *

CONTINENTAL COLLECTION BUREAU OF AMERICA

* * * * *

NATIONWIDE COLLECTION BUREAU

* * * * *

COLLECTION DEPARTMENT

* * * * *

THIS IS A COURTESY NOTICE TO INFORM YOU THAT YOUR DELINQUENT ACCOUNT HAS BEEN REFERRED TO THIS AGENCY FOR COLLECTION. YOUR CREDITOR REQUESTS THAT YOU BE ALLOWED TEN DAYS TO SETTLE THIS ACCOUNT BEFORE WE INSTITUTE COLLECTION PROCEDURES.

THEREFORE, THIS CLAIM REQUIRES YOUR IMMEDIATE ATTENTION. IT IS THE INTENT OF THIS AGENCY TO EXHAUST EVERY LEGAL MEANS TO COLLECT FOR OUR CLIENT. TO AVOID SUCH ADDITIONAL COSTS AND POSSIBLE IMPAIRMENT TO YOUR CREDIT RATING, IT IS IMPORTANT THAT YOU MAKE PAYMENT IMMEDIATELY* * *.

* * * * *

YOUR TEN DAY COURTESY PERIOD HAS EXPIRED. IF THIS CLAIM IS NOT TAKEN CARE OF IMMEDIATELY, IT WILL NECESSITATE OUR RECOMMENDATION THAT LEGAL PROCEDURES BE INSTITUTED AS SOON AS POSSIBLE.

OBLIGATIONS WARRANTING LITIGATION EXPENSES SUCH AS LEGAL FEES AND COURT COSTS MAY BE QUITE EXPENSIVE AND THESE CHARGES MAY BE CHARGEABLE TO THE DEBTOR. SO PAY THIS CLAIM IMMEDIATELY TO AVOID ANY FURTHER EXPENSES* * *.

* * * * *

* * *WE ARE, THEREFORE, RECOMMENDING THAT OUR CLIENT FILE SUIT TO RECOVER THE FULL AMOUNT OF HIS CLAIM IF OBLIGATION WARRANTS THIS ACTION.

IF THERE IS NO VALID DEFENSE, JUDGEMENT MAY BE RENDERED AND

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THE CLAIM SATISFIED BY SEIZURE OF ASSETS WHICH SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER* * *.

* * * * *

WE WISH TO GIVE YOU NOTICE THAT PAYMENT OF THIS CLAIM MUST BE RECEIVED BY OUR CLIENT AT ONCE. FURTHER LEGAL PROCEDURES BY THE ABOVE CLIENT FOLLOWING JUDGMENT MAY REQUIRE THE PRODUCING OF ALL FINANCIAL RECORDS IN COURT FOR EXAMINATION.

A WRIT OF EXECUTION ON ANY JUDGEMENT OBTAINED MAY BE ISSUED AND BE SATISFIED BY A LEVY ON PROPERTY, REAL ESTATE, CHATTELS, GOODS, ACCOUNTS RECEIVABLE AND GARNISHMENT OF BANK ACCOUNTS* * *.

* * * * *

* * *IF YOU WISH IN ANY WAY TO PROTECT THE LITTLE AMOUNT OF CREDIT THAT YOU MAY HAVE, IT IS IMPERATIVE THAT YOU TAKE CARE OF THIS OBLIGATION AT ONCE.

IF THIS OBLIGATION IS NOT MET WITHIN THE NEXT 72 HOURS, OUR OFFICE IS GOING TO RECOMMEND TO OUR CLIENT THAT HE DEEPLY CONSIDER TAKING LEGAL ACTION, AND THAT CAN BE VERY EXPENSIVE* * *.

* * * * *

NOTICE IS HEREBY GIVEN THAT WE SHALL RECOMMEND TO OUR CLIENT THAT HE SHOULD IMMEDIATELY, ACCORDING TO LAW, ENTER SUIT IN FAVOR OF GETTING THIS CLAIM SATISFIED. IF OUR CLIENT ACCEPTS OUR RECOMMENDATION, I ADVISE YOU TO PAY THIS CLAIM AT ONCE, BEFORE LEGAL ACTION CAN BE INSTITUTED* * *.

* * * * *

SO THAT WE DO NOT HAVE TO GET INVOLVED IN LEGAL ACTION, I THINK YOU CAN SEE THAT IT WOULD BE QUITE BENEFICIAL TO YOU IF YOU PAY OFF THIS OBLIGATION AT ONCE* * *.

* * * * *

* * *IF THIS CLAIM IS NOT PAID IMMEDIATELY, THE NEXT STEP IN OUR OFFICE WILL BE TO CONTACT OUR CLIENT AND HAVE CONSULTATION WITH HIM AND OUR DEFINITE RECOMMENDATION TO OUR CLIENT WILL BE TO RECOMMEND THAT HE SHOULD CONSIDER LEGAL ACTION ON THIS CLAIM AT ONCE* * *.

* * * * *

* * *WE HAVE REACHED THE END, AND IF THIS CLAIM IS NOT PAID AT ONCE, WE WILL HAVE NO ALTERNATIVE BUT TO NOTIFY OUR CLIENT THAT YOU HAVE SHOWN NO INTEREST IN FULFILLING YOUR OBLIGA-

TION. YOU ARE FORCING US TO RECOMMEND TO OUR CLIENT THAT HE CONSIDER LEGAL ACTION* * *.

PAR. 8. By and through the use of the aforesaid statements and representations, including the use of the word "collection" in the corporate name, and others of similar import not expressly set out herein, the respondents have represented, are now representing, directly or by implication, that:

1. the said corporate respondent is a collection agency;
2. alleged delinquent debtors' accounts are referred to corporate respondent by creditors for collection;
3. respondents are prepared to institute legal proceedings in the collection of alleged delinquent debts;
4. legal action with respect to alleged delinquent debts is about to be or may be initiated; and
5. if payment is not made in response to respondents' demands, the alleged debtor's general credit record will be adversely affected.

PAR. 9. In truth and in fact:

1. the said corporate respondent is not a collection agency;
2. alleged delinquent debtors' accounts are not referred to corporate respondent by creditors for collection;
3. respondents are not prepared to institute legal proceedings in the collection of alleged delinquent debts;

On the contrary, respondents' sole business is the preparation and mailing of form letters and notices to alleged delinquent debtors, exhorting them to pay their alleged creditors;

4. legal action with respect to alleged delinquent debts is neither about to be nor may be initiated.

On the contrary, while respondents' service is being used, it is virtually certain that no legal proceedings are being instituted on the basis of the alleged debtor's failure to respond to respondents' communications; and

5. if payment is not made in response to respondents' demands, the alleged debtor's general credit record will not be adversely affected.

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

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are now in substantial competition, in commerce, with corporations, firms and individuals engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 11. The use by respondents of the envelopes and forms as set forth in Paragraph Four hereof, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the

erroneous and mistaken belief that the said communication is a telegraphic message. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to induce the payment of substantial sums of money by reasons of said erroneous and mistaken belief.

PAR. 12. 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 and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 (b) of its Rules, now in further conformity with the procedures prescribed in Section 2.34 (b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Continental Collection Bureau of America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 3384 Peachtree Rd., N.E., Atlanta, Georgia.

Respondents William M. Weinberg, Peter J. Vann, and Lavail Clements are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Continental Collection Bureau of America, Inc., a corporation, its successors and assigns, and its officers and William M. Weinberg, Peter J. Vann, and Lavail Clements, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms, or any other materials which by their appearance misrepresent a telegraphic communication.

2. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which misrepresent the nature, import, purpose or urgency of any communication; *provided*, that it shall not be a violation of this order for respondents to use within the message of any communication, in the same type size as is otherwise employed in the message, a truthful reference to or implication of urgency.

3. Representing, directly or by implication, that:

(a) respondents are prepared to recommend, initiate or cause to be initiated, legal proceedings in the collection of an alleged delinquent debt;

(b) legal action with respect to an alleged delinquent debt has been or is about to be initiated; or misrepresenting that legal action is imminent, will be or may be initiated;

(c) nonpayment of the alleged delinquent debt in response to respondents' demands will adversely affect the credit rating, record or status of the debtor with respect to any consumer reporting agency or any other third party; or misrepresenting the impact or effect of nonpayment upon the debtor's credit rating, record or status.

Provided, however, That it shall be a defense in any enforcement

proceeding initiated under this Paragraph Three for the respondents to establish that such representations are factually correct.

4. Failing clearly and conspicuously to disclose in each letter, form or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. Continental Collection Bureau of America, Inc., does not accept payment. Continental Collection Bureau of America, Inc., does not ordinarily file suit.

This statement shall be made in prominent type, of a size no smaller than the basic body copy in the letter, form or notice and in a color which contrasts with the color of the stationery and writing or printing in the body of the letter, form or notice.

Provided, however, That the portion of the above statement, either as to accepting payment or the filing of suit, or both, shall not be required where respondent indicates specifically in a particular letter, form or notice that it will accept payment, file suit or institute legal proceedings and respondent does, in fact, accept payment, file suit or institute legal proceedings in that particular case, unless, suit was not filed due to subsequent instructions from the creditor or subsequent information from the debtor indicating nonexistence of the alleged debt.

5. Making any statement in any letter, form or notice to alleged delinquent debtors which is inconsistent with, negates or contradicts, the affirmative disclosure required by Paragraph Four.

6. Placing in the hands of others the means and instrumentalities to represent any of the matters prohibited in Paragraph Three or which fail to comply with the requirements of Paragraph Four or Five of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives, or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That the individual respondents named herein

promptly notify the Commission of the discontinuance of their employment with Continental Collection Bureau of America, Inc., and of their affiliation with a new business or employment. In addition, the individual respondents named herein shall promptly notify the Commission of their affiliation with a new business or employment whose principal activities include the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts, or of their affiliation with a new business or employment in which their own duties and responsibilities involve the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

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IN THE MATTER OF
NORTH AMERICAN COLLECTIONS, INC., ET AL.

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

Docket C-2809. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976

Consent order requiring a St. Louis, Mo., debt collection agency, among other things to cease misrepresenting the nature, import, or urgency of communications used in the collection of delinquent debts; misrepresenting the initiation of legal action for nonpayment of alleged debts or the effect of nonpayment on credit status of the alleged debtor; and furnishing means and instrumentalities of misrepresentation or deception. Further, the order requires respondent to disclose in correspondence to alleged debtors that respondents do not accept payments nor ordinarily file suits.

Appearances

For the Commission: *John F. LeFevre.*

For the respondents: *Daniel Smith, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. Joseph B. McGlynn, McGlynn & McGlynn, Belleville, Ill.*

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 North American Collections, Inc., a corporation, and Robert J. Kerr, individually and as an officer 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 North American Collections, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 734 West Port Plaza, St. Louis, Missouri.

Respondent Robert J. Kerr, is an individual and is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time in the past have been, engaged in the advertising, offering for sale and sale of a service

to assist in the collection of alleged delinquent debts. This service consists of the preparation by respondents of a series of form notices and letters to be mailed to alleged delinquent debtors at regular intervals. Two styles of forms are used in this series: (1) that which bears the letterhead of North American Collections, Inc., and (2) that which is entitled Urgent Message.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of the United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said business in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, the respondents mail or cause to be mailed to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative of said forms and material is a yellow, printed form styled Urgent Message designed to be inserted in the envelope described in subparagraph 1 of this paragraph.

PAR. 5. By and through the use of the form described in Paragraph Four, the respondents have represented, and are now representing, directly or by implication, that the communication is an urgent message.

PAR. 6. In truth and in fact, the communication is not an urgent message. Rather, it is a printed form letter, mailed to alleged delinquent debtors, which form by its color and appearance, styling, printing and format simulates an urgent message and which, by virtue of said simulation, misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the use by respondents of said form as set forth in Paragraph Four was and is false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

Complaint

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NORTH AMERICAN COLLECTIONS, INC. (letterhead)

* * * * *

This courtesy notice is to inform you that your delinquent account with the below named creditor has been placed with this agency for collection. Your creditor directs that you be allowed 10 days to settle this account before collection procedures begin* * *. It is our intention to employ every legal means to collect this account for our client* * *.

* * * * *

* * *Therefore, consider this your notice that North American Collections is beginning collection procedures on behalf of our client and to that end we shall recommend the filing of a suit against you by your creditor in court. The expense incidental to this type of litigation may be charged to you, including court costs, legal fees and other related charges as may be required.

We are recommending that procedures be instituted if you do not make settlement of this account* * *.

* * * * *

* * *Contact creditor immediately to arrange for payment. Imperative to avoid further action available to doctor under provisions of state statutes. If full settlement is not accomplished within 48 hours after receipt of this notice, consult your attorney at once to determine your legal liability* * *.

* * * * *

You are hereby notified that we shall recommend that your doctor advance court costs and file suit immediately* * *. If 72 hours pass without full remittance, and if the attorneys accept our recommendation to begin litigation, you may still be subject to court costs if they are incurred before settlement* * *.

* * * * *

* * *Your failure to appear and comply either in person or by legal representation to protest claim may result in commencement of litigation by doctor* * *.

* * * * *

* * *We are, therefore, recommending that the doctor file suit to recover what is due and a judgment may be rendered against you. Processing of a claim to the lawsuit stage may be accomplished in 7 days* * *. If payment is not made, this information may be turned over to your local retail bureau* * *.

* * * * *

* * *You are further notified that legal proceedings by the doctor following judgment may compel you to bring all your financial records to court to be examined. A writ of execution may be issued. A public auction of property may be held after public advertising of same. Court costs, including fees for subpoenas, sheriffs or constable fees, attachments, judgments, executions, and all other expenses relative to these proceedings may be assessed against the debtor and may become a part of the judgment. Litigation is costly* * *.

