in any respect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

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

IN THE MATTER OF

OHIO CHRISTIAN COLLEGE (OF CALVARY GRACE CHRISTIAN CHURCHES OF FAITH, INC.), ET AL.

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

Docket 8820. Complaint, July 29, 1970—Decision, May 19, 1972

Order requiring a Columbus, Ohio, correspondence school to cease using the word "college" or any similar misrepresentation, conferring any academic degrees, misrepresenting respondent as having resident classes and accredited curricula, implying that the State of Ohio or any other governmental body recognized respondents' programs, misrepresenting respondents' offer a unique method of instruction, using the name "National Educational Accrediting Association," and misrepresenting that any of respondents' businesses is a bona fide organization of guidance counselors.

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 OHIO CHRISTIAN COLLEGE (Of Calvary Grace Christian Churches of Faith, Inc.), a corporation, ALPHA PSI OMEGA SOCIETY, a corporation, Alvin O. Langdon, Leeta O. Langdon, Gene Thompson and Jerry Weiner, individually and as officers of said corporations, and Alvin O. Langdon, an individual trading as National Educational

Accrediting Association, 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:

PAR. 1. Respondents OHIO CHRISTIAN COLLEGE (of Calvary Grace Christian Churches of Faith, Inc.) and ALPHA PSI OMEGA SOCIETY are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio, with their principal office and place of business located at 1161 South Yearling Road, Columbus, Ohio.

Individual respondent Alvin O. Langdon, Leeta O. Langdon, Gene Thompson and Jerry Weiner are officers of said corporations. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The address of Alvin O. Langdon and Gene Thompson is the same as the principal place of business of the corporate respondents and the address of Leeta O. Langdon is 1156 Striebel Road, Columbus, Ohio. The address of Jerry Weiner is 88E. Broad Street, Columbus, Ohio.

Respondent Alvin O. Langdon, trading as National Educational Accrediting Association, has his principal place of business at 1161 South Yearling Road, Columbus, Ohio.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution, or assisting and aiding in the sale, of textbooks and correspondence courses in a variety of subjects, diplomas, degrees, transcripts, certificates of membership and certificates of accreditation, to the purchasing public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, said textbooks, correspondence courses, diplomas, transcripts, certificates of membership and certificates of accreditation, when sold, to be transported from respondents' places of business in the State of Ohio to purchasers thereof located in various other States of the United States and respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products and services, in 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 sale of their products and serv-

ices, respondents have made many statements and representations regarding their products and services in advertisements, circulars, brochures, pamphlets and other advertising and promotional material. By and through the use of such statements and representations and by and through the use of the words "college," "association" and "society" as a part of their corporate or trade names, respondents have represented, directly or by implication, that:

1. Respondent Ohio Christian College (Of Calvary Grace Christian Churches of Faith, Inc.) is a non-profit residence school which offers residence instruction by a staff of faculty members who are trained and competent to teach the courses of a properly accredited and recognized college and it offers a curriculum which is accredited by a recognized accrediting agency.

2. Respondent Ohio Christian College (Of Calvary Grace Christian Churches of Faith, Inc.) and the diplomas and degrees offered with its courses are recognized by various institutions, agencies, organizations and persons, and that the person to whom respondent awards a diploma or degree will be recognized as having completed and shown proficiency in a curriculum which has been approved by a recognized accrediting agency as necessary to earn the diploma or degree awarded and that the person to whom the diploma or degree is awarded is entitled to and will receive the honors, privileges and rights of persons who have been awarded diplomas or degrees with the same names from schools accredited by recognized accrediting agencies.

3. The correspondence courses offered by respondent Ohio Christian College (Of Calvary Grace Christian Churches of Faith, Inc.) contain all the subject matter, material, study and hours of residence courses offered by a school properly accredited by a recognized accrediting agency to obtain a college or theological degree.

4. The State of Ohio has approved or sanctioned the respondents' courses of instruction and issuance of diplomas.

5. Respondent Ohio Christian College (Of Calvary Grace Christian Churches of Faith, Inc.) is using and offers a unique method of instruction and study that is widely approved and accepted by educational authorities.

6. National Educational Accrediting Association is a recognized bona fide accrediting agency for schools and is a part of or has some connection with the National Education Association, a well-known and long-established organization of teachers and other persons interested in the field of education.

7. Respondent Alpha Psi Omega Society is a bona fide organization of guidance counselors and other persons interested in the field of counseling joined together for common interest and said society has founded and sponsors and maintains a home for homeless boys in Columbus, Ohio.

PAR. 5. In truth and in fact:

1. Respondent Ohio Christian College (Of Calvary Grace Christian Churches of Faith, Inc.) is a profit making organization, and it is not a residence school that offers residence instruction. Said respondent has no faculty members who are trained and competent to teach accredited and recognized college undergraduate or graduate courses of any kind; nor does it offer a curriculum in said fields which is accredited by a recognized accrediting agency, and it is not so recognized.

2. The diplomas and degrees awarded by Ohio Christian College (Of Calvary Grace Christian Churches of Faith, Inc.) are not approved or accepted by any recognized educational institution, agency, person or organization, nor is the person who receives such a diploma or degree recognized as having completed and shown proficiency in a curriculum approved by a recognized accrediting agency necessary to earn such a diploma or degree. The persons to whom the respondents' diplomas or degrees are awarded are not entitled to and will not receive all the rights, privileges and honors as persons awarded diplomas or degrees of the same name by schools accredited by a recognized accrediting agency.

3. The courses offered by respondent Ohio Christian College (Of Calvary Grace Christian Churches of Faith, Inc.) do not contain the material, study and hours of residence courses given by a school accredited by a recognized accrediting agency, to obtain diplomas or degrees of the same names as those offered by respondent.

4. Neither the State of Ohio nor any other governmental or political subdivision has approved respondents' courses of study and the issuance of their diplomas or degrees.

5. Respondent Ohio Christian College (Of Calvary Grace Christian Churches of Faith, Inc.) is not using a unique method of instruction and study that is widely approved and accepted by educational authorities.

6. National Educational Accrediting Association is not a recognized bona fide accrediting agency for schools and it has no connection with the National Education Association.

7. Respondent Alpha Psi Omega Society is not a bona fide organization of guidance counselors and other persons interested in the field of counseling joined together for common interest and said respondent has not founded, sponsored or maintained a home for homeless boys.

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

PAR. 6. By and through the use of the aforesaid acts and practices, respondents place in the hands of individuals the means and instrumentalities by and through which they may mislead and deceive others as to the diplomas, degrees and other academic qualifications said individuals possess. Further, by and through the use of the aforesaid acts and practices, respondents place in the hands of operators of schools accredited by National Educational Accrediting Association, the means and instrumentalities by and through which they may mislead and deceive prospective students as to the status of such schools.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, correspondence schools, residence colleges and universities of various kinds and nature engaged in offering education, training and instruction.

PAR. 8. The use by 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 to induce a substantial number thereof to purchase said courses of instruction, diplomas, certificates of accreditation.

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

Mr. Robert J. Hughes and *Ms. Barbara Metsky* supporting the complaint.

Mr. Jerry Weiner and *Mr. Jerry Lippe*, Columbus, Ohio for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

FEBRUARY 26, 1971

INDEX

PRELIMINARY STATEMENT

This is a proceeding under Section 5 of the Federal Trade Commission Act.[1] In its complaint mailed August 4, 1970, the Federal Trade Commission charges that the respondents (comprising two corporations, a sole proprietorship and four individuals) have made false statements and representations regarding their products and services in advertisements, circulars, brochures, pamphlets and other advertising and promotional material and that by such statements and through the use of words "college," "association" and "society" they have falsely represented, directly or by implication, that:

1. Respondent Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) is a non-profit residence school which offers residence instruction by a staff of faculty members who are trained and competent to teach the courses of a properly accredited and recognized college and it offers a curriculum which is accredited by a recognized accrediting agency.

[1] "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful." (15 U.S.C. 45)

2. Respondent Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) and the diplomas and degrees offered with its courses are recognized by various institutions, agencies, organizations and persons, and that the person to whom respondent awards a diploma or degree will be recognized as having completed and shown proficiency in a curriculum which has been approved by a recognized accrediting agency as necessary to earn the diploma or degree awarded and that the person to whom the diploma or degree is awarded is entitled to and will receive the honors, privileges and rights of persons who have been awarded diplomas or degrees with the same names from schools accredited by recognized accrediting agencies.

3. The correspondence courses offered by respondent Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) contain all the subject matter, material, study and hours of residence courses offered by a school properly accredited by a recognized accrediting agency to obtain a college or theological degree.

4. The State of Ohio has approved or sanctioned the respondents' courses of instruction and issuance of diplomas.

5. Respondent Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) is using and offers a unique method of instruction and study that is widely approved and accepted by educational authorities.

6. National Educational Accrediting Association is a recognized bona fide accrediting agency for schools and is a part of or has some connection with the National Education Association, a well-known and long-established organization of teachers and other persons interested in the field of education.

7. Respondent Alpha Psi Omega Society is a bona fide organization of guidance counselors and other persons interested in the field of counseling joined together for common interest and said society has founded and sponsors and maintains a home for homeless boys in Columbus, Ohio.