* * * * *

PAR. 8. By and through the use of the statements and representations set forth in Paragraph Seven, including the use of the word "collections" in the corporate name, and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. the said corporate respondent is a collection agency.
2. delinquent debtors' accounts are referred to corporate respondent by creditors for collection.
3. corporate respondent is prepared to take legal action in the collection of alleged delinquent debts.
4. respondents are prepared to recommend that legal action be initiated.
5. legal action with respect to an alleged delinquent debt is about to be or may be initiated.
6. if payment is not made in response to respondents' demands, the alleged debtor's general credit record may be adversely affected.

PAR. 9. In truth and in fact:

1. the said corporate respondent is not a collection agency.
2. delinquent debtors' accounts are not referred to corporate respondent by creditors for collection.
3. corporate respondent is not prepared to take legal action in the collection of alleged delinquent debts.
4. respondents are not prepared to recommend that legal action be initiated.

On the contrary, respondents' sole business is the preparation and mailing of a series of form letters to alleged delinquent debtors, exhorting them to pay their alleged creditors.

5. legal action with respect to the alleged delinquent debt is neither about to be nor may it be initiated.

On the contrary, while respondents' letter service is being used, it is virtually certain that no legal proceedings are being initiated on the basis of the alleged delinquent debtor's failure to respond to respondents' communications.

6. if payment is not made in response to respondents' demands, the alleged delinquent debtor's general credit record will not be adversely affected.

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

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals

engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to induce the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 12. 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 and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedures prescribed in Section 2.34 (b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent North American Collections, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business

located at 734 West Port Plaza, in the city of St. Louis, State of Missouri.

Respondent Robert J. Kerr, is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same, as that of said corporation.

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

ORDER

It is ordered, That respondents, North American Collections, Inc., a corporation, its successors and assigns, and its officer, and Robert J. Kerr, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials, which by their appearance misrepresent the nature, import, purpose or urgency of any communication; *provided*, that it shall not be a violation of this order for respondents to use within the message of any communication, in the same type size as is otherwise employed in the message, a truthful reference to or implication of urgency.

2. Representing, directly or by implication, that:

(a) respondents are prepared to recommend, initiate or cause to be initiated, legal proceedings in the collection of an alleged delinquent debt,

(b) legal action with respect to an alleged delinquent debt has been or is about to be initiated; or misrepresenting that legal action is imminent, will be or may be initiated,

(c) nonpayment of the alleged delinquent debt in response to respondents' demands will adversely affect the credit rating, record or status of the debtor with respect to any consumer reporting agency or any other third party; or misrepresenting the impact or effect of nonpayment upon the debtor's credit rating, record or status.

Provided, That it shall be a defense in any enforcement proceeding initiated under Paragraph Two for respondents to establish that such representations are factually correct.

3. Failing clearly and conspicuously to disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. North American Collections, Inc., does not accept payment. North American Collections, Inc., does not ordinarily file suit.

This statement shall be made in prominent type, of a size no smaller than the basic body copy in the letter, form or notice and in a color which contrasts with the color of the stationery and writing or printing in the body of the letter, form or notice.

Provided, however, That the portion of the above statement, either as to accepting payment or the filing of suit, or both, shall not be required where respondent indicates specifically in a particular letter, form or notice that it will accept payment, file suit or institute legal proceedings and respondent does, in fact, accept payment, file suit or institute legal proceedings in that particular case, unless, suit was not filed due to subsequent instructions from the creditor or subsequent information from the debtor indicating nonexistence of the alleged debt.

4. Making any statement in any letter, form or notice to alleged delinquent debtors which is inconsistent with, negates, or contradicts, the affirmative disclosure required by Paragraph Three.

5. Placing in the hands of others the means and instrumentalities to represent any of the matters prohibited in Paragraph Two or which fail to comply with the requirements of Paragraphs Three or Four of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of 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 with North American Collections, Inc., and of his affiliation with a new business or employment. Such notice shall

include respondent's new business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

IN THE MATTER OF

POWER'S SERVICE, INC., ET AL.

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

Docket C-2810. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976

Consent order requiring a Chicago, Ill., debt collection agency, among other things to cease misrepresenting the nature, import, or urgency of communications used in the collection of delinquent debts; misrepresenting the initiation of legal action for nonpayment of alleged debts or the effect of nonpayment on credit status of the alleged debtor; and furnishing means and instrumentalities of misrepresentation or deception. Further, the order requires respondent to disclose in correspondence to alleged debtors that respondents do not accept payments nor ordinarily file suits.

Appearances

For the Commission: *John F. LeFevre.*

For the respondents: *Pro se.*

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 Power's Service, Inc., a corporation and a wholly-owned subsidiary of Community Systems Corporation, a corporation, and Rosalind M. Mikesell, H.O. Seymour and G.C. Seymour, individually and as officers of said corporations, and J.P. Mikesell, individually and as an officer of Power's Service, Inc., 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 Power's Service, Inc. is a corporation and a wholly-owned subsidiary of Community Systems Corporation, a corporation. Both corporations are organized, existing and doing business under and by virtue of the laws of the State of Delaware, with their principal office and place of business located at 202 South State St., Chicago, Illinois.

Respondents Rosalind M. Mikesell, H.O. Seymour and G.C. Seymour are individuals and are officers of both corporate respondents. Respondent J.P. Mikesell is an individual and an officer of corporate respondent Power's Service, Inc. They formulate, direct and control the

acts and practices of the corporate respondent, Power's Service, Inc. and, with the exception of J.P. Mikesell, the acts and practices of corporate respondent Community Systems Corporation, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time in the past have been, engaged in the advertising, offering for sale and sale of a service to assist in the collection of alleged delinquent debts. This service consists of the preparation by respondents of a series of form notices and letters to be mailed to alleged delinquent debtors at regular intervals. Four styles of forms are used in this series: (1) that which bears the letterhead of Power's Service, Incorporated; (2) that which is styled both Credit Information and Deadline Notice; (3) that which is captioned Final Demand; and (4) that which is entitled Mailgram and is forwarded to the customer for mailing to the alleged delinquent debtor.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms and other printed material. One such form, which is mailed to the corporate respondents' customers with instructions to forward it to their alleged delinquent debtors, is a yellow printed form styled MAILGRAM.

PAR. 5. By and through the use of the form described in Paragraph Four, respondents have represented, and are now representing, directly or by implication, that the communication is a telegraphic message.

PAR. 6. In truth and in fact, the communication is not a telegraphic message. Rather, it is a printed form, mailed to respondents' customers with instructions to forward it to alleged delinquent debtors, which form by its color and appearance, styling, printing and format, simulates a telegraphic message and which, by virtue of said simulation, misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the use by respondents of said form, as set forth in Paragraph Four, was and is false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

We are writing you in connection with the above matter because payment on your account is past due. * * * If the amount IS correct, prompt reporting will maintain the good credit standing you now enjoy* * *.

* * * * *

* * * Please remember that once we recommend legal action in this matter it will be out of our hands. You can save money and credit prestige by friendly cooperation with your creditor* * *.

* * * * *

Unless payment or arrangements for settlement are made with your creditor at this time, we shall be forced to recommend that he forward your account to his attorney for whatever action he deems appropriate.

As you know, action by the creditor's attorney may add a considerable amount in court costs, fees and interest to the balance already due* * *.

* * * * *

* * * You are further notified that should it become necessary for your creditor to refer this matter to his attorney, interest and other expenses may then be added to the account* * *.

* * * * *

PAR. 8. In the course and conduct of their business and for the purpose of inducing the payment of alleged delinquent debts, respondents mail to their customers, with instructions to forward such to alleged delinquent debtors, various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations, are the following:

FINAL NOTICE BEFORE SUIT

YOU ARE HEREBY NOTIFIED that you are indebted to the undersigned in the amount stated above.

Unless you remit or arrange for adjustment of said indebtedness, or appear at the office of the claimant within seven days from the date hereof not later than one o'clock P.M., suit will be brought forthwith for the total amount of said indebtedness, together with costs of suit* * *.

* * * * *

* * *You are surely aware that under the laws governing the dissemination of credit information, your name and the amount you owe may be reported as due and unpaid* * *.

PAR. 9. By and through the use of the aforesaid statements and representations set forth in Paragraphs Seven and Eight, respondents have represented, are now representing, have caused or are now causing to be represented, directly or by implication, that:

1. legal action with respect to an alleged delinquent debt is about to be or may be initiated; and
2. if payment is not made in response to respondents' demands, the alleged delinquent debtor's general credit record will be or may be adversely affected.

PAR. 10. In truth and in fact:

1. legal action with respect to the alleged delinquent debt is neither about to be, nor may it be initiated.

On the contrary, at the end of the letter service, respondents merely suggest that the account be referred to their customer's local attorney. Furthermore, while respondents' letter service is being used, it is virtually certain that no legal action is being or will be initiated on the basis of the alleged delinquent debtor's failure to respond to respondents' communications; and

2. if payment is not made in response to respondents' demands, the alleged delinquent debtor's general credit record will not be adversely affected.

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

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 12. The use by respondents of the form as set forth in Paragraph Four hereof, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that the said communication is a telegraphic message. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to

induce the payment of substantial sums of money 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 and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedures prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Power's Service, Inc., is a corporation and a wholly-owned subsidiary of Community Systems Corporation, a corporation. Both corporations are organized, existing and doing business under and by virtue of the laws of the State of Delaware with their principal office and place of business located at 202 South State St., Chicago, Illinois.

Respondents Rosalind M. Mikesell, H.O. Seymour and G.C. Seymour are individuals and are officers of both corporate respondents. Respondent J.P. Mikesell is an individual and an officer of corporate

respondent Power's Service, Inc. They formulate, direct and control the acts and practices of the corporate respondent, Power's Service, Inc. and, with the exception of J.P. Mikesell, the acts and practices of corporate respondent Community Systems Corporation. Their 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

It is ordered, That respondents, Power's Service, Inc., a corporation, and Community Systems Corporation, a corporation, their successors and assigns, and their officers, and Rosalind M. Mikesell, J.P. Mikesell, H.O. Seymour and G.C. Seymour, individually and as officers of either corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, or placing in the hands of others for use, envelopes, letters, forms, or any other materials which appear to be, or simulate, telegraphic messages.

2. Using, or placing in the hands of others for use, envelopes, letters, forms, or any other materials which misrepresent the nature, import, purpose or urgency of any communication.

3. Representing, directly or by implication, that:

(a) legal action with respect to an alleged delinquent debt has been, is about to be, or may be initiated;

(b) if payment is not made in response to respondents' demands, the alleged debtor's credit rating, record or status may be or will be adversely affected.

Provided, however, That it shall be a defense in any enforcement proceeding initiated under this Paragraph Three for the respondents to establish that such representations are factually correct.

4. Failing clearly and conspicuously to disclose in each letter, form or notice to alleged delinquent debtors the following statement:

This communication is only a reminder notice. Power's Service, Inc., cannot accept payment nor will it take legal action regarding this claim.

This statement shall be made in prominent type, of a size no smaller

than the basic body copy in the letter, form or notice and in a color which contrasts with the color of the stationery and writing or printing in the body of the letter, form, or notice.

5. Making any statement in any letter, form or notice to alleged delinquent debtors which is inconsistent with, negates or contradicts, the affirmative disclosure required by Paragraph Four.

6. Placing in the hands of others the means and instrumentalities to represent any of the matters prohibited in Paragraph Three or which fail to comply with the requirements of Paragraphs Four or Five of this order.

It is further ordered, That the corporate respondent Community Systems Corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of alleged delinquent debts and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the 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 successor corporations, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their employment with Community Systems Corporation or Power's Service, Inc., whichever is applicable, and of their affiliation with a new business or employment. In addition, the individual respondents named herein shall promptly notify the Commission of their affiliation with a new business or employment whose principal activities include the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts, or of their affiliation with a new business or employment in which their own duties and responsibilities involve the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in

which they are engaged as well as a description of their duties and responsibilities.

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

Complaint

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IN THE MATTER OF
CONTINENTAL COLLECTION SERVICE, ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2811. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976

Consent order requiring a Clarissa, Minn., debt collection agency, among other things to cease misrepresenting the nature, import or urgency of any communication utilized in the collection of delinquent debts; misrepresenting the initiation of legal actions; misrepresenting that if debts are paid within a specified time, respondent will absorb the cost of any legal actions initiated; and furnishing means or instrumentalities of misrepresentation or deception. Further, respondents are required to disclose in correspondence to alleged debtors that respondents do not accept payment nor ordinarily file suits.

Appearances

For the Commission: *Roger J. Fitzpatrick.*

For the respondents: *Rodger J. Johnston, Flora & Johnston, Long Prairie, Minn.*

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 Continental Collection Service, a partnership, and Carol Carrick and Morris Perna, individually and as copartners trading and doing business as Continental Collection Service, 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 Continental Collection Service is a partnership organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at Main St., Clarissa, Minnesota.

Respondents Carol Carrick and Morris Perna are individuals and are partners in Continental Collection Service. They formulate, direct and control the acts and practices of Continental Collection Service, including the acts and practices hereinafter set forth. Their business address is Main St., Clarissa, Minnesota and their mailing address is Box 6011, West St. Paul, Minnesota.

PAR. 2. Respondents are now and for some time in the past, have

been engaged in the advertising, offering for sale and sale of a service to assist in the collection of alleged delinquent debts. This service consists of the preparation by the respondents of a series of form notices and letters to be mailed to alleged delinquent debtors at regular intervals. Two styles of forms are used in this series: 1) that which is titled TELEGRAM; and 2) that which bears the letterhead of Continental Collection Service.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of the United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative, but not necessarily all inclusive, of said forms and material are the following:

1. A yellow window envelope on which a return address is printed, with no name. The word TELEGRAM is printed in large black type over the window.