By answer mailed August 28, 1970, respondents denied that they had knowledge or information sufficient to form a belief as to the truth of the allegations contained in the complaint and therefore denied each and every allegation. Following a prehearing conference on September 17, 1970, before the Honorable Walter R. Johnson, the hearing examiner then assigned to the matter, respondents filed an amended answer dated September 25, 1970, which admitted the existence of the corporations, specified who the officers were and admitted certain of the representations but denied their falsity and denied any

violation of law. Among the admissions were that respondent Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) (hereinafter referred to as OCC) admits it is a non-profit institution under the direction of the church and has facilities for resident students. Respondents further admit that they have a staff of faculty members who are trained and competent to teach the courses of recognized colleges; that respondent OCC is using and offers a unique method of instruction and study widely approved and accepted by educational authorities; and that the society Alpha Psi Omega (hereinafter referred to as APO) maintains a home for homeless boys in Columbus, Ohio.

By prehearing order dated September 18, 1970, the Honorable Walter R. Johnson, required the parties to submit trial briefs by October 14, 1970, listing the witnesses and documentary exhibits. In this order he provided that the exhibits should be deemed to be genuine unless objections were noted within 10 days of the receipt of the trial briefs and he further ordered that no exhibits or testimony would be offered that were not listed or described in the trial briefs ordered to be filed by October 14, 1970.

The undersigned was substituted by the Director of Hearing Examiners for the Honorable Walter R. Johnson at the latter's request and on October 16, 1970, complaint counsel filed their trial brief listing over 20 witnesses and almost 600 exhibits, all of which were marked for identification. The respondents filed the "Theory of the Case" on November 12, 1970, but did not list their witnesses and exhibits until after commencement of the proceedings.

These irregularities were, however, waived by counsel and in the few cases where there were other deviations from such lists there was no objection by either party.

Perhaps the most serious charge made in the complaint was that against OCC which complaint counsels' brief describes as a "diploma mill" (see page 3, Par. 1). The respondents in their answer had denied the allegations of the complaint which alleged they were in commerce and in their trial brief stated as their theory of their defense that the Federal Trade Commission has no authority to regulate respondent OCC because it was incorporated and sanctioned by the Calvary Grace Christian Churches of Faith, Inc. for the purpose of giving educational advantages to members of the church. Respondents also claimed that under the first amendment neither the United States nor any of the states have any right to regulate the activities of this church sponsored organization.

At trial, on being questioned concerning the extent of that claim of exemption, respondents' counsel also claimed that the Federal Trade Commission did not have statutory jurisdiction under the language of the enabling statute.[2]

Hearings commenced on November 16, 1970, and continued with only such interruptions as are customary in judicial proceedings until November 24, 1970.[3] By stipulation two of complaint counsels' witnesses who were unable to appear earlier testified during the course of the presentation of respondents' case. It was agreed that notwithstanding this deviation from the usual order of proof respondents did not waive any of their rights to move to dismiss at the close of complaint counsels' case. The hearing examiner reserved decision on that motion and now denies it.

BASIS OF DECISION

This decision is based on the entire record, including the proposed findings and conclusions of the parties. All findings of fact not expressly, or in substance, adopted are denied as erroneous, immaterial or irrelevant. In accordance with Rule 3.51(b), references are made to the specific pages of the principal supporting items of evidence in the record. The citations to the principal supporting portions of the record are not intended to exclude other portions of the record, all of which have been carefully considered in light of the demeanor of the witnesses and their consistency or inconsistency with contemporaneously written documents. The abbreviations used are found in the footnote.[4] Although in the exercise of his discretion the hearing examiner permitted complaint counsel to put in their entire case without requiring first that matters relating to the contested jurisdiction be offered, in ensuing findings the hearing examiner will separate

[2] In the case *Community Blood Bank of Kansas City Area Inc.* v. *Federal Trade Commission*, 405 F.2d 1011 (8th Cir. 1969) the Court held that the Federal Trade Commission did not have the jurisdiction over a community blood bank and its hospital members and the hospital's associations all of which were non-profit organizations. This was not because of the form of incorporation but because in their actual operation the organizations were devoted to community service and were not themsives obtaining a profit nor were their officers. The rationale of the case is that Section 4 exempts such associations defining the term corporation to include a corporation or association incorporated or unincorporated "which is organized to carry on business for its own profit or that of its members." (15 U.S.C. 44)

[3] The time of the hearing examiner to render this initial decision was extended because of the failure to receive the transcript on time.

[4] C.—Complaint; A.—Answer; Tr.—Transcript; CX—Commission Exhibit; RX—Respondent's Exhibit; CPF refers to Complaint Counsel's Proposed Findings. Since respondents filed an argument rather than proposed findings references are unnecessary. All findings will be deemed, when cited, to include citations to the references therein contained.

those findings relating primarily to jurisdiction and those which relate to the practices claimed to be misleading.

FINDINGS OF FACT

A. Description of Respondents and Their Mutual Relationships

1. Respondent Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) (hereinafter sometimes referred to as OCC) is a corporation organized and existing under the laws of the State of Ohio. Its principal office was formerly located at 1161 S. Yearling Road, Columbus, Ohio. It is now located at 2456 West Broad Street, Columbus, Ohio. (A. page 1; Tr. 157; CX 1a-f).

2. Respondent Alpha Psi Omega Society (hereinafter sometimes called APO) is a corporation organized and existing under the laws of the State of Ohio. Its principal office is located at 1156 Striebel Road, Columbus, Ohio (A. page 1; CX 25a–d).

3. Respondent Alvin O. Langdon held the office of president of OCC from its incorporation until January 1970, when he assumed the title of "dean." His place of residence is 1156 Striebel Road, Columbus, Ohio. Respondent Alvin O. Langdon was one of the incorporators of OCC and has been a member of its board of trustees since incorporation (Tr. 31, 32, 1000; CX 1a–f, CX 3a–3).

4. Respondents Leeta O. Langdon and Gene Thompson are officers of OCC and incorporators and members of the board of trustees. The residence address of respondent Leeta O. Langdon is 1156 Striebel Road, Columbus, Ohio, and the residence address of respondent Gene Thompson is 1161 S. Yearling Road, Columbus, Ohio (CX 1a–f, CX 3a–e; Tr. 831, 832, 839).

5. Respondent Jerry Weiner is a practicing attorney and member of the bar of the State of Ohio. His address is 88 E. Broad Street, Columbus, Ohio. Sometime in the month of January 1970, he assumed the presidency of OCC (A. page 1; Tr. 1000).

6. Respondents Alvin O. Langdon, Leeta Langdon and Gene Thompson are officers, incorporators and members of the board of trustees of respondent APO (A. page 1; CX 25a–d).

7. Respondent Alvin O. Langdon is sole proprietor of National Educational Accrediting Association (hereinafter sometimes referred to as NEAA). Its principal address and place of business is 1156 Striebel Road, Columbus, Ohio. He holds the trademark of NEAA (Tr. 46–48).

8. Respondents Alvin O. Langdon, Leeta Langdon, Gene Thompson and Jerry Weiner cooperate and act together in carrying out the acts and practices of respondent OCC (CPF 3, 4, 5 and 8).

9. Respondents Alvin O. Langdon, Leeta Langdon and Gene Thompson cooperate and act together in carrying out the acts and practices of respondent APO (CPF 6, 9).

B. Findings Relating Primarily to Jurisdiction

10. According to the sworn testimony of respondent Alvin O. Langdon, commencing sometime in the 1960's, respondent Alvin O. Langdon established contact with Dr. Herman Keck of Calvary Grace Christian Churches of Faith, Inc. of Florida (hereinafter called "mother church") (Tr. 899). Langdon and his wife were authorized by the "mother church" for the State of West Virginia to establish schools, missionary societies and college activities and thereafter commenced a college which was known as the Central Christian College (Tr. 901–902). At about the same time respondent Alvin O. Langdon developed the National Educational Accrediting Association, of which he was the sole proprietor (Tr. 47). He has accredited two of the Rev. Keck's colleges which conferred degrees on both the Langdons and on respondent Gene Thompson without any resident study.

11. The Attorney General's office in West Virginia brought a proceeding against respondent Alvin O. Langdon individually, and as Central Christian College, secured a preliminary injunction and seized his property and files. The order (CX 593a and b) recites that the prayer for injunction to be rendered against Alvin O. Langdon and Central Christian College would restrain and enjoin him from the alleged fraudulent activities of awarding degrees and the offering of courses of study in violation of the laws of West Virginia. Respondent Langdon testified that this was because of a dispute about the requirements for a foreign church in West Virginia (Tr. 903–906). He testified moreover that the suit was not his reason for leaving West Virginia; he merely desired to get better recording facilities (Tr. 910).

12. Somewhat earlier the Langdons had found that they could not continue to operate a Children's Center which they had in Huntington, West Virginia, because of the requirements of the inspection authorities that they expend a large sum of money in improvements to satisfy the safety standards required by the municipal authorities (Tr. 961–963).

13. In 1965 respondents Langdon commenced to operate Ohio Christian College without incorporation but as an arm of the "mother church" (Tr. 911–912). This was later incorporated as Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) in

Ohio (CX 1). Calvary Grace Christian Churches of Faith, Inc. (hereinafter Calvary Church) was also incorporated there (RX 286).

14. At about the same time the APO, which had been operated in connection with Central Christian College as World Youth Counsel, was incorporated. Respondent Alvin O. Langdon as sole proprietor of National Educational Accrediting Association accredited OCC and accreditation was secured from Association of Fundamental Institutions of Religious Education which Langdon could not describe except to say that it had the same Post Office Box as two of the Rev. Keck's colleges (Tr. 222, 223).

15. According to Respondent Alvin O. Langdon all the courses now taught at OCC have to do with religion (Tr. 930). And, Calvary Church offers assistance such as household furnishings, clothing for the children or practically anything that is needed (Tr. 938). It advertises and passes out cards for persons needing assistance (Tr. 938; RX 287).

16. The articles of incorporation of both OCC and APO state that they are not organized for profit and that on their dissolution none of their property would go to anyone except a tax exempt organization (CX 1, 25; Tr. 33, 45, 915).