2. A yellow, printed form styled TELEGRAM, printed in large black type, designed to be inserted in the envelope described in subparagraph 1 of this Paragraph.

PAR. 5. By and through the use of envelopes and forms described in subparagraphs 1 and 2 of Paragraph Four, respondents have represented, and are now representing, directly or by implication, that the communication is a telegraphic message.

PAR. 6. In truth and in fact the communication is not a telegraphic message. Rather, it is a printed form letter, mailed to alleged delinquent debtors, which form by its color and appearance, styling, printing and format simulates a telegraphic message and which, by virtue of said simulation, misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the use by respondents of said envelopes and forms as set forth in Paragraph Four was and is false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed, to alleged delinquent debtors various

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printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

CONTINENTAL COLLECTION SERVICE (Letterhead)

* * * * *

WE HEREBY GIVE NOTICE THAT WE HAVE BEEN RETAINED BY THE ABOVE NAMED CREDITORS TO COLLECT THE ABOVE DELINQUENT SUM. OUR POLICY IS TO ALLOW SEVEN (7) DAYS BEFORE WE BEGIN COLLECTION PROCEDURES. IT IS IMPERATIVE THAT YOU CONTACT YOUR CREDITOR AND ARRANGE PAYMENTS BEFORE THE LAPSE OF SEVEN DAYS* * *.

* * * * *

* * *You are hereby notified that Continental Collection Service has instituted collection procedures.

Furthermore, we have recommended that our client should commence legal proceedings and obtain a court judgment for the above amount. Satisfaction of such judgement often involves attachment of property and garnishment of wages. To avoid all these costly remedies to yourself, contact your creditor within five (5) days to avoid the legal pursuance of the above action.

* * * * *

We wish to notify you that your creditor has taken our recommendation to begin necessary legal steps to recover the above amount. We would remind you that legal proceedings may involve levies upon your automobile, real estate, bank accounts and all other personal belongings. Such above mentioned property may be held for public auction for the satisfaction of any judgment obtained from the above amount.

Furthermore, you as debtor, may be assessed additional amounts in excess of the above amount to include interest and court costs such as: fees for subpoenas, attachments, garnishments, sheriff's fees, judgment and execution* * *.

* * *Submit payment of this claim within two (2) days and we will recommend that our client absorb any and all costs incurred in the above action as of this date.

* * * * *

It is important that you immediately attend to the above delinquent amount within the next forty-eight (48) hours. If full settlement is not made with your creditor within the time period allotted, we shall recommend that he advance court costs and proceed with the proper legal steps to secure his rightful claim under state statute.

* * * * *

Settlement deadline is twenty-four (24) hours from the receipt of this notice* * *.

If sufficient payments are made to the creditor we will forestall the time period set at the claimant's claim office, your creditor will advise us if you have contacted him,

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whereupon we will take the necessary steps to discontinue any further action, thus eliminating any personal appearance that may have been required by yourself. However, to prevent this, you must act today within twenty-four hours.

* * * * *

* * *Therefore unless the said debtor arranges for adjustment in said indebtedness or appears at the office of the creditor within seven (7) days of this dated notice, suit will be brought for the total amount of the indebtedness, together with interest and costs.

* * * * *

PAR. 8. By and through the use of the aforesaid statements and representations, including the use of the word "collection" in the business name, and others of similar import not expressly set out herein, respondents have represented, are now representing, have caused and are now causing others to represent, directly or by implication, that:

1. respondents' business is a collection agency;
2. delinquent debtors' accounts are referred to respondents by creditors for collection;
3. respondents are prepared to recommend or have recommended that legal action be initiated;
4. legal action with respect to a delinquent debt has been or is about to be initiated on the basis of respondents' recommendation; and
5. respondents will recommend that the creditor absorb the cost of recommended legal action if the debt is paid within a specified time.

PAR. 9. In truth and in fact:

1. respondents' business is not a collection agency;
2. delinquent debts are not referred by creditors for collection;
3. respondents are not prepared to recommend and have not recommended that legal action be initiated;
4. legal action with respect to a delinquent debt has not been, nor is it about to be initiated on the basis of respondents' recommendations; and
5. respondents do not recommend that the creditor absorb the cost of recommended legal action if the debt is paid within a specified time;

On the contrary, respondents' sole business is the preparation and mailing of form letters to alleged delinquent debtors, exhorting them to pay their creditors.

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

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now in substantial competition, in commerce, with corporations, firms and individuals

engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 11. The use by respondents of the envelopes and forms as set forth in Paragraph Four hereof, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that the said communication is a telegraphic message. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to induce the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 12. 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 and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedures prescribed in Section 2.34 (b) of its Rules, the Commission hereby issues its complaint in the form

contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Continental Collection Service is a partnership organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at Main St., Clarissa, Minnesota.

Respondents Carol Carrick and Morris Perna are individuals and are partners in said partnership. They formulate, direct and control the policies, acts and practices of said partnership and their address is the same as that of said partnership.

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, Continental Collection Service, a partnership, and Carol Carrick and Morris Perna, individually and as copartners, trading and doing business as Continental Collection Service, or under any name or names, their successors and assigns, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of, or inducing or attempting to induce, the payment of alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by their appearance misrepresent a telegraphic communication.

2. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which misrepresent the nature, import, purpose or urgency of any communication; *provided*, that it shall not be a violation of this order for respondents to use within the message of any communication, in the same type size as is otherwise employed in the message, a truthful reference to or implication of urgency.

3. Representing, directly or by implication, that:

(a) respondents have recommended, are prepared to recommend, initiate or cause to be initiated, legal proceedings in the collection of an alleged delinquent debt;

(b) legal action with respect to an alleged delinquent debt has been or is about to be initiated; or misrepresenting that legal action is imminent, will be or may be initiated;

(c) respondents recommend or have recommended that the creditor absorb the cost of legal action if the debt is paid within a specified time.

Provided, however, That it shall be a defense in any enforcement proceeding initiated under this Paragraph Three for the respondents to establish that such representations are factually correct.

4. Failing clearly and conspicuously to disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. Continental Collection Service does not accept payment. Continental Collection Service does not ordinarily file suit.

This statement shall be made in prominent type, of a size no smaller than the basic body copy in the letter, form or notice and in a color which contrasts with the color of the stationery and writing or printing in the body of the letter, form or notice.

Provided, however, That the portion of the above statement, either as to accepting payment or the filing of suit, or both, shall not be required where respondent indicates specifically in a particular letter, form or notice that it will accept payment, file suit or institute legal proceedings and respondent does, in fact, accept payment, file suit or institute legal proceedings in that particular case, unless, suit was not filed due to subsequent instructions from the creditor or subsequent information from the debtor indicating nonexistence of the alleged debt.

5. Making any statement in any letter, form or notice to alleged delinquent debtors which is inconsistent with, negates or contradicts, the affirmative disclosure required by Paragraph Four.

6. Placing in the hands of others the means and instrumentalities to represent any of the matters prohibited in Paragraph Three or which fail to comply with the requirements of Paragraph Four or Five of this order.

It is further ordered, That the respondent shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future partners, officers, agents, representatives, or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in the partnership respondent such as dissolution, assignment or sale resulting in the emergence of a successor partnership, the creation or dissolution of

subsidiaries or any other change in the partnership which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their employment with Continental Collection Service and of their affiliation with a new business or employment. In addition, the individual respondents named herein shall promptly notify the Commission of their affiliation with a new business or employment whose principal activities include the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts, or of their affiliation with a new business or employment in which their own duties and responsibilities involve the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

Order

87 F.T.C.

IN THE MATTER OF
FISHER FOODS, INC.

Docket 9062. Order, Mar. 17, 1976

Motion by complaint counsel to amend the complaint remanded to the administrative law judge.

Appearances

For the Commission: *Vivian L. Solganik, Aaron H. Bulloff and Melvin H. Wolovits.*

For the respondent: *John F. McClatchey, Thompson, Hine & Flory, Cleveland, Ohio.*

ORDER REMANDING MOTION TO AMEND COMPLAINT

The administrative law judge has certified to the Commission complaint counsel's motion to amend the complaint in this matter by substituting the phrase "in or affecting commerce" for the phrase "in commerce" in Paragraphs Three, Four, and Ten of said complaint.

The Commission believes that the instant motion is within the authority of the law judge to decide since it apparently only seeks "to add examples of practices [already alleged in the complaint] to be unlawful." *Cavanagh Communities Corp.*, Order Granting in Part and Remanding in Part Motion to Serve Supplemental Pleading, January 27, 1976, p. 3, n. 3; * *Capitol Records Distributing Corp.*, 58 F.T.C. 1170, 1173 (1961).

The Commission notes that respondent has argued that the expansion by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, Pub. L. 93-637 (January 4, 1975), of the Commission's jurisdiction to acts "affecting commerce" is not retroactive to alleged violations that occurred prior to the effective date of the statute. However, it may well be that complaint counsel do not intend to introduce evidence of acts, affecting, but not in, commerce that occurred prior to January 4, 1975. In case they do, the law judge is in the best position to decide the issue in the context of a specific offer of proof. Accordingly,

It is ordered, That the aforesaid motion be, and it hereby is, remanded to the administrative law judge.

* Reported in this Volume.

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IN THE MATTER OF
KIRBY OF NORTH PROVIDENCE, INC., ET AL.

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

Docket C-2590. Decision, Nov. 1, 1974—Modifying Order, Mar. 22, 1976

Order modifying previous order dated Nov. 1, 1974, 40 F.R. 7088, 84 F.T.C. 1218, by substituting, for the notice requirement of Paragraph I (7), the notice required by the Preservation of Consumers' Claims and Defenses Trade Regulation Rule, 16 C.F.R. Part 433, effective May 14, 1976. Unless modified, the respondents would be required to include both disclosure notices on their instruments of indebtedness.

Appearances

For the Commission: *Lois M. Woocher.*

For the respondents: *William C. Hillman, Strauss, Factor, Chernick & Hillman, Providence, R.I.*

ORDER GRANTING PETITION TO REOPEN THE PROCEEDING
AND TO MODIFY THE ORDER

Respondents have petitioned the Commission to reopen the final order in the above-styled matter for the purpose of substituting, for the notice required therein, the notice required by the Preservation of Consumers' Claims and Defenses Trade Regulation Rule, 16 C.F.R. §433, which becomes effective May 14, 1976. Unless modified, respondents' instruments of indebtedness would be required to include both the order notice and the trade regulation rule notice.

The Commission, having considered respondents' petition and complaint counsel's answer, which does not oppose the modification, is of the opinion that the public interest would be best served by granting the petition and modifying the order so that it comports with the notice required by the trade regulation rule. Accordingly,

It is ordered, That Paragraph I(7) of the order entered on November 1, 1974, be, and it hereby is, modified to read as follows:

"7. Failing to include the following statement clearly and conspicuously on the face of any note, contract, or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

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

Order

87 F.T.C.

WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR
SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.”

Complaint

• IN THE MATTER OF
STRAWBRIDGE & CLOTHIER

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

Docket C-2812. Complaint, Mar. 22, 1976—Decision, Mar. 22, 1976

Consent order requiring a Philadelphia, Pa., developer of shopping centers and operator of retail department stores and discount outlets, among other things to cease entering into agreements which empower it to control the admission of competing retailers into shopping centers; restrict and control retailers' conduct of sales, use of advertising and other methods of sales promotion; determining particular types or brands of goods and services competing retailers may or may not sell; and determining price or quality ranges within which competing retailers may sell their goods or services.

Appearances

For the Commission: *Richard F. Kelly and Gary M. Laden.*

For the respondent: *Benjamin M. Quigg, Jr., Stephen W. Armstrong, Morgan, Lewis & Brohius, Philadelphia, Pa.*

COMPLAINT

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

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

(a) The term "shopping center" refers to a planned development of retail outlets, managed as a unit in relation to a trade area which the development is intended to serve and containing (1) at least two tenants other than respondent; (2) at least one major tenant; and (3) on-site parking in some definite relationship to the types and sizes of stores in the development.

(b) The term "tenant" includes any occupant or potential occupant of retail space in a shopping center, whether a lessee or owner of such space, but the term does not refer to an occupant of space within the

store or other areas occupied by respondent, which occupant operates a department for respondent pursuant to a license from respondent.

(c) The term "major tenant" refers to tenant providing primary drawing power for a shopping center. A tenant which occupies at least 50,000 square feet of floor area will be deemed to provide primary drawing power.

(d) The term "retailer" refers to a tenant which sells merchandise or services to the public.

(e) The terms "price line," "price range," "range of prices," "fashion range," "range of fashions," "quality range" and "range of quality" refer to descriptive words identifying a particular tenant as an example of a category of merchants selling merchandise within a generally identifiable range of prices, and also include, but are not limited to, such descriptive words as "popular priced," "medium priced," and "better priced;" "popular fashion," "medium fashion," and "high fashion;" and "popular quality," "medium quality," and "high quality."

(f) The term "fringe area" refers to land area bordering a shopping center property, which land area respondent does not own or does not have a right to purchase. A shopping center property includes the tract of land on which the physical structures, parking areas, roadways, landscaped area, open areas, and other common facilities of the shopping center are located, and areas reserved for future use, as shown on the layout.

(g) The term "developer" means any business entity which plans, constructs, or operates a shopping center and negotiates and executes lease agreements with tenants.

PAR. 2. (A) Respondent Strawbridge & Clothier (hereinafter referred to as S & C) is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at 801 Market St., Philadelphia, Pennsylvania. S & C is engaged in the development and operation of retail stores in the Delaware Valley Area, including department stores and discount outlets, the latter being operated by S & C's Clover Discount Stores Division. S & C operates ten department stores, seven of which are located in shopping centers. S & C's Clover Discount Stores Division operates six discount outlets (hereinafter referred to as Clover Stores).