17. Alvin O. Langdon, Leeta O. Langdon, and Gene Thompson were the original incorporators of OCC and APO and as all of the directors, they authorized respondent Alvin O. Langdon to publish advertising and to draw checks on behalf of both of these organizations. This authorization has not been changed. (Tr. 39–42, 972; CX 4). Alvin O. Langdon, Leeta O. Langdon and Gene Thompson live on the premises of OCC and title to the premises [5] is held by Calvary Church (Tr. 209–210, 218–219, 277). The Langdon respondents receive their food as well as their lodging free of charge (Tr. 250, 975) and Alvin O. Langdon allots himself a salary of $100 a week which he does not always take (Tr. 250, 975); has the use of a Cadillac automobile which he stated was used solely for the purpose of work for the church and the college (Tr. 251). Gene Thompson receives a salary and lodging for himself and his wife paid by Calvary Church (Tr. 854). OCC has no bank account and owns nothing (Tr. 916, 919, 1007)—all its funds are deposited in the account of Calvary Church. APO is usually in the red and it has to borrow from Calvary Church to carry on its activities (Tr. 953).

18. Jerry Weiner, counsel for the respondents, who became president of OCC sometime in January 1970, after respondent Alvin O.

[5] There is one exception, the 1156 Striebel Road property is owned by respondent Langdon's son subject to a mortgage. Rent in the form of payments on the mortgage is paid by Calvary Church (Tr. 206–207).

Langdon relinquished that post and became dean (Tr. 922, 1000), testified that he had examined all of the check vouchers of the accounts of APO and Calvary Church which were handled by Alvin O. Langdon and that no distribution except by way of modest salaries for services rendered was made to any of the other respondent individuals (Tr. 1010) and that the records demonstrated a great many donations being made by the church to needy individuals (Tr. 1004) partial or complete care was given to some 15 boys by APO although only two were there continually and that monies are paid to Calvary Grace Christian Churches of Faith, Inc. of Florida the "mother church" (Tr. 1008–9). One contribution on April 30, 1970, made in the amount of some $300 was identified (RX 308; Tr. 1009).

19. Respondent Langdon testified that Calvary Church had been incorporated at the direction or under the auspices of the mother church, that OCC had likewise been incorporated on behalf of the church (Tr. 901 *et seq.*). He further testified that the college was formed for the purpose of securing converts to the church (Tr. 59).

20. Respondent Alvin O. Langdon testified that persons making inquiry to the college were sent a copy of a proposed catalogue and also a copy of a letter telling them they must be members of the church before they could secure an educational opportunity from the college. (Tr. 78, 942–943; RX 304). He testified that this had been the rule since the beginning (Tr. 176). On the other hand, on further examination by counsel supporting the complaint, he testified that in the case of at least four or five individuals, who were admittedly not members of the church, they had been admitted to the college and had been given extension courses and a certificate. Mr. Paul Abraham testified that when he enrolled in 1968 (Tr. 789) nothing was said to him and he did not receive any written communication that indicated he was required to be a member of Calvary Church (Tr. 788).

21. Subsequent to January 1, 1970, the catalogue of the college was changed so that it contained a specific requirement that persons who desired to become members of the college would have to first be members of the church. It was further explained, however, that no donations would be required and that there would be no duties involved in becoming a member of the church and that church membership was to make the applicant eligible to pursue the educational program offered by OCC (RX 288; Tr. 924). No application was turned down because the applicant was not a church member (Tr. 191–192).

22. On the basis of the testimony of respondents Langdon, Mrs. Langdon and Thompson, it appears that all of the decisions with respect to the operation of both APO and OCC were made by Mr.

Langdon, that the others assisted him in correcting papers only at his direction and while they attended meetings they appeared to have no recollection as to what occurred (Tr. 834, 851–852, 972). Thus, for all practical purposes up until early in 1970, OCC and APO were in reality Alvin O. Langdon.

23. There was no proof offered contradicting the testimony of respondents Weiner and Langdon about the disposition of funds of the corporate respondents.

24. It was stipulated that both of the Calvary Grace Christian Churches of Faith, Inc., had received exemption as charitable organizations from the Internal Revenue Service and that while OCC and APO were still being audited they had not yet been held to be subject to or exempt from income taxes (Tr. 279-283).

Interstate Commerce

25. Advertisements were published by respondents in magazines and newspapers that circulated among the several states (CX 107). Applications for enrollment and membership (CX 146, 160) and accreditation (CX 506) and payments and completed lessons were forwarded by mail from states other than Ohio to Ohio and pamphlets, catalogues, forms (CX 26; RX 288), text books, lessons, transcripts (CX 73, 83), degrees (CX 513), certificates of membership (CX 505a–c) and certificates of accreditation (CX 519) and corrections to lessons were forwarded by respondents by mail from Ohio to students (CX 277a–m) and colleges (CX 506a–c) in states other than Ohio. There was thus a continuous stream of communications in interstate commerce embodying the representations hereinafter described and respondents were accordingly in commerce as that term is defined in the Federal Trade Commission Act (15 USC 45 *et seq.*) (CPF 22, 23).

C. Findings Relating to Offenses Charged

In ensuing findings we shall deal with the types of representation made, the implications therefrom and the connection of the individual respondents therewith. Then we shall consider the truth or falsity of each of the various types of representation.

Representations Regarding OCC and Persons Responsible Therefor

26. The initial effort to reach the prospective student is that contained in an advertisement inserted spasmodically in the following well-known magazines of national circulation (Tr. 57–58): Popular

Mechanics, Science Digest, Outdoor Life, Popular Science and Field and Stream. The advertisement reads:

Earn college degree at home, All subjects. Ohio Christian College, 1156 Striebel Rd., Columbus, Ohio 43227 (CX 107)

This implies on its face that OCC is capable of and competent to teach students all subjects customarily taught in a recognized college and to award a degree which will be generally recognized as a college degree.

The advertisement is still being run (Tr. 51–53) and it has been expressly approved by respondent Alvin O. Langdon who was specifically authorized to issue advertising on behalf of OCC by respondents Leeta O. Langdon and Gene Thompson (CX 2, 3; Tr. 39–42). Respondent Weiner before he agreed to represent respondents and before and after he became president of OCC made an investigation of the affairs of OCC (Tr. 1001 *et seq.* 1018) and a number of changes (Tr. 1012) so we must infer that the advertisement received his approval. It continues to be run unchanged (Tr. 51–53).

27. In a mailing brochure (CX 512) more detail is given. Degrees in all subjects are offered and business, industry, science, psychology, law, medicine, sociology, theology and education are expressly mentioned. It also states to ask for catalogue.

28. The next presentation to the prospective student was the catalogue of the college. The catalogue was originally entitled Curricular of Extension Studies and had several editions. The last one is entitled "Admission Bulletin" (CX 5, 507, 508; RX 288). Issuance of the catalogues by respondent Alvin O. Langdon was clearly authorized by Mrs. Langdon and respondent Thompson (CX 2, 3; Tr. 39–42) and the latest edition, The Admission Bulletin, was one revised by respondent Weiner (Tr. 1011).

The second page is substantially identical in each. Contained at the top in old english letters headline size is "Ohio Christian College." This is followed by the words "Adult Degree Program" in all capital slightly smaller type. Then in much smaller italics appears "of Calvary Grace Christian Churches of Faith, Inc." At the center of the page are the words in medium size type "An Accredited Educational Institution." Then in very large headline type "State Chartered" appears followed by two seals; one contains "Association of Fundamental Institutions of Religious Education accredited member" and the second "National Educational Accrediting Assn. accredited member NEAA."

This page alone implies to the prospective student that this is a college of the traditional type offering degrees of the character offered by accredited colleges, and that it bears the imprimatur of the State of Ohio as well as two recognized accredited associations one of which might easily be mistaken for the well-known National Education Association.

29. Subsequent catalogue pages enhance rather than detract from these implications. Degrees of Bachelor, Master and Doctor are offered in Theology and in Music as well as in a great many other fields. These representations imply that the degrees offered are the same as those of recognized institutions of learning and that there is a faculty capable of teaching them and that the degrees and courses offered will secure recognition as such.

Prospective students are told in the catalogue that they may pursue resident study but if not able to afford it may get home study (or extension) courses at a fraction of the cost of resident study. This is touted as a new educational plan. The prospective student is promised credit for experience which will reduce his home study requirements. An honorary degree even is offered "to eligible candidates in recognition of their accomplishments and achievements" (RX 288). In earlier catalogues it was made clear that a fee of $50 would be required with each application toward the tuition but that in case of honorary degrees the applicant's contribution of a full $100 would be needed (CX 52 p. 9).

As further bait for the home study course the prospective student is told:

> Degree Certificates and Transcripts issued for extension study are the same as those issued for resident school. They do not bear the words "Home Study" or "Extension" study" (RX 288 p. 18).

30. The prospective student thus is given to understand that the degrees and transcripts will be as good as those obtained in resident colleges. In addition, the prospective student is expressly assured:

> DEGREES
>
> The college is fully empowered by the state of Ohio to grant college degrees through its legal charter. Degree requirements are based upon the completion of a required number of subjects rather than the accumulation of hours or credits. The college can assume no responsibility for teacher certification as certification requirements vary from state to state. (RX 288)

The disclaimer in the last sentence (based no doubt on experiences like that of Mr. Abraham who was relieved by a school board for accepting a doctors degree from OCC) (Tr. 791 *et seq.*) seems to imply that

in other non-teaching situations the degree and transcript will be acceptable to other colleges and to state and other institutions.

31. On the basis of the foregoing examples and on a review of all the evidence we conclude that:

(a) Respondents have represented that OCC is a non-profit residence school which offers resident instruction by a staff of faculty members who are trained and competent to teach the courses of a properly accredited and recognized college and its offers a curriculum which is accredited by a recognized accrediting agency (CPF 1–5).

(b) Respondents have represented that OCC and the diplomas and degrees offered with its courses are recognized by various institutions, agencies, organizations and persons, and that the person to whom respondents award a diploma or degree will be recognized as having completed and shown proficiency in a curriculum which has been approved by a recognized accrediting agency as necessary to earn the diploma or degree awarded, is entitled to and will receive the honors, privileges and rights of persons who have been awarded diplomas or degrees with the same name from schools accredited by recognized accrediting agencies (CPF 7, 8).

(c) Respondents have represented that the correspondence courses offered by OCC contain all the subject matter, material, study and hours of residence courses offered by a school properly accredited by a recognized accrediting agency to obtain a college or theological degree (CPF 10).

(d) Respondents have represented that the State of Ohio has approved or sanctioned the respondents' courses of instruction and issuance of diplomas (CPF 12).

(e) Respondents have represented that OCC is using a unique method of instruction and study that is widely approved and accepted by educational authorities (CPF 14).

Representations Regarding APO

32. The early catalogue supplied to describe OCC also contained matter describing APO (CX 52 p. 17).

33. It represented that APO was founded and sponsored by OCC for those whose duties involve the counseling of others and that its purpose was to provide the latest information on modern counseling methods, research and statistics "and to bind together in brotherhood the nation's finest counselors."

34. It listed fourteen types of counseling including educational, legal, psychological and medical, among others. And it promised that on acceptance members were automatically elected to the National Advisory Board of Directors and "entitled to share in all honors and privileges of the National Society."

35. Then followed several pages, including photographs of boys and two "cottages" at the boys' home, claiming that "one of the many projects" of the APO "is the founding, supervision and maintenance of a Home for Homeless Boys". (CX 52 pp. 18–23).

36. The same type of representation without material on the boys' home appears in other soliciting material, that describes APO as a "Professional, Honor and Recognition Society of Psychological Counselors." (CX 92)

37. Respondents thus have represented that Alpha Psi Omega Society is a bona fide organization of guidance counselors and other persons interested in the field of counseling joined together for common interest and said Society has founded and sponsors and maintains a home for homeless boys in Columbus, Ohio (CPF 19–21).

Representations Regarding NEAA

38. Respondent Alvin O. Langdon while still in Huntington, West Virginia issued invitations as executive director of NEAA to institutions to become accredited. In the invitation he states that NEAA "is dedicated to the improvement of educational policies and standards. Every assistance is given to the affiliate member in all educational matters." Later the invitation states that the prospective member may use the seal which "serves to increase the prestige of the school and is our certification of approval and recommendation" (CX 99). The letterhead and the seal stress the letters NEA which are the same letters used by the National Education Association. In another such invitation (CX 580) respondent Langdon states that NEAA was founded and is sponsored by Central Christian College. It claims that although not recognized by the United States Office of Education its "standards for accrediting are higher than Federal requirements." In still another letter, respondent Alvin O. Langdon states in part that NEAA was founded because no religious educational institution could be accredited by Federal or state agencies under the doctrine of separation of church and state (CX 53a). It also claimed that NEAA was "one of the finest accrediting agencies in the nation."

39. Respondent Alvin O. Langdon thus has represented that National Education Accrediting Association is a recognized bona fide

accrediting agency for schools and is a part of or has some connection with the National Education Association, a well-known and long-established organization of teachers and other persons interested in the field of education (CPF 16–18). By the adoption of the seal of accreditation as part of the catalogues (CX 52;RX 288) the other individual respondents have also implied that NEAA is a recognized accrediting agency and re-transmit the information that tends to imply a connection between NEAA and National Education Association.

Facts Regarding OCC and Its Operation

40. OCC is a shell through which respondent Alvin O. Langdon has operated a type of correspondence school with the assistance of his wife, respondent Leeta Langdon and a young protege, respondent Gene Thompson. Respondent Alvin O. Langdon dominates the others who do in effect just what he tells them (see Tr. 834 for Mrs. Langdon; see Tr. 842, 843 for Mr. Thompson). By their votes at an early meeting of the board of trustees, constituting with respondent A. O. Langdon all members of the board, they abdicated to him entire control of the operation (CX 2, 3 and 4). As previously noted, the Langdons had been in a similar operation in West Virginia. Under the auspices of the "mother church" they had run the Central Christian College. This activity was enjoined by the court at the instance of the Attorney General of the State (CX 593). The Langdons then returned to Columbus, Ohio, where they had lived off and on (Tr. 891 *et seq.*) and commenced anew with Ohio Christian College (unincorporated) as another arm of the mother church. This was soon "accredited" by respondent Alvin O. Langdon (Tr. 221) utilizing his NEAA to investigate and accredit his OCC (Tr. 49). From its inception to about January 1970, after the investigation of the Commission commenced, the entire faculty of OCC consisted of respondents Langdon and their protege respondent Gene Thompson (CX 51a–c). The last named respondent was a trustee and registrar of OCC (Tr. 938), supervisor of the "boys home" (Tr. 844), sole resident student (Tr. 208) and at times acting dean (CX 599).

41. Although the letterhead of OCC contained an impressive list of degrees held by the alleged faculty and board of advisors (CX 51a–c, CX 53a–c), in fact, respondent Alvin O. Langdon only claimed the board was available to teach—no instance of their actual participation was disclosed (Tr. 103). Of the three regular faculty members none had a degree based on residence study. Respondent Alvin O. Langdon claimed a degree from the Baltimore Conservatory of Music which he attended for a year (Tr. 882–883). All other degrees were

either based on correspondence work with schools he could not recall or were honorary (Tr. 883). So far as his doctorate degrees from Rev. Herman Keck's Faith Bible College (which incidentally his NEAA had accredited), they were based on tests and experience (Tr. 883). Mrs. Langdon also received her theological degree from Rev. Keck who gave it to her on the basis of a test on the Bible plus her years of experience in Sunday School and church work (Tr. 832). And, respondent Gene Thompson had two years of high school and received a Bachelor of Theology Degree from Dr. Keck's institution, Faith Bible and Theological Seminary (Tr. 849).

42. Turning now to facilities and operation, the library consists of textbooks. There are no regular classrooms or a laboratory (Tr. 158, 209–210, 268). Lessons are graded with an answer sheet supplied by the publishers of the textbooks (Tr. 238, 242–245, 831–832, 834). Students are credited for experience which they claimed they had had (CX 52). Respondent Thompson was the only alleged resident student (Tr. 208–209). One student was given a degree of Doctor of Education after a few months study. Prior to enrolling he (Tr. 789; CX 599) had a face to face conference with respondent Alvin O. Langdon who assured him that the credentials of the school had been accepted by the Pennsylvania Department of Public Education (Tr. 786). His degree was signed by respondent Alvin O. Langdon as President and respondent Gene Thompson as Dean (Tr. 789; CX 599). To earn this "degree" Mr. Abraham was required to pay $270 (Tr. 787), to submit a partial transcript and statement of his later studies (Tr. 796) and to write a book report on the philosophy of religion, a 3100 stereotyped paper and a thesis of 2500 words. He did not receive grades on these but was granted a "diploma" (Tr. 787).

43. Very clearly this performance failed to even approximate the representations. Even the physical plant is wholly inadequate. The physical properties used by OCC and by APO as well as by Langdon in his capacity as National Education Accrediting Association consist of four residence type buildings located at 1156 Striebel Road, 1161 Yearling Road, 1911 Samada Road and 2456 Broad Street. The Langdons reside at the 1156 Striebel Road address and have done so since 1958 (Tr. 831). No one lives at the Broad Street or the Samada Road premises (Tr. 834). Respondent Gene Thompson and his wife live at 1161 Yearling Road and they supervise the two boys that are permanently residents there (Tr. 833). The houses respondents live in are in a residential neighborhood and have the physical appearance of residences.

44. A careful review of the stated operations of OCC by a large number of well-qualified educators (Tr. 289–445, 447–473, 474–496, 499–507, 508–551, 594–626, 698–745, 754–776) established that OCC's representations were false and misleading. It was not duly accredited as neither NEAA or Association of Fundamental Institutions of Religious Education were on the list of accrediting agencies approved by the United States Office of Education (Tr. 302–304) or of the National Commission on Accreditation (Tr. 464–465). In fact, in the opinion of the representative of the Commissioner of Education, its catalogue demonstrated that it fell far short of being a bona fide reputable college (Tr. 332) and its degrees and credits would not be accepted as such (Tr. 315–328). Both staff and physical equipment were deemed inadequate and the curriculum did not measure up to minimum standards. Specifically, the State of Ohio had not granted educational recognition to OCC merely a certificate of incorporation (Tr. 636–641, 647–653), and the State of Pennsylvania refused to recognize its degrees (Tr. 986–998). A representative of the Accrediting Association of Bible Colleges testified that OCC was not accredited and on the basis of its courses, facilities and faculty would not measure up to Bible College standards (Tr. 693–745). Similarly a representative of the American Association of Theological Schools, the accrediting agency for Graduate Seminaries made clear that OCC would not meet its minimum standards.

45. Hence it is clear that respondents' claim that they were using a unique method of instruction widely approved and accepted by educational authorities is false and misleading as are their claims of accreditation and the value and equivalency of OCC's degrees, credits and course of study (see CPF 22–100).