(B) S & C's stores achieved sales in its fiscal year 1974 in excess of \$225 million. Sales in S & C's department stores in shopping centers account for a majority of respondent's yearly net retail sales.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaged in acts or practices in or affecting

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

(A) Respondent purchases for resale a great variety of consumer products from a large number of suppliers located throughout the United States. Respondent causes these products, when purchased by it, to be transported from the place of manufacture or purchase to its business establishments located in Pennsylvania, Delaware, and New Jersey. Such products have been and are advertised and offered for sale by respondent in newspapers circulated among and between the States of Delaware, New Jersey and the Commonwealth of Pennsylvania. Respondent has engaged in the planning and development of its retail department stores in shopping centers in the States of Delaware, New Jersey and the Commonwealth of Pennsylvania.

(B) In the course of the development of these stores in shopping centers in the State of New Jersey and the Commonwealth of Pennsylvania, respondent has negotiated and executed agreements, leases and contracts with developers. In the course of negotiating and executing these leases, agreements and contracts, exchanges of information and communications have occurred between respondent in Pennsylvania and developers in States other than the Commonwealth of Pennsylvania. Correspondence with respect to respondent's approval of tenants for inclusion in shopping centers has passed between respondent in Pennsylvania and developers in States other than the Commonwealth of Pennsylvania through the use of the United States mails.

PAR. 4. Except to the extent that competition has been hindered, frustrated and eliminated as set forth in this complaint, respondent, in the course and conduct of its business of offering for sale and selling household goods, home furnishings, apparel and services, has been and is in substantial competition with other corporations, individuals and partnerships in the retail sale of the same or comparative brands of merchandise carried and sold by respondent.

PAR. 5. In recent years, S & C has negotiated, entered into, executed and enforced operating agreements, contracts, understandings and lease agreements with shopping center developers for the purpose of establishing department stores. In the course and conduct of negotiating such agreements with developers, S & C has induced various developers of shopping centers to agree to certain types of restrictive covenants or provisions which authorize S & C to control and determine the admission of other tenants into shopping centers and give S & C control of various other conditions affecting other tenants in shopping centers as is hereinafter set forth in Paragraph Six.

PAR. 6. In the course and conduct of its business, respondent is and

has been engaged in unfair methods of competition and unfair acts and practices in or affecting commerce, in that it has caused the execution and enforcement of operating agreements, contracts, understandings and lease agreements which have suppressed, restricted, restrained, hindered, lessened, prevented and foreclosed competition in the retail distribution of goods and services in, among others, the States of New Jersey, Delaware and the Commonwealth of Pennsylvania and have injured consumers. Said agreements, contracts, understandings and lease agreements have conferred upon respondent the following:

(a) the right to approve or disapprove the admission or expulsion of other retailers in shopping centers or to set conditions for their entry;

(b) the right to prohibit the admission into a shopping center of a particular class of retailers;

(c) the right to control or restrict other retailers with respect to the conduct of sales, use of advertising or other methods of promotion;

(d) the right to approve or disapprove the amount of space available to other retailers in shopping centers or the use to which such space may be put within said shopping centers;

(e) the right to approve, disapprove, or determine the particular brands or types of goods and services which other retailers may sell in shopping centers, or the right to approve, disapprove, or determine the amount of floor space that may be utilized for the display and sale of such goods and services;

(f) the right to determine the price ranges or price lines at which other retailers may sell their goods and services in shopping centers;

(g) the right to utilize or enforce quality standards for goods and services so as to determine or control the price ranges or price lines at which other retailers may sell their goods and services in shopping centers;

(h) the right to require or approve that a particular retailer be permitted to have an exclusive right or right of first refusal to operate a particular type of business, sell a particular type or brand of merchandise, or furnish a particular type of service, or the right to obtain exclusive covenants for itself;

(i) the right to approve or disapprove other retailers' hours of operation in shopping centers;

(j) the right to approve or disapprove the location of other retailers in shopping centers;

(k) the right to preclude a retailer from opening or maintaining another store similar to or in competition with that retailer's own store within a specified radius or distance from a shopping center;

(l) the right to prevent or limit further expansion of the shopping center;

(m) the right to restrict or limit the uses to which fringe area land may be developed or used;

(n) the right to use preapproved tenant lists to exclude potential tenants and classes of tenants from shopping centers.

PAR. 7. The aforesaid operating agreements, contracts, understandings and lease agreements, and the rights, powers and privileges thereby conferred upon respondent, and its exercise and enforcement thereof, have had and continue to have the tendency to restrain trade and commerce. The effects of these acts and practices have tended to cause injury to respondent's competitors, to other businessmen and to consumers. In particular, included among the effects of such restraints are the following:

(a) fixing, establishing, controlling, stabilizing, and maintaining prices at which or the price ranges within which tenants must sell their merchandise;

(b) allowing respondent to choose competitors and to exclude actual or potential competitors and limit the number and diversity of their competitors;

(c) allowing respondent to influence the location of other tenants so as to induce the public to shop in areas of shopping centers where respondent's stores are located, and conversely, so as to draw the public away from areas in shopping centers where other major tenants are located;

(d) eliminating, hindering, and discouraging discount advertising, discount pricing and discount selling;

(e) denying the public the benefit of price competition;

(f) boycotting potential occupants of shopping centers;

(g) limiting the numbers and locations of other retail stores operated by tenants outside of the shopping center, thereby limiting competition and limiting the numbers and locations of other retail stores that might otherwise be accessible to the public;

(h) restricting, hindering, and coercing developers in their choice of tenants in shopping centers;

(i) restricting and hindering developers in their expansion of existing shopping centers;

(j) permitting respondent to limit or restrict the types or brands of merchandise that tenants may sell;

(k) allocating territories among competitors for the sale of goods and services;

(l) foreclosing competitors from competing with respondent both inside and outside of shopping centers in which respondent operates;

(m) denying other retailers the freedom to choose the hours of business in which they may compete.

PAR. 8. The aforesaid operating agreements, contracts, understandings or lease agreements, respondent's acts, practices and methods of competition in connection therewith, and the adverse competitive effects resulting therefrom are injurious to consumers and to respondent's competitors, and constitute unfair methods of competition in or affecting commerce, and 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 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 Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, 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 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 Strawbridge & Clothier 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 801 Market St., Philadelphia, Pennsylvania.

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

ORDER

I

For purposes of this order the following definitions shall apply:

(a) The term "shopping center" refers to a planned development of retail outlets, managed as a unit in relation to a trade area which the development is intended to serve and containing (1) at least two tenants other than respondent; (2) at least one major tenant; and (3) on-site parking in some definite relationship to the types and sizes of stores in the development.

(b) The term "tenant" includes any occupant or potential occupant of retail space in a shopping center, whether a lessee or owner of such space, but the term does not refer to an occupant of space within the store or other areas occupied by respondent, which occupant operates a department for respondent pursuant to a license from respondent.

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

(d) The term "retailer" refers to a tenant which sells merchandise or services to the public.

(e) The terms "price line," "price range," "range of prices," "fashion range," "range of fashions," "quality range" and "range of quality" refer to descriptive words identifying a particular tenant as an example of a category of merchants selling merchandise within a generally identifiable range of prices, and also include, but are not limited to, such descriptive words as "popular priced," "medium priced," and "better priced;" "popular fashion," "medium fashion," and "high fashion;" and "popular quality," "medium quality," and "high quality."

(f) The term "fringe area" refers to land area bordering a shopping center property, which land area respondent does not own or does not have a right to purchase. A shopping center property includes the tract of land on which the physical structures, parking areas, roadways, landscaped area, open areas, and other common facilities of the shopping center are located, and areas reserved for future use, as shown on the layout.

(g) The term "developer" means any business entity which plans, constructs, or operates a shopping center and negotiates and executes lease agreements with tenants.

II

It is ordered, That respondent Strawbridge & Clothier, a corporation,

its successors and assigns, and its officers, and respondent's agents, representatives and employees, hereinafter sometimes referred to as respondent, directly or through any corporation, subsidiary, division or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, in its capacity as a tenant in a shopping center, forthwith cease and desist from requesting, obtaining, making, executing, carrying out, or enforcing, directly or indirectly, any agreement, lease provision, operating agreement, contract, or understanding which:

(1) grants respondent the right to approve or disapprove the entrance into a shopping center of any other retailer, or the conditions for entry of other retailers;

(2) prohibits the admission into a shopping center of retailers, including, but not limited to, for purposes of illustration:

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

(3) grants respondent the right to control or restrict the business operations of other retailers, including but not limited to:

(a) the right to specify, prohibit or restrict any type of advertising, including discount advertising, or the right to specify or restrict the content of store signing;

(b) the right to use trading stamps, auction sales, bona fide going out of business sales, bankruptcy sales or other like methods of merchandising; or

(c) the right to be a discounter or sell merchandise or services at discount prices;

(4) grants respondent the right to approve or disapprove the amount of floor space that any other retailer may lease or purchase in a shopping center, or limit or restrict the use to which such space may be put within the shopping center;

(5) limits the types of merchandise or brands of merchandise or services which any other retailer in a shopping center may offer for sale, or the amount of floor space that may be utilized for the display and sale of such merchandise or service;

(6) specifies that any other retailer in the shopping center shall or shall not sell its merchandise or services at any particular price or within any range of prices, or shall not sell designated price lines of merchandise;

(7) specifies that any other retailer in the shopping center shall or shall not sell merchandise unless said merchandise is of a certain quality or fashion range;

(8) gives covenants to other retailers in their shopping center leases whereby a particular tenant is permitted to have an exclusive right or a right of first refusal to operate a particular type of business, sell a particular type or brand of merchandise, or furnish a particular type of service;

(9) grants respondent the right to approve or disapprove any other retailer's hours of operation in a shopping center;

(10) grants respondent the right to approve or disapprove the location in a shopping center of any other retailer;

(11) establishes or maintains a radius or distance from shopping centers within which a retailer may not operate another store similar to or in competition with that retailer's own store at the shopping center;

(12) grants respondent the right to restrict, approve, or disapprove the uses to which fringe areas of a shopping center may be developed or used;

(13) grants respondent the right to prevent or limit expansion of the shopping center;

(14) grants respondent the right to restrict the categories or types of uses designated for the land on which a shopping center is being developed or expanded;

(15) establishes quotas on or limits the number of any class of retailer which can become tenants in a shopping center, by any device, such as, but not limited to, preapproved lists.

Provided, however, That respondent's full line department stores shall not be subject to the provisions of Section II of this order unless said full line department stores are tenants in a shopping center, as defined as follows: The term "shopping center" refers to a planned development of retail outlets, managed as a unit in relation to a trade area which the development is intended to serve and containing (1) a total floor area designed for retail occupancy of 200,000 square feet or more, of which at least 50,000 square feet is for occupancy by tenants other than respondent; (2) at least two tenants other than respondent; (3) at least one major tenant; and (4) on-site parking in some definite relationship to the types and sizes of stores in the development.

III

A. *It is further ordered,* That respondent, in its capacity as a shopping center developer, forthwith cease and desist from making, carrying out, or enforcing, directly or indirectly, an agreement or provision of an agreement which:

(1) specifies that any retailer in any of respondent's shopping centers shall or shall not sell merchandise or services at any particular price, or

within any range of prices or price lines, or within any range of fashions or within any range of quality;

(2) specifies that any retailer in any of respondent's shopping centers shall not be a discounter or sell merchandise or services at discount prices;

(3) specifies the content of or prohibits any type of advertising by a retailer, other than advertising within any of respondent's shopping centers, except that respondent may require a tenant to include the name, insignia, or other identifying mark of any of respondent's shopping centers in advertising pertaining to the tenant's store in any of respondent's shopping centers; or

(4) prohibits price advertising within any of respondent's shopping centers or controls advertising within any of respondent's shopping centers in such a way as to make it difficult for consumers to discern advertised prices from the common area of such shopping centers; *provided*, that in all other respects, respondent may make, carry out and enforce reasonable standards for advertising within any of respondent's shopping centers.

B. *It is further ordered*, That respondent, in its capacity as a shopping center developer, cease and desist from entering into any agreement with any tenant that said tenant may:

(1) specify or control or may require respondent to specify or control prices, price ranges, price lines, fashion ranges, or quality ranges of merchandise or services sold by any other retailer;

(2) control or may require respondent to control discounting by any other retailer; or

(3) exclude any retailer from any of respondent's shopping centers by reason of such retailer's discount selling or discount advertising.

C. *It is further ordered*, That respondent, in its capacity as a shopping center developer, advise the Commission in writing within sixty (60) days of any occasion that:

(1) a tenant disapproves the admission into any of respondent's shopping centers of any other retailer;

(2) a tenant refuses to approve the renewal of another retailer's lease in any of respondent's shopping centers;

(3) a tenant approves the admission of another retailer into any of respondent's shopping centers subject to conditions imposed by the tenant relating to the pricing, price ranges, price lines, fashion ranges, quality ranges, trade names, store names, trademarks, brands or lines of merchandise, or the discounting practices or methods of such other retailer; or

(4) a tenant enters into an agreement with respondent to become a

tenant in any of respondent's shopping centers on condition that respondent refuse to renew the lease of another retailer.

D. *It is further ordered*, That respondent, in its capacity as a shopping center developer, will not base its decision to grant, renew or extend the lease of a tenant in any of respondent's shopping centers upon the pricing practices of such tenant.

E. *It is further ordered*, That respondent, in its capacity as a shopping center developer, shall within thirty (30) days after service of this order upon respondent, notify each tenant in any of respondent's shopping centers of this order by providing each tenant with a copy of this order by registered or certified mail.

IV

A. *It is further ordered*, That this order shall not prohibit respondent from including a provision in a construction, operating and reciprocal easement agreement or lease with respect to a shopping center, which provision identifies in designated buildings respondent and those other major tenants which contemporaneously enter into such agreement or lease with respect to such shopping center; *provided*, that the operation of this Section shall not in any way limit or modify provisions II.(1) or II.(10) of this order.