Facts Concerning APO

46. APO like OCC is in reality respondent A. O. Langdon, although Mrs. Langdon and respondent Thompson assist as members of the board of directors and in keeping up the so-called boys' home, as previously pointed out in our discussion of jurisdiction.

47. As a Professional Honor and Recognition Society of Psychological Counselors APO falls far short of the norm in membership, publications, and activities in the opinion of qualified experts on that subject (Tr. 564–577, 1026–1041). It is not composed of qualified counselors (Tr. 263–265, 576; CPF 139). It does not hold regular conferences or workshops (Tr. 260–261; CPF 140, 141) and its journals resemble rather a pseudo religious magazine than a scholarly

journal (CX 93–98). In the opinion of experts the journal articles in a bona fide organization of guidance counselors would contain scholarly articles of significant interest to counselors in that field (Tr. 573–76, 1035–37, 1049–1050; CPF 144, 145).

48. So far as the representations concerning the maintenance of a boys home are concerned, the performance falls far short of the promise. From the publicity, one would anticipate a series of cottages each housing six or eight boys on a permanent basis (CX 52; RX 288). In fact, while there are two boys generally in residence in the house occupied by the Thompsons, the presence of other boys is sporadic and in some cases no more than visits of sons of friends (See Tr. 212–213, 836–837, 843–844). Moreover, there is considerable doubt that the proper license has been obtained (Tr. 213, 677–682; CPF 146, 147).

49. Respondents thus have misrepresented the nature and activities of APO (CPF 149).

Facts Concerning NEAA

50. NEAA is not an accrediting organization at all; it is merely a registered trade name used by respondent Alvin O. Langdon, (Tr. 47) who signs himself executive secretary, (CX 99, 518) to issue invitations to institutions not eligible for accreditations by North Central or other State or Federal agencies (CX 518) seeking to have them secure a certificate of accreditation (CX 519, 522).

51. NEAA does not appear on the list of accrediting agencies issued by either the United States Office of Education (CX 528) or the National Commission on Accrediting (CX 531; Tr. 304); although in the opinion of educators this listing is regarded as almost a prerequisite to recognition (CPF 101).

52. The procedures used by respondent Alvin O. Langdon are wholly inadequate in the opinion of experts in the accrediting field (CX 529, 532, 538, 582; Tr. 304–305, 438, 456–461, 696–698, 756–759). These procedures used by NEAA consist merely of a decision by respondent Alvin O. Langdon on the basis of a form filled out by the applicant institution (CX 520; Tr. 49, 120; CPF 104–105, 106). Moreover, in the case of the accreditation of OCC the operation was in effect respondent Alvin O. Langdon accrediting himself (Tr. 48, 49, 224–225; CPF 131). This is wholly inadmissible in the opinion of experts in the field (CPF 128–131) as careful procedures are specified and meticulously followed (CPF 103, 108, 111, 113, 115, 117, 119, 121, 123, 125).

53. With regard to the use of the initials NEA by NEAA, such initials are those of a well-known and highly respected association of

educators (Tr. 502, 506–507) that is known by the initials NEA (CX 555–557; Tr. 502–505). NEAA is in no way connected with National Education Association (Tr. 270, 507) and the use of the latter's initials by NEAA in its letterhead and in its seal may mislead and certainly places in the hands of others the means of misleading prospective students as to NEAA's connections.

54. Thus the representations and implications that NEAA is a recognized bona fide accrediting agency for schools and the implication that it is connected with the National Education Association (all of which are attributable to each of the individual respondents through their authorization of the use of the seal of accreditation on the documents issued under the name of OCC (CX 52, 288) are false and misleading (CPF 101–137).

55. By and through the use of the aforesaid acts and practices, respondents place in the hands of individuals the means and instrumentalities by and through which they may mislead and deceive others as to the diplomas, degrees, and other academic qualifications said individuals possess. Further, by and through the use of the aforesaid acts and practices, respondents place in the hands of operators of schools accredited by National Educational Accrediting Association, the means and instrumentalities by and through which they may mislead and deceive prospective students as to the status of such schools (CPF 1–150).

56. In the course and conduct of their aforesaid activities and at all times mentioned herein respondents have been, and now are, in substantial competition, in commerce, with corporations, correspondence schools, residence colleges and universities of various kinds and nature engaged in offering education, training, and instruction (RX 3).

57. In the course and conduct of his aforesaid activities, and at all times mentioned herein, respondent Alvin O. Langdon, trading as National Educational Accrediting Association has been, and now is in substantial competition, in commerce, with accrediting agencies and other educational organizations engaged in offering accreditation to schools, and providing educational services (CX 528, 531).

58. In the course and conduct of their aforesaid activities, and at all times mentioned herein, respondents have been and now are, in substantial competition in commerce, with guidance counselor organizations, and other corporations and organizations engaged in charitable activities.

59. The use by 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 to induce a substantial number thereof to purchase the courses of instruction, diplomas and certificates of accreditation above described.

60. The acts and practices of respondents, heretofore described, 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 commerce and unfair and deceptive acts and practices in commerce.

REASONS FOR DECISION

The hearing examiner is faced with a situation where the activities of all of respondents, as counsel supporting the complaint described them, "constitute an affront to the bona fide educational community of the United States * * *"[6] and would if the Commission possessed jurisdiction also constitute unfair acts and practices by each of them within the meaning of Section 5 of the Federal Trade Commission Act.

However, in the opinion of this examiner the preponderance of the evidence fails to demonstrate that the Commission possesses jurisdiction over either respondent Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) (referred to as OCC) or respondent Alpha Psi Omega Society, (referred to as APO) under the most recent decision on the subject.[7]

Both of these organizations are incorporated as not for profit corportions and the certificates of incorportion of both provide that on dissolution their assets must be distributed to non-profit organizations. It has not been established that profits from either are distributed to their members or to non-charitable ends (Tr. 953).

Moreover, in the case of OCC all of its funds are deposited in the bank account of an IRS recognized exempt institution Calvary Grace Christian Churches of Faith, Inc. (an Ohio corporation hereinafter referred to as the Calvary Church) and disbursements are made from that account to cover OCC's expenses. All of the real property used by OCC except one parcel owned by the son of respondent Alvin O. Langdon, is in the name of the Calvary Church and only interest on the mortgage on the son's property is paid for the use of that property.

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[6] Introductory statement to Complaint Counsels' Proposed Findings p. 2.

[7] *Community Blood Bank of Kansas City Area, Inc.* v. *FTC*, 405 F.2d 1011 (8th Cir. 1969).

There are indeed a number of very suspicious circumstances. The Calvary Church and both respondents OCC and APO are, under resolutions passed by the trustees, completely dominated by respondent Alvin O. Langdon. He has complete operational control of everything and he also has sole control of the purse strings and makes all the decisions. Thus the two corporations are mere shells without substance. The testimony of both the Langdon respondents and of respondent Thompson is inherently incredible. Either their memories were faulty or they were deliberately evasive.[8] However, there was no solid proof offered by complaint counsel that funds were used except in full accord with the non-profit character of the organizations, merely proof that modest salaries and expenses of the Langdon re-

[8] Respondent Mrs. Langdon for example could not give an estimate of how many boys were at the home at any particular time and didn't think that she was a trustee of APO (Tr. 831, 833). She attended meetings of the board of trustees of OCC, voted but didn't have much to say (Tr. 834). Although she received a check she couldn't say what bank the check was drawn on (Tr. 838) and she claims she never signed a bank resolution although the record indicates she was a director of OCC and APO and Calvary Church (Tr. 838).

Respondent Gene Thompson the registrar and for a time the acting dean of OCC didn't know how long he held that position (Tr. 838). He claimed he didn't prepare but merely typed the transcripts (Tr. 840) and he couldn't give any estimate of how many he had sent out (Tr. 841). Although he signed the applications, (*e.g.* CX 83) he was very vague about how they were approved (Tr. 842–843). Although the premises at 2456 West Broad Street had been purchased only 1 or 2 months before Thompson couldn't remember how long they had been occupied (Tr. 845). He could give no estimate of how many boys had been served nor could he tell how much it cost to serve boys at the home he supervised (Tr. 847–848). Although the purchase of the Samada Road property was discussed with the board of directors, Thompson couldn't remember the discussion (Tr. 851–852) and didn't know how long the property had been owned by Calvary Church.

Respondent Alvin O. Langdon couldn't remember the names of the correspondence schools from whom he had secured lessons (Tr. 883). With respect to the dates of the use of documents which he was asked to identify, respondent Langdon was extremely vague (Tr. 75, 78, 89).

With regard to the faculty of OCC respondent Langdon was also vague and claimed that all persons on the letterhead were available to teach as needed (Tr. 103) but when pressed later he was extremely evasive (Tr. 241). With respect to the degrees which he claimed to have obtained he could not give the dates when they were obtained. He was also vague concerning publications used by APO (Tr. 146–149).

Respondent Langdon was even vague as to what books OCC had and where they were located (Tr. 163, 168).

Mr. Langdon's claim with respect to the requirement of church membership before individuals could be members of a college was both vague and possibly contradictory. He first said that the requirement for church membership was true since almost the beginning (Tr. 176) and when shown Abraham's application he was not sure when the requirement went in (Tr. 180–182). He finally admitted they never rejected students' applications because they did not join the church (Tr. 191–192).

Until shown previous statements, respondent A. O. Langdon was unable to estimate the receipts of OCC or APO and would only say that he thought that NEAA had lost money (Tr. 246–248). Although he admitted a $2500 salary he said he did not receive it (Tr. 251). He was not sure of the location of or who ran the Fundamental Institutions of Religious Education which it is claimed accredited OCC. He said this was done about 1965 before Ohio Christian College was incorporated and while it was still an arm of the church. He did admit that it had the same P.O. Box as Dr. Keck's institutions.

spondents and respondent Thompson were paid by Calvary Church.

This situation, in the opinion of the examiner, is an excellent reason for a recommendation to Congress for legislation to extend the jurisdiction of the Commission to include cases where so-called charitable and educational organizations are actively engaged in deceptive practices.

Here, clearly, the deceptive practices charged took place and are continuing.

Unlike the cases of the nonprofit corporate respondents OCC and APO, National Educational Accrediting Association (hereinafter NEAA) is stipulated to be a name under which respondent Alvin Langdon operated as sole proprietor. He claimed it was formed under church auspices for the purpose of accrediting colleges that were not eligible for accreditation by the recognized organizations (CX 59a). It operated through the mails in interstate commerce to supply accreditation certificates for a fee to alleged colleges including OCC with the result that credulous students might be misled into believing that such alleged colleges were duly accredited institutions as that term is generally understood. Hence, so far as NEAA's activity is concerned, an order may properly be issued against respondent Alvin O. Langdon.

Moreover, unlike the public spirited lawyers, ministers and doctors who operated the nonprofit organizations without compensation in *Community Blood Bank of Kansas City Areas, Inc. v. Federal Trade Commission*, 405 F.2d 1011 (8th Cir. 1969), and who were thus held not to be subject to the jurisdiction of the Commission, each of the individual respondents here were active participants in the day to day operation of the unfair practices and three of them (the two Langdon respondents and respondent Thompson) secure their livelihood from the operation and the fourth Mr. Weiner is their attorney and has taken over the operation of the organizations, with their consent, continuing many of the same practices as before with knowledge of the Federal Trade Commission investigation. In addition, respondent Langdon's previous adventure into Central Christian College ended in an injunction by the Attorney General of West Virginia and his NEAA operation was the subject of a suit by National Education Association. So, he and presumably Mrs. Langdon were well aware of the misleading character of their present operation. Respondents cannot be shielded by the corporate shells of OCC and APO (CX 593a–b). Accordingly, the individual respondents should be expressly prohibited from continuing to carry on the unfair practices and affirmatively ordered to institute corrective action. Action against the individuals is required in any event because the history of the Lang-

don respondents' similar venture in West Virginia demonstrates that OCC and APO may easily be dropped and another college and a different society started.[9] We turn now to disclaimers.

In making this initial decision the hearing examiner has not based it in any part on the early record of respondent Alvin O. Langdon (Tr. 946) and has taken at face value respondent's assurance of conversion (Tr. 947). Nor has this examiner based his decision on any of the testimony that tended to establish norms or prerequisites for securing an education. The evaluation of education is not his function. He has limited his consideration to the statements and representations made or authorized by the individual respondents and the implications therefrom that he has found to be false or misleading.

With regard to the claim that the activity involved is within the clause of the First Amendment of the Constitution forbidding Congress to make any law "prohibiting the free exercise" of religion, the claim is simply not true.

The initial misleading advertising is not limited to church members, and respondent Langdon's position that only church members were permitted to enroll was later modified by him. It was clearly not true. In addition, no clause in the order is in any way to be construed to regulate the exercise of the religious teaching of respondents—prohibited only is the use of false and misleading advertising and representations in interstate commerce. There is then a requirement for corrective action that is deemed necessary because of the experience of the Pennsylvania teacher group in attempting to use the OCC degrees (see Tr. 988–993).

For the foregoing reasons, we reach the following conclusions:

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the person of each of the respondents except Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) and Alpha Psi Omega Society. The last two named respondents have not been shown to be corporations within the meaning of Section 4 of the Federal Trade Commission Act (16 U.S.C. 33) and the proceeding will be dismissed as against them.

2. Respondents have engaged and are now engaging in deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

3. The following order should issue.

[9] See *FTC* v. *Standard Education Society*, 302 U.S. 112 (1937); *Dlutz* v. *FTC*, 406 F.2d (3rd Cir. 1968), *cert. denied*, 395 U.S. 936.

ORDER

It is ordered, That the complaint be and it is hereby dismissed against respondents, Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.), a corporation, and Alpha Psi Omega Society, a corporation, by reason of lack of jurisdiction over such respondents.

It is further ordered, That Alvin O. Langdon, Leeta O. Langdon, Gene Thompson and Jerry Weiner, individually, and Alvin O. Langdon, an individual trading and doing business as National Educational Accrediting Association or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of correspondence courses, diplomas, certificates of membership or accreditation in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "college" or any other word or words of similar import or meaning as a part of a corporate or trade name, or in any other manner, to describe or designate any of respondents' businesses; misrepresenting, in any manner, the nature, character or affiliation of any of respondents' businesses.

2. Conferring or offering to confer upon anyone any academic degree.

3. Representing, directly or by implication, that:

(a) Any of respondents' businesses: offers resident classes; is accredited by a recognized accrediting agency; offers a curriculum or course of study which is accredited by a recognized accrediting agency; or has a staff of faculty members who are trained and competent to teach the courses of a properly accredited and recognized college;

(b) The diplomas offered by respondents are recognized as signifying completion of an academic course, or that the recipients of respondents' diplomas will be recognized as having satisfactorily completed a properly accredited curriculum in any educational field;

(c) Recipients of respondents' diplomas will be entitled to and will receive the same honors, privileges and rights that recipients of diplomas from schools accredited by a recognized accrediting agency are entitled to receive;

(d) Respondents' correspondence courses contain all of the subject matter or material, study or curriculum hours included in courses covering the same or similar subjects of-

fered by a school accredited by a recognized accrediting agency.

(e) The State of Ohio, or any other governmental or political subdivision, agency or body, has approved or recognized the respondents' courses, diplomas or degrees;

(f) Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) offers and is using a unique method of instruction and study that is widely approved and accepted by educational authorities; or misrepresenting, in any manner, respondents' instructional methods.

4. Using the name "National Educational Accrediting Association," or any other name or names of similar import or meaning, or representing, in any other manner, directly or by implication, that respondents' business is that of a bona fide accrediting agency for schools or that respondents have any connection of any kind with the National Education Association; misrepresenting, in any manner, the character, purpose or affiliation of any of respondents' businesses.

5. (a) Using the word "society" or any other word or words of similar import or meaning as a part of a corporate or trade name, or in any other manner, to describe or designate any of respondents' businesses;

(b) Representing, directly or by implication, that any of respondents' businesses is a bona fide organization of guidance counselors or other persons interested in the field of counseling joined together for common interest or that respondents have founded, sponsor or maintain a home for homeless boys; misrepresenting, in any manner, the nature or purpose of any of respondents' businesses or the use made of the monies received by any of respondents' businesses.

It is further ordered, That respondents notify the Commission at least thirty days prior to any proposed change in either Ohio Christian College or Alpha Psi Omega Society such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations, or any of them, which may affect compliance obligations arising out of this order.

It is further ordered, That respondent Alvin O. Langdon shall forthwith: (1) send by registered mail a copy of this order to each corporation, firm or individual granted accreditation by National Eductional Accrediting Association and (2) send a copy of this order by ordinary mail to the last known address of each person awarded a

diploma or degree by Ohio Christian College or holding a membership in Alpha Psi Omega Society.

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

Opinion of The Commission

MAY 19, 1972

By Dennison, *Commissioner:*

This matter involves the misleading and deceptive practices of two nonprofit corporations and the individuals who control such corporations. It is before the Commission on the cross-appeals of respondents and complaint counsel from the initial decision of the hearing examiner. The gravamen of both appeals is not the examiner's finding that the parties had misled and deceived, rather it was the finding that the Commission lacks jurisdiction over the nonprofit corporations but that an order against the individual respondents (who controlled and operated the nonprofit corporations) is appropriate.

Complaint counsel appeal the examiner's finding that the corporate respondents were not "organized to carry on business for [their] own profit or that of [their] members." [1]

Respondents' counsel appeal the finding that the individuals (who claim they were acting solely in behalf of the nonprofit corporations) were subject to our cease-and-desist order even though the corporations are not. They assert that this ruling makes any corporate exemption illusory inasmuch as corporations can only act through individuals.

The Commission finds itself able to agree with both parties in this matter.

Certainly, to circumvent a legislative restriction of the Commission's authority over certain classes of companies by issuing orders against all individual officers, agents, directors or trustees would be contrary to the intent of Congress. Should we confer upon the Commission the authority to issue orders against individuals heading exempt organizations it could lead to a variety of untenable situations, such as the Federal Trade Commission ordering the head of another governmental agency to cease and desist from, *e.g.*, falsely advertising the merits of military service or conducting activities which might

[1] Section 4, Federal Trade Commission Act (15 U.S.C. 44).

restrain trade. By the same token, an order such as that proposed by the hearing examiner here could be easily thwarted by selling the nonprofit corporation to a third party and permitting him to continue the offending practices. The Commission concurs with the views of respondents that this result is undesirable and has concluded that, absent a finding that the corporate respondents are subject to the Commission's jurisdiction, conduct of the individual respondents *while acting solely on behalf of such corporations* cannot support the issuance of an order.

The reverse is equally true: If individuals direct and control the acts and practices of an amenable corporation, then they too may be made subject to orders along with the corporate respondent.[2] A finding that the corporations are amenable is the result urged by complaint counsel.