B. *It is further ordered*, That this order shall not prohibit respondent from negotiating to include, including, carrying out, or enforcing an agreement or provision in any agreement with the developer or the landlord of a shopping center that the respondent may:

(1) require that with respect to the selection of other tenants in the shopping center, the developer shall select businesses which are financially sound and of good reputation;

(2) require the developer or the landlord to maintain reasonable standards of appearance, maintenance and housekeeping of and in the shopping center, including reasonable standards of appearance, maintenance and housekeeping relative to the use of common areas of the shopping center for the advertising or sale of merchandise, and reasonable uniform standards with respect to the appearance of signs;

(3) approve or grant to respondent the right to approve a layout of the shopping center, which layout may (a) designate respondent's store, (b) set forth the location, size and height of all buildings, (c) locate parking areas, roadways, utilities, entrances, exits, walkways, malls, landscaped areas and other common areas, and (d) establish a proposed layout for future expansion of the shopping center;

(4) require the developer or landlord to prohibit occupancy of space

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

(5) require that in respect of the selection of other tenants in the shopping center by the developer, the objective of maintaining a balanced and diversified grouping of retail stores, merchandise, and services shall be considered;

(6) require that the developer or the landlord consider the objective of maintaining reasonable uniform minimum hours of operation; or

(7) require that any expansion of the shopping center not provided for in the layout:

(a) shall not interfere with efficient automobile and pedestrian traffic flow into and out of the shopping center and between respondent's store and perimeter and access roads, parking areas, malls and other common areas of the shopping center;

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

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

(d) shall be accomplished only after any and all covenants, obligations and standards (for example, construction, architecture, operation, maintenance, repair, alteration, restoration, parking ratio and easements) of the shopping center, exclusive of the expansion area (i) shall be made applicable to the expansion area, (ii) shall be made prior in right to any and all mortgages, deeds of trust, liens, encumbrances, and restrictions applicable to the expansion area, and (iii) shall be made prior in right to any and all other covenants, obligations and standards applicable to the expansion area.

V

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

It is further ordered, That respondent shall within thirty (30) days after service of this order upon respondent, notify each developer or landlord of shopping centers in which respondent occupies floor space, of this order by providing each such developer or landlord with a copy thereof by registered or certified mail.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a

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

It is further ordered, That respondent 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 they have complied with this order.

Complaint

87 F.T.C.

IN THE MATTER OF
MUTUAL HOME EQUIPMENT COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2813. Complaint, Mar. 25, 1976—Decision, Mar. 25, 1976

Consent order requiring a Philadelphia, Pa., door-to-door seller of household goods, and other consumer goods and products, among other things to cease misrepresenting retail installment sales contracts as rental agreements; accepting obligations from consumers which unfairly authorize it to enter buyers' homes without legal process and retake encumbered property without the buyer's permission, with the buyer waiving any action for trespass or damage and provide that the buyer forfeit all previously made payments in the event of default in payment of the obligation; failing to disclose to customers their right to a three-day cooling-off period during which they may cancel their contract with a full refund of monies paid; and in connection with the extension of consumer credit, failing to make such disclosures as required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Bernard Rowitz.*

For the respondents: *Pro se.*

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 Mutual Home Equipment Company, Inc., a corporation, and Samuel H. Alessi and Irving Gaeman, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have engaged in acts and practices contrary to the Commission's Trade Regulation Rule Concerning a Cooling-Off Period for Door-To-Door Sales (16 C.F.R. §429), as amended, in violation of the Federal Trade Commission Act, as amended, and have also engaged in acts and practices in violation of the provisions of the above-mentioned 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 Mutual Home Equipment Company, Inc. is a corporation organized, existing and doing business under and by

virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 4610 North 15th St., Philadelphia, Pennsylvania.

Respondents Samuel H. Alessi and Irving Gaeman are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the door-to-door offering for sale, sale, and distribution of household goods, including cookware, dishes, blankets and other consumer goods and products to the public at retail.

COUNT I

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

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business located in the Commonwealth of Pennsylvania to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained a substantial course of trade in said merchandise 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, as aforesaid, and in connection with their door-to-door sales, respondents now cause, and for some time last past have caused, their credit customers to enter into binding contracts, which respondents represent and identify as being "rental agreements," when in truth and in fact, such "agreements" when entered into by customers of respondents are retail installment sales contracts for the purchase of respondents' goods and merchandise. Such representations by respondents are therefore false, misleading and deceptive.

PAR. 5. In the course and conduct of their business, as aforesaid, and in connection with their door-to-door sales, respondents now cause, and for some time last past have caused, their credit customers to enter into binding contracts, which contain, among other things, the following language and provisions:

* * *[Mutual's] agents are hereby authorized to enter my premises and take and

remove said property without legal process [*name of consumer*] hereby waiving any action for trespass or damage therefor and disclaiming any right of resistance thereto* * *.

The conditions imposed upon credit customers of respondents through the use of the above language and contract provisions are adhesive; are to the disadvantage of said customers; are not offset by any reasonable value received; and are included without regard to the actual risk of nonrepayment borne by respondents. Furthermore, said language and contract provisions are contrary to public policy and the law of the State in which respondents reside and do business. Thus, the use of said language and contract provisions was and is unfair, misleading and deceptive.

PAR. 6. In the course and conduct of their business, as aforesaid, and in connection with their door-to-door sales, respondents now cause, and for some time last past have caused, their credit customers to enter into binding contracts, which provide for, among other things, that title to said property remains with respondents until the "rental" has been paid in full, and in the event of default, all payments previously made by the customer are forfeited, and the unpaid balance of the "rental" may become due and payable at once to respondents. Such provision annuls and fails to take into account previously made payments, and fails to provide that if respondents should retake encumbered or secured property, the fair market retail value of the property so taken will be credited toward the balance due under the obligation.

The conditions imposed upon credit customers of respondents through the use of the above contract provisions are adhesive; are to the disadvantage of said customers; are not offset by any reasonable value received; and are included without regard to the actual risk of nonrepayment borne by respondents. Furthermore, said contract provisions are contrary to public policy and the law of the State in which respondents reside and do business. Thus, the use of said language and contract provisions was and is unfair, misleading and deceptive.

PAR. 7. In the course and conduct of their business, as aforesaid, and in connection with their door-to-door sales, respondents have been able to induce customers into signing binding contracts upon initial contact without giving the customers sufficient time to carefully consider the purchase and consequences thereof and without affirmatively stating and affording such customers the right to cancel any resulting purchase or contract.

Therefore, respondents' acts and practices as set forth herein were, and are, unfair, false, misleading and deceptive acts and practices.

PAR. 8. By and through the use of the aforesaid acts and practices,

respondents control and place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public, in the manner and as to the things hereinabove alleged.

PAR. 9. 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.*, has conducted a proceeding for the promulgation of a trade regulation rule pertaining to a cooling-off period for door-to-door sales. Notice of this proceeding, including a proposed rule, was published in the *Federal Register* on September 29, 1970 (35 F.R. 15164). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed rule.

After it had considered the suggestions, criticisms, objections, and other pertinent information in the record, the Commission on February 17, 1972, published a revised proposed rule in a notice in the *Federal Register* (37 F.R. 3551) extending an opportunity to interested parties to submit data, views or arguments regarding the revised proposed rule. A period of 30 days was allowed for the submission of written statements.

The Commission considered all matters of fact, law, policy and discretion, including the data, views and arguments presented on the record by interested parties in response to the notices, as prescribed by law, and determined that the adoption of the trade regulation rule and its statement of basis and purpose was in the public interest, and, accordingly promulgated the Trade Regulation Rule Concerning a Cooling-Off Period For Door-To-Door Sales on October 18, 1972, effective June 7, 1974 (16 C.F.R. §429). A copy of the rule, marked Appendix A*, is attached hereto and made a part of this pleading.

PAR. 10. In the ordinary course and conduct of their business, as aforesaid, respondents engage in door-to-door sales of consumer goods, as the terms "door-to-door sales" and "consumer goods" are defined in the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales 16 C.F.R. §429 (1974) (hereinafter referred to as the "Commission Rule"), duly promulgated by the Federal Trade Commission.

PAR. 11. Subsequent to June 7, 1974, respondents, in the ordinary course and conduct of their business, as aforesaid, and in connection with their door-to-door sales of consumer goods:

* For reasons of economy, not reproduced herein.

1. Fail to furnish the buyers with a fully completed receipt of the sale in accordance with Section (a) of the Commission Rule.

2. Fail to provide a NOTICE OF CANCELLATION in the form and manner provided by Sections (b) and (c) of the Commission Rule.

3. Fail to inform each buyer orally of his right to cancel, in accordance with Section (e) of the Commission Rule.

4. Misrepresent the buyer's right to cancel the transaction, in violation of Section (f) of the Commission Rule.

PAR. 12. Respondents' aforesaid failure to comply with Sections (a), (b), (c), (e) and (f) of the Commission Trade Regulation Rule Concerning a Cooling-Off Period For Door-to-Door Sales constitutes unfair and deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 13. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in or affecting commerce, with corporations, partnerships, firms and individuals engaged in the sale of merchandise of the same general kind and nature as those sold by respondents.

PAR. 14. 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, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and complete and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

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

PAR. 16. 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. 17. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" 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, have caused, and are causing customers to execute binding retail installment contracts, hereinafter referred to as the contracts. Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of these retail installment contracts, respondents:

1. Fail to make the consumer credit cost disclosures required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.
2. Fail to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the goods, as required by Section 226.8(c)(1) of Regulation Z.
3. 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.
4. Fail to use the term "total downpayment" to describe the sum of the "cash downpayment" and "trade-in," as required by Section 226.8(c)(2) of Regulation Z.
5. 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.
6. Fail to use the term "amount financed" to describe the amount of credit of which the customer will have actual use, as required by Section 226.8(c)(7) of Regulation Z.
7. Fail to use the term "finance charge" to describe the cost of credit determined in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z.
8. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
9. Fail to disclose the finance charge as an annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, using the term "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z.
10. Fail to disclose the number, amount, due dates or periods of

payments scheduled to repay the indebtedness, and the sum of such payments using the term, "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

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

12. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment in full of the obligation, to state the amount or method of computing any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to an obligation or refunded to the customer, or that no rebate of unearned finance charges will be made upon prepayment in full, as required by Section 226.8(b)(7) of Regulation Z.

PAR. 18. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended, and the Truth in Lending Act and the regulations promulgated thereunder; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for

a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mutual Home Equipment Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its offices and principal place of business located at 4610 No. 15th St., Philadelphia, Pennsylvania.

Respondents Samuel H. Alessi and Irving Gaeman 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

It is ordered, That respondents Mutual Home Equipment Company, Inc., a corporation, its successors and assigns, and its officers, and Samuel H. Alessi and Irving Gaeman, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device in connection with, offering for sale, sale and distribution of household goods, cookware, dishes, blankets or any other consumer goods or products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing directly or by implication, orally or in writing, that retail installment sales contracts are rental agreements.

2. Taking or receiving from a customer an obligation in which the customer waives any right of action against respondents, or their agents for trespass, damage, or any other torts.

3. Taking or receiving from a customer an obligation which fails to provide that, if the creditor retakes encumbered or secured property, the fair market retail value of property so taken and previous payments made by the customer, will be credited toward the balance due under the obligation.

4. Taking or receiving from a customer an obligation in which the customer waives any right of action against respondents or holder of the obligation or any other person acting on respondents' behalf, for any illegal act committed in the collection of payments under an obligation or in the repossession of goods.

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

6. Failing to furnish the buyer 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 buyer 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.

7. Failing to furnish each buyer, at the time he signs the door-to-door 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 ten point bold face type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

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 MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE

INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, 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 place of business] NOT LATER THAN MIDNIGHT OF [Date]

I HEREBY CANCEL THIS TRANSACTION.

[Date]

[Buyer's signature]

8. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's 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 buyer may give notice of cancellation.

9. Including in any door-to-door 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.

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

11. Misrepresenting in any manner the buyer's right to cancel.

12. 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 created in the transaction.

13. 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.

14. Failing, within 10 business days of receipt of the buyer's notice

of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

15. Engaging in any act or practice which constitutes an unfair or deceptive act or practice pursuant to the Commission's Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales, effective June 7, 1974, 16 C.F.R. §429 (a copy of which is attached hereto as Appendix A*), and any amendments thereto.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by Federal law, Trade Regulation Rule 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 the above Paragraphs (5) to (15) of this order with respect to contracts executed in the state in which such different obligations are required.

It is further ordered, That respondents Mutual Home Equipment Company, Inc., a corporation, its successors and assigns, and its officers, and Samuel H. Alessi and Irving Gaeman, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any extension of consumer credit or 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. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Failing to make the consumer credit cost disclosures required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

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

3. 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.

4. Failing to use the term "total downpayment" to describe the sum of the "cash downpayment" and "trade-in," as required by Section 226.8(c)(2) of Regulation Z.

5. 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.

6. Failing to use the term "amount financed" to describe the amount

* For reasons of economy, not reproduced herein.

of credit of which the customer will have the actual use, as required by Section 226.8(c)(7) of Regulation Z.

7. Failing to use the term "finance charge" to describe the cost of credit determined in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z.

8. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

9. Failing to disclose the finance charge as an annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, using the term "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z.

10. Failing to disclose the number, amount, due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments using the term, "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

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

12. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment in full of the obligation, to state the amount or method of computing any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to an obligation or refunded to the customer, or to disclose that no rebate of unearned finance charges will be made upon prepayment in full, as required by Section 226.8 (b)(7) of Regulation Z.