The hearing examiner found that notwithstanding the acts of the corporate respondents, which "constitute an affront to the bona fide educational community of the United States," [3] the Commission lacks "jurisdiction over either [corporate] respondent***under the most recent decision on the subject." [4] The decision referred to by the examiner is *Community Blood Bank of Kansas City Area, Inc. v. Federal Trade Commission.*[5]

To determine the validity of complaint counsel's arguments that the corporate respondents here should be treated differently than was the case in *Community Blood Bank*, it is necessary to compare the two cases, the practices involved, the apparent or concealed motives of the individuals in control, and the end to which the corporate entity was employed.

In *Community Blood Bank*, the Commission issued a complaint against the principal respondent (Community), a nonprofit Missouri corporation, its directors and officers and the Kansas City Area Hospital Association (AHA), another nonprofit corporation, for entering into an agreement to boycott two fledgling commercial blood banks. Counsel for respondents asserted, and the Commission and the court found, "that no part of any funds received by Community and AHA have ever been distributed or inured to the benefit of any of their members, directors or officers; all receipts have been used exclusively for the purposes authorized by law and their articles of incorporation; all funds received by Community originated from gifts, loans and grants, replacement blood donations and payment of responsi-

[2] *Federal Trade Commission* v. *Standard Education Society*, 302 U.S. 112 (1937).
[3] Initial Decision, p. 838.
[4] *Ibid.*
[5] 405 F.2d 1011 (8th Cir. 1969).

bility and processing fees; AHA received its funds from grants, loans, gifts and dues of member hospitals." [6] The officials in control of the corporate respondents and named as individual respondents were "public-spirited volunteers and derived no personal profit, benefit or advantages in their individual occupations as businessmen, lawyers, doctors, labor leaders or clergymen from their participation in the activities of the community-wide blood bank program. Their activities at all times were directed toward promoting a community-sponsored program in the public interest and at no time were infected with commercial intent." [7] In his dissenting opinion, Commissioner Elman pointed out: "There is no contention that any of the corporate respondents is a device or instrumentality of individuals or firms who seek monetary gain through the nonprofit corporation." [8]

The court, holding that the corporate respondents were not subject to the jurisdiction of the Commission, found their boycotting activities were motivated by a sincere belief that commercial trafficking in blood was immoral and not in the public interest. Whether one agrees with this belief or not, it is apparent the actions of the corporate respondents in *Community Blood Bank* were well-intentioned and did not inure to the financial benefit of anyone.

This is not the case in *Ohio Christian College*. In this matter, the corporate respondents are Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) (OCC), a nonprofit Ohio corporation, and Alpha Psi Omega Society (APO), a nonprofit Ohio corporation purportedly created as a guidance and counseling organization to care for homeless boys. The examiner found both corporations to be "in reality respondent A. O. Langdon***." [9] The methods adopted and used by the Ohio Christian College reduced it to little more than a "diploma mill." The brochure sent to prospective "students" who respond to OCC's numerous advertisements in national periodicals imply that the college was of the traditional type offering degrees of the character of accredited institutions.[10] "Prospective students are told in the catalogue that they may pursue resident study but if not able to afford it may get home study (or extension) courses at a fraction of the cost of resident study. This is touted as

[6] *Id.* at p. 1020.

[7] *Id.* at p. 1021–22.

[8] *Community Blood Bank of the Kansas City Area, Inc., et al.*, FTC Docket No. 8519, 70 F.T.C. 728, 950 (1966).

[9] Initial Decision, Finding 46.

[10] The individual respondent, A. O. Langdon, went so far as to create an accrediting association (National Educational Accrediting Association (NEAA)), which accredited OCC. The name and seal of NEAA was easily mistaken for those of the National Education Association (NEA). The Commission's order prohibiting its use has not been appealed and is not an issue here.

a new educational plan. The prospective student is promised credit for experience which will reduce his home study requirements. Even an honorary degree is offered 'to eligible candidates in recognition of their accomplishments and achievements.' In earlier catalogues it was made clear that a fee of $50 would be required with each application to be applied toward the tuition but in the case of honorary degrees the applicants' contribution of a full $100 would be needed." [11] As one student, a Pennsylvania public school teacher seeking his Master's Degree, found, the OCC degree received was virtually meaningless.[12]

Alpha Psi Omega is purportedly a professional society created to further the discipline of guidance counselors and professional counselling methods, research and techniques. This respondent charges prospective members annual dues by representing that APO is a bona fide organization of guidance counselors and that one of its principal programs is the maintenance of a home for homeless boys. The hearing examiner found the respondent did not meet even a reasonable criteria for a professional society. The home for boys was generally the house used as a personal residence of one of the individual respondents and the presence of boys was sporadic, in some cases no more than visits of sons of friends.[13]

COMMISSION JURISDICTION

The Commission agrees with the hearing examiner, that should it have jurisdiction it should issue an order preventing future abuses. The inquiry as to whether the corporate respondents were carrying on a business "for [their] own profit or that of [their] members" raises, as the hearing examiner stipulated, "very suspicious circumstances." [14] We are unpersuaded by his conclusion that we lack jurisdiction. From the record it appears that he was correct in holding that these corporate respondents were, in reality, the individual respondent, A. O. Langdon, using the guise of the nonprofit corporation to further his own finance and comfort, *albeit* he was not too successful, as we will discuss *infra*. Both corporations are completely dominated by this individual respondent. "He has complete operational control of everything and he also has sole control of the purse strings and makes all the decisions. Thus the two corporations are mere shells without substance." [15] This "shell game" has given the individual respondents much of their subsistence and shelter and provided ex-

[11] Initial Decision, Finding 29 (citation omitted).
[12] *Id.*, Finding No. 20.
[13] *Id.*, Finding Nos. 47, 48.
[14] Initial Decision, p. 839.
[15] *Id.*

pensive automobiles for them to drive. Profit, for the purpose of Section 4 of the Federal Trade Commission Act, is not limited to dividends, gains or direct reward. The Ohio Supreme Court is in accord and confirms local law in that jurisdiction by holding:

> Profit does not necessarily mean a direct return by way of dividends, interest, capital account or salaries. A saving of expense which would otherwise necessarily be incurred is also a profit to the person benefited.[16]

While the terms employed in other statutes and the interpretation adopted by other agencies are not controlling, the treatment of exemptions for nonprofit corporations by other branches of the Federal Government is helpful. The Internal Revenue Act creates a tax exemption for "corporations***organized and operated exclusively for ***educational purposes***no part of the net earnings of which inures to the benefit of any private shareholder or individual***." [17]

In 1960 the Commissioner of Internal Revenue reviewed the nonprofit tax exemption status of an educational corporation which was similar in structure to OCC. Notwithstanding the fact the corporation had been afforded an exemption certificate, the Internal Revenue Service and the court found that because of the lax financial dealings with the founders of the school, it was not in fact an exempt corporation.[18] The court determined that there was comingling of funds, that numerous individual expenses of the controllers were paid by the corporation and that the individual controllers on occasion treated the assets of the corporation as their own. These facts are similar to the relationship of Ohio Christian College to its principals.

The Internal Revenue Service looks to the ultimate disposition of income as a determinative factor. The Commission agrees that the question is not whether a corporation amassed profit, but how it disposed of such profit. From the facts available to the Commission, we find the relationship between OCC and the individual respondents in dealing with the dissipation of profits strikingly similar to that existing between a closely-held commercial corporation and its officer-shareholders. The cavalier treatment of the corporate assets and finances leads us to conclude that respondents considered them their own. The individual respondent, A. O. Langdon, has complete control over the purse strings, he sets all salaries (including his own),[19] determines all allocation and expenditures, signs all checks and exercises plenary power over the affairs of the school. The record shows

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[16] *Russell* v. *Sweeney*, 153 Ohio St. 66, 68, 91 N.E.2d 13, 16 (1950).

[17] 26 U.S.C. 501(c)(3).

[18] *Birmingham Business College, Inc.* v. *Commissioner*, 276 F.2d 476 (5th Cir. 1966).

[19] Transcript, p. 867.

the corporation was organized and controlled so that the individual respondents could take what they wanted prior to any further disposition or comingling of funds.

The structure and financial dealings of Ohio Christian College (indeed many of the unfair and deceptive acts and practices) are similar to that found in *Bethany College and Divinity School, et al.*,[20] an Illinois nonprofit corporation. In that case the Commission had little difficulty holding the corporation as a responsible party.

Section 4 of the Federal Trade Commission Act operates as a shield for legitimate, bona fide eleemosynary institutions to protect them from unwarranted governmental interference. To use this protection as a sword and suffer the public to be injured, cheated and bilked is quite another matter. "In such a case, piercing the non-profit corporate veil and recognizing the [respondent] for what it is—a device by which individual[s]***for private gain, seek [to deceive the public]—does no violence to the Congressional design embodied in Sections 5(a) (6) and 4 of the Federal Trade Commission Act; failure to pierce the veil, indeed, would elevate form over substance to an unreasonable degree, and lay the path to evasion of the Act wide open." [21]

Our decision today is to block one such path to evasion. Ohio Christian College and Alpha Psi Omega have, using the shield of nonprofit corporate status, misled and deceived the public. Prevention of these acts were and are the function of the Federal Trade Commission as envisaged by the Congress.[22]

Two additional issues presented deserve discussion: The fact the corporate respondents comingled funds with a nonprofit, religious institution, and the fact that respondents were apparently not very successful in their enterprise. Respondents point out some portion of the funds received by the college and the guidance society are contributed to the Calvary Grace Christian Church, a religious institution headed by the individual respondent. Respondents would require us to find that the religious institution is subject to our jurisdiction before issuing an order against the corporate respondents. This is clearly not necessary since only the named corporate and individual respondents perpetrated the acts in question. The folly of this position can be illustrated by using an extreme example: What differences does it make to the injured public whether a thief tithes? The public needs

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[20] 49 F.T.C. 1 (1952).