13. Failing in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

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 door-to-door offering for sale, sale of any product or service or consummation of any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or

employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

IN THE MATTER OF
WARNER-LAMBERT COMPANY

Docket 8891. Order, Mar. 26, 1976

Denial of respondent's petition to reopen proceedings to receive evidence of *ex parte* communications and of FDA findings concerning Listerine, and to withdraw final order pending consideration of such evidence.

Appearances

For the Commission: *Wallace S. Snyder* and *William S. Busker*.

For the respondent: *Mudge, Rose, Guthrie & Alexander*, New York City and *Larry Sharp, Bergson, Borkland, Margolis & Adler*, Washington, D.C.

Respondent has petitioned the Commission to reopen the proceeding for the purpose of receiving "evidence of *ex parte* communications and of FDA findings concerning Listerine, and to withdraw [the] final order pending consideration of such evidence."

First, respondent contends that the Commission staff, through written memoranda dealing with the Commission's over-the-counter drug program, has "singl[ed] out Listerine by name, [and] made improper and damaging *ex parte* arguments to the Commission" while the above-styled matter was pending. This contention is plainly without merit. The Commission has based its determinations and order in this proceeding solely upon the record compiled in Dkt. 8891. See *Encyclopaedia Britannica, Inc.* (Order Denying Motion To Reopen Record And Proceedings) (March 2, 1976¹). We have examined the memoranda² attached to respondent's Petition, as well as the portions of the memoranda which were excised prior to FOIA release. The only mention of Listerine occurs in a few statements that a proceeding exists with respect to respondent, e.g., "* * *the Listerine case which is now before the Commission* * *." There are no arguments, as respondent contends, of the appropriateness of corrective advertising as a remedy in the Listerine proceeding. The references to Listerine are not *ex parte* communications since they are not statements "with respect to the merits," Rules of Practice Section 4.7.

Secondly, respondent contends that the record should be reopened since an FDA advisory panel, after issuance of the Commission's opinion and order, "found that combination products containing the

¹ Reported in this Volume.

² The memoranda, with one exception, consist of reports to the Commission or the Chairman as to the status of the Commission's Over-the-Counter Drug program. The exception is a report to the Director of the Bureau of Consumer Protection from the Division of National Advertising and was a wholly intra-Bureau communication.

active ingredients of Listerine may be efficacious for the symptomatic relief of colds and coughs and that until further test data can be developed, may continue to label and to sell the products as in the past, for the conditions indicated* * *." [footnote omitted]. We also find this contention to be without merit.

In the decision in this proceeding, the Commission concluded, on the basis of the preponderance of the evidence in the record before us, that the use of Listerine, as directed, will not prevent or cure colds or sore throats or ameliorate cold symptoms. Here the report that the respondent references in its Petition is a draft report by the FDA's review panel for over-the-counter cough and cold remedies. The report has not been adopted and thus there is no "finding," as respondent contends. The draft report has been placed on the public record for comment. *See* CCH Food, Drug & Cosmetic Law Reporter Para. 41,571 [41 F.R. 38312]. Moreover, "Category III," the category in which respondent claims its product's ingredients fall, is designated by FDA for drugs requiring additional study. Accordingly,

It is ordered, That the aforesaid petition be, and it hereby is, denied.

Complaint

IN THE MATTER OF

MUTUAL CONSTRUCTION COMPANY, INC., ET AL.

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

Docket 9022. Complaint, Mar. 25, 1975—Final Order, Mar. 30, 1976

Order requiring a Birmingham, Ala., seller and installer of home improvement products, including residential siding, among other things to cease using bait and switch tactics; using deceptive or misleading sales plans to obtain leads or sales prospects; disparaging products; misrepresenting sales as bona fide; misrepresenting time limitations or restricted offers; misrepresenting prices as reduced or special; failing to maintain adequate records; misrepresenting guarantees or warranties; misrepresenting durability, quality and maintenance of its products; and misrepresenting that purchasers' homes will be used for advertising or for demonstration purposes.

Appearances

For the Commission: *W. Roland Campbell and T. Douglas Wilson, Jr.*

For the respondents: *Gary P. Smith, Najjar, Najjar, Vincent & Smith, Birmingham, Ala.*

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 Mutual Construction Company, Inc., a corporation, and Joseph L. Cameron, individually and as an officer of said corporation, hereinafter 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 Mutual Construction Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 742 Valley Rd., in the city of Birmingham, State of Alabama.

Respondent Joseph L. Cameron is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including those hereinafter set forth. His business address is the same as that of the corporate

respondent. His home address is 3465 Birch Tree Dr., in the city of Birmingham, State of Alabama.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of home improvement products, including, but not limited to, residential siding, and in the installation thereof.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said products to be sold in various States of the United States and when sold, to be shipped from their place of business in the State of Alabama to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase and installation of their home improvement products, respondents and their salesmen or representatives have made, and are now making, numerous statements and representations in advertising and promotional material and through oral statements and representations with respect to the nature and limitations of their offers, their prices, their purchasers' savings, their warranty, the durability of their products and the availability of their advertised product and installation thereof.

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

ALL-ALUMINUM SIDING SALE
THIS IS A LIMITED OFFER
SPECIAL OFFER
MAIL THIS CARD TODAY

One lifetime installation protects forever!
100% Guaranteed Genuine Aluminum Siding
Since this is an advertising promotion, the
time limit on this offer is five days
\$499

COMPLETELY INSTALLED

If your serial number, located at the top of this page, appears in group #1, you will get \$100 off the regular price. If your serial number appears in group #2, you will get \$150 off the regular price. If your serial number appears in the GRAND PRIZE group #3, you will received \$280 off the regular price.

IN LESS THAN TWO WEEKS YOUR FRIENDS WILL
THINK YOU HAVE A BRAND NEW HOME.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, separately and in connection with oral statements and representations of their salesmen or representatives, respondents have represented, and are now representing, directly or by implication, that:

1. The offers set out in their advertisements are bona fide offers to sell aluminum siding, and the installation thereof, at the prices and on the terms and conditions stated.

2. Their aluminum siding and installation is being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of the reductions from respondents' regular selling prices.

3. Their aluminum siding material will never require painting or restorative maintenance.

4. Their aluminum siding is unconditionally guaranteed or guaranteed for life.

5. Their advertised offer of aluminum siding and installation for \$499 is limited to five days only.

6. After the installation of their aluminum siding is completed, the homes of purchasers will be used for demonstration and advertising purposes by respondents, and, as a result of allowing or agreeing to allow the use of their homes as models or demonstrators, purchasers will be granted reduced prices.

PAR. 6. In truth and in fact:

1. The offers set out in respondents' advertisements are not genuine or bona fide offers to sell aluminum siding and its installation of the kind therein described at the prices or on the terms and conditions stated, but are made for the purpose of obtaining leads to persons interested in the purchase of aluminum siding. After obtaining such leads, individual respondent Joseph L. Cameron or respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, disparage respondents' advertised aluminum siding and otherwise discourage the purchase thereof and attempt to sell and frequently do sell the more expensive aluminum siding.

2. Respondents' aluminum siding and its installation is not being offered for sale at special or reduced prices, and savings are not thereby afforded to purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices, but the prices at which respondents' aluminum siding and its installation is sold vary from purchaser to purchaser depending upon the resistance of the particular purchaser.

3. Respondents' aluminum siding materials will require painting and restorative maintenance.

4. Respondents' aluminum siding is not unconditionally guaranteed or guaranteed for life. Such guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the guarantee and the extent and manner of performance thereunder.

5. Respondents' advertised offer of aluminum siding and installation for \$499 is not limited to five days. Said product is advertised regularly at the represented price and on the terms and conditions stated therein.

6. After the installation of respondents' aluminum siding is completed, the homes of respondents' purchasers will not, in most instances, be used for demonstration or advertising purposes by respondents and as a result of allowing, or agreeing to allow their homes to be used as models, purchasers are not granted reduced prices.

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 aforesaid business, and in the furtherance of a sales program for inducing the purchase of their home improvement products and installations, including, but not limited to, residential siding, respondents have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

1. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

2. Respondents have failed to disclose certain material facts to purchasers, including, but not limited to, the fact that when instruments of indebtedness, executed by such purchasers in connection with their credit purchase agreements, are transferred or sold to financial institutions or third parties to whom the purchaser is thereafter indebted, valid claims and defenses which said purchasers may have against respondents may not be available to said purchasers in any subsequent legal proceeding in which the financial institution or third party seeks to enforce such obligations of indebtedness.

Therefore, the acts and practices, as set forth in Paragraph Seven hereof, were, and are, false, misleading and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of home improvement products and installations of the same general kind and nature of those sold by respondents.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' home improvement products and installations by reason of said erroneous and mistaken belief.

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

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE
LAW JUDGE

NOVEMBER 10, 1975

PRELIMINARY STATEMENT

[1] The Commission issued a complaint in this proceeding on March 25, 1975, charging Mutual Construction Company, Inc., a corporation, and Joseph L. Cameron, individually and as an officer of said corporation, with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. The complaint was served on the individual respondent, Joseph L. Cameron, on May 1, 1975, and on the corporate respondent, Mutual Construction Company, Inc., on May 3, 1975. Respondents filed their answer to the complaint on June 19, 1975.

[2] The complaint alleges that respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of home improvement products, including, but not limited to, residential siding, and in the installation

thereof. The complaint further alleges that respondents, in the course and conduct of their aforesaid business, and for the purpose of inducing the purchase and installation of their home improvement products, and their salesmen or representatives have made, and are now making, numerous statements and representations in advertising and promotional material and through oral statements and representations with respect to the nature and limitations of their offers, their prices, their purchasers' savings, their warranty, the durability of their products and the availability of their advertised product and installation thereof. By and through the use of the aforesaid statements and representations, it is alleged that respondents have represented, and are now representing, directly or by implication, that:

1. The offers set out in their advertisements are bona fide offers to sell aluminum siding, and the installation thereof, at the prices and on the terms and conditions stated.

2. Their aluminum siding and installation is being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of the reductions from respondents' regular selling prices.

3. Their aluminum siding material will never require painting or restorative maintenance.

4. Their aluminum siding is unconditionally guaranteed or guaranteed for life.

5. Their advertised offer of aluminum siding and installation for \$499 is limited to five days only.

6. After the installation of their aluminum siding is completed, the homes of purchasers will be used for demonstration and advertising purposes by respondents, and, as a result of allowing or agreeing to allow the use of [3] their homes as models or demonstrators, purchasers will be granted reduced prices.

In truth and in fact, the complaint alleges:

1. The offers set out in respondents' advertisements are not genuine or bona fide offers to sell aluminum siding and its installation of the kind therein described at the prices or on the terms and conditions stated, but are made for the purpose of obtaining leads to persons interested in the purchase of aluminum siding. After obtaining such leads, individual respondent Joseph L. Cameron or respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, disparage respondents' advertised aluminum siding and otherwise discourage the purchase thereof and attempt to sell and frequently do sell the more expensive aluminum siding.

2. Respondents' aluminum siding and its installation is not being

offered for sale at special or reduced prices, and savings are not thereby afforded to purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices, but the prices at which respondents' aluminum siding and its installation are sold vary from purchaser to purchaser depending upon the resistance of the particular purchaser.

3. Respondents' aluminum siding materials will require painting and restorative maintenance.

4. Respondents' aluminum siding is not unconditionally guaranteed or guaranteed for life. Such guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the guarantee and the extent and manner of performance thereunder.

5. Respondents' advertised offer of aluminum siding and installation for \$499 is not limited to five days. Said product is advertised regularly at the represented price and on the terms and conditions stated therein.

[4] 6. After the installation of respondents' aluminum siding is completed, the homes of respondents' purchasers will not, in most instances, be used for demonstration or advertising purposes by respondents and, as a result of allowing, or agreeing to allow their homes to be used as models, purchasers are not granted reduced prices.

Therefore, the complaint alleges, the statements and representations as set forth above were, and are, false, misleading and deceptive.

The complaint further alleges that, in the further course and conduct of their aforesaid business, and in the furtherance of a sales program for inducing the purchase of their home improvement products and installations, respondents have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

1. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

2. Respondents have failed to disclose certain material facts to purchasers, including, but not limited to, the fact that when instruments of indebtedness, executed by such purchasers in connection with their credit purchase agreements, are transferred or sold to financial institutions or third parties to whom the purchaser is thereafter

indebted, valid claims and defenses which said purchasers may have against respondents may not be available to said purchasers in any subsequent [5] legal proceeding in which the financial institution or third party seeks to enforce such obligations of indebtedness.

Therefore, the complaint alleges, the acts and practices set forth above were, and are, false, misleading and deceptive. The complaint further avers that the use by respondents of these false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' home improvement products and installations by reason of said erroneous and mistaken belief.

Hearings for the case-in-chief were set to commence on September 10, 1975, and defense hearings were to commence immediately following completion of the case-in-chief, and no later than September 22, 1975. On July 18, 1975, upon motion of complaint counsel, the undersigned issued an order suspending the pretrial schedule until August 11, 1975 on the ground that respondents had agreed to a stipulation of facts. On July 30, 1975, respondents filed a stipulation that the facts, as alleged in the complaint, are true facts and are, therefore, admitted, and that, upon the execution of the stipulation, the record in this matter shall be closed for the reception of evidence. In the aforesaid stipulation, respondents' counsel reserved the right to file briefs pertaining to the legal issue of the broadness of the proposed order as it applies to the individual respondent, Joseph L. Cameron.

By order issued August 11, 1975 by the undersigned, the record was closed for the reception of evidence and the submissions of the parties were limited to a proposed order and a legal memorandum in support thereof. Reply briefs were limited to the propriety of the relief to be entered in this proceeding.

Counsel for the parties have filed their proposed orders, legal memoranda, and reply briefs.

This matter is now before the undersigned upon the complaint, answers, pretrial proceedings, stipulation, proposed orders and legal memoranda in support thereof, and reply briefs filed by complaint counsel and counsel [6] for respondents. These submissions by the parties have been given careful consideration and, to the extent not adopted by this 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 specifically ruled upon, either directly or by the necessary effect of the conclusions in this decision, are hereby

denied. The findings of fact made herein are based on a review of the entire record in this proceeding.

FINDINGS OF FACT

1. Respondent Mutual Construction Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 742 Valley Rd., in the city of Birmingham, State of Alabama. Said corporate respondent was dissolved by resolution of its stockholders on August 11, 1975. (See certified copy of Stockholders' Resolution of Dissolution dated August 11, 1975.)

2. Respondent Joseph L. Cameron is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including those hereinafter set forth. His business address is the same as that of the corporate respondent. His home address is 3465 Birch Tree Dr., in the city of Birmingham, State of Alabama.

3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of home improvement products, including, but not limited to, residential siding, and in the installation thereof.

4. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said products to be sold in various States of the United States and when sold, to be shipped from their place of business in the State of Alabama to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

[7] 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase and installation of their home improvement products, respondents and their salesmen or representatives have made, and are now making, numerous statements and representations in advertising and promotional material and through oral statements and representations with respect to the nature and limitations of their offers, their prices, their purchasers' savings, their warranty, the durability of their products and the availability of their advertised product and installation thereof.

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

ALL-ALUMINUM SIDING SALE
THIS IS A LIMITED OFFER

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87 F.T.C.

SPECIAL OFFER
MAIL THIS CARD TODAY
One lifetime installation protects forever!
100% Guaranteed Genuine Aluminum Siding
Since this is an advertising promotion, the
time limit on this offer is five days
\$499
COMPLETELY INSTALLED

If your serial number, located at the top of this page, appears in group #1, you will get \$100 off the regular price. If your serial number appears in group #2, you will get \$150 off the regular price. If your serial number appears in the GRAND PRIZE group #3, you will receive \$280 off the regular price.

IN LESS THAN TWO WEEKS YOUR FRIENDS WILL
THINK YOU HAVE A BRAND NEW HOME.

[8] 7. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, separately and in connection with oral statements and representations of their salesmen or representatives, respondents have represented, and are now representing, directly or by implication, that:

(1) The offers set out in their advertisements are bona fide offers to sell aluminum siding, and the installation thereof, at the prices and on the terms and conditions stated.

(2) Their aluminum siding and installation is being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of the reductions from respondents' regular selling prices.

(3) Their aluminum siding material will never require painting or restorative maintenance.

(4) Their aluminum siding is unconditionally guaranteed or guaranteed for life.

(5) Their advertised offer of aluminum siding and installation for \$499 is limited to five (5) days only.

(6) After the installation of their aluminum siding is completed, the homes of purchasers will be used for demonstration and advertising purposes by respondents, and, as a result of allowing or agreeing to allow the use of their homes as models or demonstrators, purchasers will be granted reduced prices.

8. In truth and in fact:

(1) The offers set out in respondents' advertisements are not genuine or bona fide offers to sell aluminum siding and its installation of the kind therein described at the prices or on the terms and conditions stated, but are made for the purpose of obtaining leads to persons

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Initial Decision

interested in the purchase of aluminum siding. After obtaining such leads, [9] individual respondent Joseph L. Cameron or respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, disparage respondents' advertised aluminum siding and otherwise discourage the purchase thereof and attempt to sell and frequently do sell the more expensive aluminum siding.

(2) Respondents' aluminum siding and its installation is not being offered for sale at special or reduced prices, and savings are not thereby afforded to purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices, but the prices at which respondents' aluminum siding and its installation is sold vary from purchaser to purchaser depending upon the resistance of the particular purchaser.

(3) Respondents' aluminum siding materials will require painting and restorative maintenance.

(4) Respondents' aluminum siding is not unconditionally guaranteed or guaranteed for life. Such guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the guarantee and the extent and manner of performance thereunder.

(5) Respondents' advertised offer of aluminum siding and installation for \$499 is not limited to five (5) days. Said product is advertised regularly at the represented price and on the terms and conditions stated therein.

(6) After the installation of respondents' aluminum siding is completed, the homes of respondents' purchasers will not, in most instances, be used for demonstration or advertising purposes by respondents and as a result of allowing, or agreeing to allow their homes to be used as models, purchasers are not granted reduced prices.

[10] Therefore the statements and representations as set forth in Findings 5, 6 and 7 hereof were, and are, false, misleading and deceptive.

9. In the further course and conduct of their aforesaid business, and in the furtherance of a sales program for inducing the purchase of their home improvement products and installations, including, but not limited to, residential siding, respondents have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

(1) In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third

parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

(2) Respondents have failed to disclose certain material facts to purchasers, including, but not limited to, the fact that when instruments of indebtedness, executed by such purchasers in connection with their credit purchase agreements, are transferred or sold to financial institutions or third parties to whom the purchaser is thereafter indebted, valid claims and defenses which said purchasers may have against respondents may not be available to said purchasers in any subsequent legal proceeding in which the financial institution or third party seeks to enforce such obligations of indebtedness.

Therefore, the acts and practices, as set forth in Finding 9 hereof were, and are, false, misleading and deceptive.

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

11. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' home improvement products and installations by reason of said erroneous and mistaken belief.

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

CONCLUSIONS

THE COMMISSION'S AUTHORITY TO ISSUE AN ORDER

Corporate respondent Mutual Construction Company, Inc. and individual respondent Joseph L. Cameron have, by their Stipulation As To Facts, admitted all the material allegations of the complaint. That

stipulation was filed in this proceeding on July 30, 1975, and the record closed for the reception of evidence on Aug. 11, 1975.

Section 3.12(b)(2) of the Commission's Rules of Practice provides that the complaint and the admitting answer will provide a record basis on which the administrative law judge shall file an initial decision, including an appropriate order. Accordingly, in this case, respondents' stipulation is deemed to be an [12] admitting answer and, together with the complaint allegations, it constitutes the record basis for this decision. The findings of fact are based entirely on respondents' admission, in the stipulation, that the facts as alleged in the complaint in this matter are true. Therefore, the only issue remaining in this proceeding is the scope of the remedy, particularly whether it should be made applicable to Joseph L. Cameron in his individual capacity.

Respondents have admitted engaging in acts and practices violative of Section 5 of the Federal Trade Commission Act. The Commission is therefore vested with broad discretion in fashioning a remedy adequate to insure discontinuance of the unlawful practices. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965); *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952); *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608 (1946). The only limitation on the Commission's discretion is the requirement that the remedy be reasonably related to the unlawful acts which form the basis for the order. *Jacob Siegel Co.*, *supra*, 327 U.S. at 613.

INDIVIDUAL LIABILITY OF RESPONDENT JOSEPH L. CAMERON

When they filed their stipulation admitting the material allegations of the complaint, respondents reserved the right to file briefs on the issue of the applicability of the proposed order to the individual respondent, Joseph L. Cameron. In their brief respondents suggest that the order extend to Mr. Cameron in his corporate capacity only, arguing that it is unfair for the Commission to impose on a layman the burden of distinguishing conduct prohibited by the order from that permitted by it.

This argument cannot be accepted. Respondent Cameron has admitted that he formulated, directed and controlled the acts and practices of the respondent corporation, including the specific acts and practices alleged in the complaint. Those practices, it has also been admitted, were false, deceptive and misleading, and were to the prejudice and injury of the public and of respondents' competitors. Thus, respondent Cameron has admitted that [13] he is personally responsible for the unlawful acts of the corporate respondent.

It is well settled that the Federal Trade Commission has the authority to issue orders directed individually against officers,

directors, and others who have participated in or controlled the unlawful acts of a corporate respondent. *Federal Trade Commission v. Standard Education Society, et al.*, 302 U.S. 112, 119-120 (1937); *Rayex Corp. v. Federal Trade Commission*, 317 F.2d 290, 295 (2d Cir. 1963); *Standard Distributors, Inc., et al. v. Federal Trade Commission*, 211 F.2d 7, 14-15 (2d Cir. 1954). The purpose of doing so is to make the order fully effective in preventing recurrence of the practices found to be unlawful, for the Commission has recognized that a corporate respondent is not the only vehicle through which individuals, who have been personally involved in unlawful practices, may in the future continue to engage in such practices. *Tractor Training Service, et al. v. Federal Trade Commission*, 227 F.2d 420, 425 (9th Cir. 1955), *cert. denied*, 350 U.S. 1005 (1956); *Consumer Sales Corp. v. Federal Trade Commission*, 198 F.2d 404, 407-408 (2d Cir. 1952), *cert. denied*, 344 U.S. 912 (1953).

An order against an individual need not be justified by a demonstrated intent to evade the order, or even a probability of such evasion; it is enough that there is opportunity for evasion. As the Commission stated in *Coran Brothers Corp., et al.*, Dkt. 8897, 72 F.T.C. 1, 25 (July 11, 1967):

The public interest requires that the Commission take such precautionary measures as may be necessary to close off any wide "loophole" through which the effectiveness of its orders may be circumvented. Such a "loophole" is obvious in a case such as this, where the owning and controlling party of an organization may, if he later desires, defeat the purposes of the Commission's action by simply surrendering his corporate charter and forming a new corporation, or continuing the business under a partnership agreement or as an individual proprietorship with complete disregard for the Commission's action against the predecessor organization.

[14] This case provides a striking example of the "loophole" referred to in *Coran*. Respondents' counsel has served on the administrative law judge and on complaint counsel a certified copy of the Stockholders' Resolution of Dissolution of the corporate respondent, Mutual Construction Company, Inc.¹ Thus, if no order is issued against Mr. Cameron individually, not only could he evade any Commission order issued against Mutual Construction Company, Inc. by the simple expedient of continuing its business and practices under a different corporate form, but he would effectively have prevented the issuance of any order by dissolving the corporate respondent before the order issued. The Commission need not, and should not, allow its authority to be so easily circumvented.

Respondent Cameron's control of the respondent corporation is admitted. It is therefore appropriate to include him in the scope of the

¹ This certified copy of the Stockholders' Resolution of Dissolution of the corporate respondent has been placed in the public record as part of respondents' brief. Further, official notice has been taken of the document.

remedy ordered. We would otherwise be faced with the situation described by the United States Court of Appeals for the Fourth Circuit in *Pati-Port, Inc., et al. v. Federal Trade Commission*, 313 F.2d 103, 105 (1963):

* * * it would seem in cases of this sort to be a futile gesture to issue an order directed to the lifeless entity of a corporation while exempting from its operation the living individuals who were responsible for the illegal practices.

The order which is adopted in this proceeding is tailored to prohibit the particular practices admitted to be false, deceptive and misleading, and is clear enough to be understood by a layman attempting in good faith to abide by it. There is, accordingly, no unfairness in making it effective against respondent Cameron. In addition, should a situation arise in which respondent is unable to determine whether a particular course of conduct would violate the order, he may apply to the [15] Commission under Rule 3.61(d) for a ruling on whether the proposed actions would comply with the order. See *Colgate-Palmolive, supra*, 380 U.S. at 394.

THE REMEDY

Complaint counsel's proposed order is identical in every material element to the notice order served with the complaint. Respondents have not challenged that order in any respect other than the individual liability of Joseph L. Cameron, and it will be adopted with only a few modifications. Since the corporate respondent, Mutual Construction Company, Inc., has been dissolved by resolution of the shareholders, no useful purpose would be served by issuing an order against it. That respondent has accordingly been deleted from the order.

Respondents have admitted engaging in certain false, misleading and deceptive practices in the advertising and sale of home improvement products, particularly residential siding. With the exception of record-keeping and reporting requirements generally included in Commission orders and deemed necessary to enable the Commission to monitor compliance therewith, the order simply prohibits respondent Cameron's further participation in those specific deceptive practices. The provisions of the order are thus reasonably related to the violations of law which have been admitted, and are necessary to correct such violations and to prevent evasion of the order.

A few provisions of the order merit discussion. Respondents have admitted that they, in the usual course of their business, take from purchasers instruments of indebtedness which they then assign to financial institutions under circumstances in which those institutions may be able to enforce the obligations free of valid claims the

customers might have against respondents, without disclosing to those customers that the instruments may be so assigned or the possible consequences of such assignment. The Commission has ruled on several occasions that such a practice is unfair and deceptive, and that the appropriate remedy is to order that full disclosure be made. See *All-State Industries of North Carolina, Inc., et al.*, Dkt. 8738, 75 F.T.C. 465 (April 1, 1969), *aff'd* 423 F.2d 423 (4th Cir. 1970), *cert. denied*, 400 U.S. 828 (1970); *Certified Building Products, Inc., et al.*, [16] Dkt. 8875, 3 CCH Trade Reg. Rep. ¶ 20,506 (Oct. 5, 1973), *aff'd sub nom. Thiret v. Federal Trade Commission*, 512 F.2d 176 (10th Cir. 1975). A provision requiring respondent to disclose to consumers from whom he secures an instrument of indebtedness that it may be assigned to another and that an assignee may be able to enforce the instrument free from the buyer's claims against the seller is included in the order. However, complaint counsel also have proposed requiring respondent to make, in connection with acceptance of an instrument of indebtedness, any disclosures required by Federal law or the law of the State in which the instrument is executed. Since the proposed provision is vague and, to the extent such Federal or State laws provide penalties for their violation, unnecessary and redundant, it has been deleted from the order.

Complaint counsel's proposed order would prohibit certain deceptive practices by respondent in the sale of *any product*, rather than simply those products involved in this proceeding. It is clear that the Commission has the power to enter such a broad order where necessary to forestall recurrence in the future of practices the same or similar to those found to be unlawful. *Benrus Watch Co. v. Federal Trade Commission*, 352 F.2d 313, 324 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966); *Niresk Industries, Inc. v. Federal Trade Commission*, 278 F.2d 337, 342-43 (7th Cir. 1960), *cert. denied*, 364 U.S. 883 (1960). Whether such a remedy is appropriate in a given case, however, depends on the particular circumstances of that case. *Colgate-Palmolive Co.*, *supra*, 380 U.S. at 394; see *Fedders Corp.*, Dkt. 8932, 3 CCH Trade Reg. Rep. ¶ 20,825 (Jan. 14, 1975 [85 F.T.C. 38]). In this case the allegations of the complaint were restricted to home improvement products generally and residential siding in particular, and it is appropriate to limit the scope of the order to home improvement products.

Finally, complaint counsel's proposed order would require respondent to maintain for a period of five years certain records relative to representations made by respondent to purchasers of products covered by the order and to contracts entered into between respondent and his customers and suppliers. Since it appears that three years is adequate

to insure compliance with the order (*see Freight Liquidators*, Dkt. 8937 (order dated Feb. 25, 1975 [85 F.T.C. 274]); *Fedders Corporation*, Dkt. [17] 8932 (order dated Jan. 14, 1975 [*supra*]), and complaint counsel have made no showing that a longer period is necessary in this case, the order requires that the records be maintained for three years only.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over respondent Joseph L. Cameron, and this proceeding is in the public interest.

2. The acts and practices of respondents charged in the complaint and involved herein took place in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. At the times relevant to the acts and practices charged in the complaint, the individual respondent, Joseph L. Cameron, formulated, directed and controlled the acts and practices of the corporate respondent, Mutual Construction Company, Inc.

4. At the times relevant to the acts and practices charged in the complaint herein, respondents were engaged in the advertising, offering for sale, sale and distribution to the public of home improvement products, including residential siding, and the installation thereof.

5. In the course and conduct of the aforesaid business, respondents engaged in false, misleading and deceptive advertising, and used unfair and deceptive acts and practices.

6. The aforesaid acts and practices of respondents were to the prejudice and injury of the public and of respondents' competitors and constituted deceptive acts or practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. [18]

ORDER

It is ordered, That respondent Joseph L. Cameron, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution or installation of residential siding or other home improvement products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Advertising or offering for sale any residential siding or other home improvement products for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered, and respondent maintains a readily available stock of said products.

2. 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 [19] prospects for the sale of residential siding or other home improvement products, or the installation thereof.

3. Discouraging the purchase of or disparaging any residential siding or other home improvement products or the installation thereof which are advertised or offered for sale by respondent.

4. Representing, directly or by implication, that any residential siding or other home improvement products or the installation thereof are offered for sale or sale and installation by respondent when such offer is not a bona fide offer to sell such products or installation.

5. Representing, directly or by implication, that any of respondent's offers to sell residential siding or other home improvement products or the installation thereof are limited as to time or restricted or limited in any other manner, unless such represented limitations or restrictions are actually enforced and in good faith adhered to.

[20] 6. Representing, directly or by implication, that any price for respondent's residential siding or other home improvement products or the installation thereof is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products or installations have been sold in substantial quantities by respondent in the recent regular course of his business; or misrepresenting, in any manner, the prices or the savings available to purchasers.

7. Failing to maintain adequate records:

(a) For a period of three (3) years which disclose the factual basis for any representations or statements as to special or reduced prices of residential siding or other home improvement products or installations, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraph 6 of this order.

[21] (b) For a period of three (3) years, with regard to each and every contract hereafter entered into between respondent and his customers for the sale of residential siding or other home improvement products or the installation thereof, which disclose, in itemized form, what each customer was charged, exclusive of interest or finance charges, for materials and for labor, and for those contracts involving siding, or the installation of siding, or both, additional information as to the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, the total amount of money paid to salesmen, agents or representatives for the solicitation of the said contracts, and what each customer was charged exclusive of

interest or finance charges per square foot for the performance of the said contract.

[22] (c) For a period of three (3) years invoices, notices for payment and all similar documents which respondent receives, in the conduct of his business of selling residential siding or other home improvement products and the installation thereof, from suppliers, subcontractors and other persons.

(d) For a period of three (3) years copies of all contracts entered into between respondent and his customers for the sale or installation of residential siding or other home improvement products.

8. Representing, directly or by implication, that respondent's residential siding or other home improvement products or the installation thereof are warranted or guaranteed unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder, are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondent promptly and fully performs all of his obligations and [23] requirements, directly or impliedly represented under the terms of each such warranty or guarantee.

9. Falsely representing, directly or by implication, that his aluminum siding materials will not require painting or other type of restorative maintenance; or misrepresenting in any manner the durability, efficiency, composition or quality of respondent's residential siding or other home improvement products or the installation thereof.

10. Falsely representing, directly or by implication, that the home of any of respondent's purchasers of residential siding or other home improvement products, or prospective purchasers of such products, will be used for any type of advertising or demonstration purpose or as a model home and that, as a result of such use, respondent's purchasers or prospective purchasers will receive a reduced price or will earn discounts or allowances of any type.

[24] 11. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness executed by any purchaser of residential siding or other home improvement products, with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

(a) Where negotiation of the instrument to a third party is not prohibited by the law of the State in which the instrument is executed, that the trade acceptance, conditional sales contract, promissory note or other instrument may, at the option of respondent and without further

notice to the purchaser, be negotiated or assigned to a finance company or other third party; and

(b) Where the law of the State in which the instrument is executed does not preserve as against any holder of the instrument all the legal and [25] equitable defenses the purchaser may assert against the seller, that, in the event the instrument is negotiated or assigned to a finance company or other third party, the purchaser may have to pay such finance company or other third party the full amount due under the contract whether or not he has claims against respondent, such as defective merchandise, a refusal to service the merchandise, or respondent is no longer in business, or other like claims.

It is further ordered, That respondent shall notify the Commission of his present business or employment and of his affiliation with any new business or employment, within thirty (30) days following affiliation with any new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all [26] present and future personnel of respondent engaged in the offering for sale or sale of respondent's residential siding or other home improvement products or the installation thereof, and in the consummation of any extension of consumer credit, and that respondent secure a signed statement acknowledging the receipt of said order from each such person.

OPINION OF THE COMMISSION

BY DIXON, *Commissioner*;

[1] Complaint in this matter was issued on March 25, 1975, charging Mutual Construction Company, Inc. and Joseph L. Cameron, individually and as an officer of the corporation, with various unfair and deceptive acts and practices in connection with the sale of aluminum siding, all in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45). Before evidentiary hearings were to begin, respondents filed a stipulation of facts admitting all allegations of the complaint but reserving the right to contest the order proposed against the individual respondent.

The administrative law judge entered an initial decision based on the stipulation, finding that respondents had engaged in practices including bait and switch, deceptive pricing, and misrepresentation of product quality and the scope of warranty coverage. The law judge proposed an order differing from the notice order accompanying the complaint in two respects: (1) The corporate respondent was omitted, inasmuch as it

had ceased to exist, and (2) the order entered against the individual respondent was limited to practices undertaken in connection with the sale of "aluminum siding and other home improvement products" rather than "all products."

[2] In their appeal complaint counsel request that the original language of the notice order be reinstated. We fully agree with this proposal. In performing its statutory duty to prevent the recurrence of unlawful practices found to have occurred, the Commission has wide discretion in framing an order, *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 611 (1946), and "is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past." *Federal Trade Commission v. Ruberoid*, 343 U.S. 470,473 (1952).

Here the activities we are called upon to prevent include such staples of sharp practice as deceptive pricing and bait and switch. In this case they were applied to the sale of home improvement products, but they are no less adaptable to the sale of innumerable other goods and services. The Commission would be doing little to rid this respondent of his bad habits were it to require only that he abstain from them in one of many readily entered fields of commercial endeavor.

Effective and efficient prevention of the unfair and deceptive acts and practices which have occurred here, therefore, requires reinstatement of the notice order language. This is, as complaint counsel note, in accord with numerous prior cases, some involving strikingly similar circumstances, e.g., *American Aluminum Corporation, et al.*, Dkt. 8865 (July 2, 1975), *aff'd.*, 522 F.2d 1278 (5th Cir. 1975); *All State Industries of North Carolina, Inc.*, 75 F.T.C. 465, 495 (1969), *aff'd.*, 423 F.2d 423 (4th Cir.), *cert. denied*, 400 U.S. 828 (1970); *Certified Building Products, Inc., et al.*, Dkt. 8875 (Oct. 5, 1973), *aff'd. sub nom. Thiret v. Federal Trade Commission*, 512 F.2d 176 (10th Cir. 1975).

OTHER ISSUES

Respondent filed a "notice of intent to appeal" to the Commission from the initial decision, but its counsel subsequently indicated by letter dated December 23, 1975, that the appeal was directed only to the "breadth of the order" sought by the Commission against the individual Joseph Cameron and that "unless the Commission is prepared to review and revise its position with respect to individual respondents * * * the respondent Joseph L. Cameron has nothing further to offer in this proceeding." Respondent has filed no other briefs in this matter. We agree with the administrative law judge that imposition of liability on the individual respondent is appropriate and necessary here, for the reasons outlined at pages 12-14 of the initial decision.

[3] The Commission on its own review has modified the proposed order of the administrative law judge in two respects not addressed by counsel. Paragraph 11 of the judge's order would require respondent to disclose the fact that a purchaser's contract or promissory note may be assigned or negotiated to a third party in States that allow it. The order would further require that the contract disclose (in States which allow a third party holder of an instrument to avoid defenses which the purchaser might assert against the seller) the fact that the purchaser may be deprived of certain defenses against a third party holder. The Commission has recently promulgated a Trade Regulation Rule concerning "Preservation of Consumers' Claims and Defenses," 16 C.F.R. §433 (November 18, 1975). Pursuant to the rule, effective May 14, 1976, respondent, like other sellers, will be required to insert language in his contracts to insure that consumers do not forfeit defenses by virtue of negotiation of their contracts to third parties. The presence in respondent's contracts of the protective language required by the rule will obviate the necessity for any of the disclosures required by Paragraph 11 of the law judge's order. Accordingly, we have deleted Paragraph 11 from our final order.

The Commission has further modified the reporting paragraph of the order to require that respondent report changes in business status only for a period of 10 years following the order's effective date. See *Carpets "R" Us, et al.*, Dkt. 8947 (February 26, 1976), slip op.* pages 13-14.

An appropriate order is appended.

FINAL ORDER

This matter having been heard by the Commission upon the cross-appeals of complaint counsel and respondents' counsel from the initial decision, and the Commission, for the reasons stated in the accompanying opinion, having modified the initial decision in certain respects:

It is ordered, That pages 1-17 of the initial decision of the administrative law judge be, and they hereby are, adopted as the Findings of Fact and Conclusions of Law of the Commission, excluding the last paragraph which begins on page 15 and the first paragraph which begins on page 16.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying opinion.

It is further ordered, That the following order to cease and desist be, and it hereby is, entered:

* Reported in this Volume.

ORDER

It is ordered, That respondent Joseph L. Cameron, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution or installation of residential siding, other home improvement products, or any other products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Advertising or offering for sale any products for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered, and respondent maintains a readily available stock of said products.

2. 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 other products, installations, or services.

3. Discouraging the purchase of or disparaging any product, installation or service which is advertised or offered for sale by respondent.

4. Representing, directly or by implication, that any product, installation, or service is offered for sale or sale and installation by respondent when such offer is not a bona fide offer to sell such product, installation, or service.

5. Representing, directly or by implication, that any of respondent's offers to sell products, installations or services are limited as to time or restricted or limited in any other manner, unless such represented limitations or restrictions are actually enforced and in good faith adhered to.

6. Representing, directly or by implication, that any price for respondent's products, installations or services is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products, installations, or services have been sold in substantial quantities by respondent in the recent regular course of his business; or misrepresenting, in any manner, the prices or the savings available to purchasers.

7. Failing to maintain adequate records:

(a) For a period of three (3) years which disclose the factual basis for any representations or statements as to special or reduced prices, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraph 6 of this order.

(b) For a period of three (3) years, with regard to each and every contract hereafter entered into between respondent and his customers, which disclose, in itemized form, what each customer was charged, exclusive of interest or finance charges, for materials and for labor, and for those contracts involving siding, or the installation of siding, or both, additional information as to the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, the total amount of money paid to salespeople, agents or representatives for the solicitation of the said contracts, and what each customer was charged exclusive of interest or finance charges per square foot for the performance of the said contract.

(c) For a period of three (3) years invoices, notices for payment and all similar documents which respondent receives, in the conduct of his business from suppliers, subcontractors and other persons.

(d) For a period of three (3) years copies of all contracts entered into between respondent and his customers.

8. Representing, directly or by implication, that respondent's products, installations or services are warranted or guaranteed unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder, are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondent promptly and fully performs all of his obligations and requirements, directly or impliedly represented under the terms of each such warranty or guarantee.

9. Falsely representing, directly or by implication, that his aluminum siding materials will not require painting or other type of restorative maintenance; or misrepresenting in any manner the durability, efficiency, composition or quality of respondent's products, installations, or services.

10. Falsely representing, directly or by implication, that the home of any of respondent's purchasers, or prospective purchasers of such products, will be used for any type of advertising or demonstration purpose or as a model home and that, as a result of such use, respondent's purchasers or prospective purchasers will receive a reduced price or will earn discounts or allowances of any type.

It is further ordered, That respondent shall 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 notice of affiliation shall

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Final Order

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 respondent shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the offering for sale or sale of respondent's residential siding or other home improvement products or the installation thereof, and in the consummation of any extension of consumer credit, and that respondent secure a signed statement acknowledging the receipt of said order from each such person.

It is further ordered, That respondent shall, within sixty (60) days after the effective date of the order served upon him, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of his compliance with the order to cease and desist.

Chairman Collier not participating.