[21] *Community Blood Bank of the Kansas City Area, Inc.*, 70 F.T.C. 728, 949 (1966), Commissioner Elman's dissent.

[22] *Federal Trade Commission* v. *Sperry & Hutchinson Co.*, 401 U.S. 992 (1972).

the protection, and whether the corporate respondents give money to a religious institution or not does not detract from our determination to protect consumers.

Respondents also make mention of the low salaries they receive from the college and professional society. Aside from the fact the "fringe benefits" are not inconsiderable, it is not relevant whether a respondent is highly successful or not. The question is whether the public is being injured. We find substantial public interest in the facts that consumers were being deceived and that the image of reputable colleges, accrediting associations and professional associations was being tarnished. That respondents were poor businessmen is of little consequence.

In conclusion, we are revising the hearing examiner's findings and conclusions as to our jurisdiction over the corporate respondents herein. As to all other factual findings and conclusions, we adopt his decision. The examiner's order, after modification to make the corporate respondents amenable to the order, is adopted by the Commission.

Commissioner MacIntyre concurs in the result as to the individual respondents.

IN THE MATTER OF

MORSLY INCORPORATED, ET AL.

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

Docket C-2223. Complaint, May 19, 1972—Decision, May 19, 1972

Consent order requiring a New York City importer and distributor of women's apparel, including scarfs, to cease importing or selling fabrics so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabric Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Morsly Incorporated, a corporation, and Stephen M. Levy and David M. Levy, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to

the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Morsly Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its address is 390 Fifth Avenue, New York, New York.

Respondents Stephen M. Levy and David M. Levy are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are engaged in the importation, sale and distribution of women's apparel, including, but not limited to, scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products as the terms "commerce" and "product" are defined in the Flammable Fabric Act, as amended, which fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabric Act, as amended.

Among such products mentioned hereinabove were scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act; and

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by

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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Morsly Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 390 Fifth Avenue, in the county of New York, city and State of New York.

Respondents Stephen M. Levy and David M. Levy are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation. Their office and principal place of business is located at 390 Fifth Avenue, New York, New York.

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 the respondents Morsly Incorporated, a corporation, its successors and assigns, and its officers, and Stephen M. Levy, and David M. Levy, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable

Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the scarves which gave rise to the complaint, of the flammable nature of said scarves and effect the recall of said scarves from such customers.

It is further ordered, That the respondents herein either process the scarves which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said scarves.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the scarves which gave rise to the complaint, (2) the number of said scarves in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said scarves and effect the recall of said scarves from customers, and of the results thereof, (4) any disposition of said scarves since November 27, 1970 and (5) any action taken or proposed to be taken to bring said scarves into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said scarves, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

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

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

IN THE MATTER OF

CAROLINA MANUFACTURING COMPANY, INC., ET AL.

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

Docket C-2224. Complaint, May 19, 1972—Decision, May 19, 1972

Consent order requiring a New York City importer and seller of textile fiber products, including scarves, to cease importing, distributing, and selling fabrics so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Carolina Manufacturing Company, Inc., a corporation, and Sam E. Haddad, Robert Haddad and Hiram Haddad, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Carolina Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its address is 313 Fifth Avenue, New York, New York.

Respondents Sam E. Haddad, Robert Haddad and Hiram Haddad, are officers of the corporate respondent. They formulate, direct and control the acts, practices, and policies of the said corporate respondent including those hereinafter set forth.

Respondents are engaged in the importation, sale, and distribution of textile fiber products, including, but not limited to, scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and the impor-

tation into the United States, and have introduced, delivered for introdution, transported and caused to be transported in commerce and have sold or delivered after sale or shipment in commerce, products as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York 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 Flammable Fabric Act and the Federal Trade Commission Act; and

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) and its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent Carolina Manufacturing Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 313 Fifth Avenue, New York, New York.

Respondents Sam E. Haddad, Robert Haddad and Hiram Haddad are officers of said corporation. They formulate, direct and control the acts, practices and policies 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 the respondents Carolina Manufacturing Company, Inc., a corporation, its successors and assigns, and its officers, and Sam E. Haddad, Robert Haddad and Hiram Haddad, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the scarves which gave rise to the complaint, of the flammable nature of said scarves and effect the recall of said scarves from such customers.

It is further ordered, That the respondents herein either process the scarves which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said scarves.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1)

the identity of the scarves which gave rise to the complaint, (2) the number of said scarves in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said scarves and effect the recall of said scarves from customers, and of the results thereof, (4) any disposition of said scarves since March 25, 1971 and (5) any action taken or proposed to be taken to bring said scarves into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said scarves, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton, or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

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

It is further ordered, That respondents 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

U.S. GENERAL SUPPLY CORPORATION, ET AL.

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

Docket C-2225. Complaint, May 23, 1972—Decision, May 23, 1972

Consent order requiring a Jericho, New York, mail order firm to cease failing to make shipments within specified time limits, failing to disclose that not all items advertised are kept in stock, but are drop-shipped by the

manufacturer, failing to make complete refunds within specified time limits, misrepresenting that all items shipped are insured, regardless of purchase price, failing to indicate fee for respondent's catalog, using comparative inflated prices, and keeping inadequate records of purchase orders. Corporate respondent is further required to maintain a business telephone and to list the number in the official telephone directory for its location and in all of its mail order catalogs.

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 U.S. General Supply Corporation, a corporation, and Harold Rashbaum as president and Murray Harrow as secretary and treasurer of said corporation, sometimes 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent U.S. General Supply Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Harold Rashbaum and Murray Harrow are president and secretary-treasurer respectively of said corporation and are members of the board of directors of said corporation. Harold Rashbaum owns 50 percent or more of the stock of said firm. Murray Harrow is also a major stockholder.

Respondents Harold Rashbaum and Murray Harrow formulate, direct and control the acts, practices and policies of said corporate respondent which has its principal place of business at 100 General Place, Jericho, Long Island, New York and which also uses the address 20 Jericho Turnpike, Jericho, Long Island, New York. The latter address is simply another entrance to the same building.

Respondent U.S. General Supply Corporation is a mail order business which offers tools, hardware, home appliances, office equipment and other products to the general public through a mail order catalog advertised throughout the United States by means of an advertising flyer which offers the catalog for sale to the public for $1.

Individual respondents Harold Rashbaum and Murray Harrow also operate eight affiliated corporations in the form of retail outlets which are leased departments located on the premises of Billy Blake Discount Centers. These retail outlets offer for sale to the public the same products which are offered through U.S. General Supply Corporation's mail order catalog. These eight corporations were organized,

exist and are doing business under and by virtue of the laws of the State of New York. Respondents Harold Rashbaum and Murray Harrow are officers and members of the board of directors for all eight corporations which are as follows: U.S.G.S. Smithtown, Inc., U.S.G.S. Bethpage, Inc., U.S.G.S. Babylon, Inc., U.S.G.S. Sayville, Inc., U.S.G.S. Port Jefferson, Inc., U.S.G.S. Riverhead, Inc., U.S.G.C. Islip, Inc., U.S.G.S. Middle Island, Inc.

Atlas West Corporation is the sole source of supply of all merchandise purchased by U.S. General Supply Corporation and its eight affiliated retail outlets. The address for Atlas West Corporation is identical to that of U.S. General Supply Corporation. All ten corporations operate out of the same address. Harold Rashbaum and Murray Harrow are corporate officers of all ten corporations. Murray Harrow is president of Atlas West Corporation and Harold Rashbaum is the secretary-treasurer.

PAR. 2. Respondents in the course and conduct of their business have been, and are now, engaged in the sale, advertising and offering for sale in commerce of merchandise which they ship or cause to be shipped, when sold, from the State of New York to purchasers located in various other states and maintain and have maintained a course of trade in said merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in the mail order sale of general merchandise is and has been substanial. Among such merchandise so sold and shipped are hand and electric tools, hardware, home appliances and office equipment.

PAR. 3. Respondents are now, and at all times mentioned herein, have been in substantial competition in commerce with other corporations, firms and individuals engaged in the sale and distribution of tools, hardware, home appliances, office equipment and other merchandise.

PAR. 4. In the course and conduct of their business in commerce, and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations in the advertising and sale of said products through their advertising flyer and mail order catalogs with respect to the deliveries, prices, refunds, guarantees, and other policies related to said products.

Typical and illustrative of the statements and representations in said advertising material and mail order catalogs, are the following:

Our huge warehouse stock gives you an inventory no other source can offer to your customers. *All* orders are shipped within 24 hours. In those very rare cases where an item is short your money is returned at once. Nothing is left dangling to complicate matters.

Add 10% to your remittance to cover POSTAGE, HANDLING AND GUARANTEED DELIVERY.

We stock over 12,000 kinds of tools and accessories; ship from our huge warehouse the day your order arrives. Every item is unconditionally guaranteed: money back without question! A million dollar wholesale inventory at your fingertips—no stock to carry—just order as you need it.

When you order from this catalog, you get real value—NATIONALLY ADVERTISED BRAND NAME MERCHANDISE AT WHOLESALE PRICES.

Remember, this catalog does not offer you discounts, but rather *wholesale* prices that give you a real break on tools for your own use, and prices that give you a handsome profit when selling tools to your friends.

Buy at wholesale from our Million Dollar Inventory of NATIONALLY ADVERTISED BRANDS.

LOWEST PRICES ON AMERICA'S FINEST MERCHANDISE

TOOLS AT WHOLESALE

TOOLS AND HARDWARE WHOLESALE

You can save hundreds of dollars a year on all types of tools and hardware. Nationally known makes, finest quality at WHOLESALE prices. THIS CATALOG DOES NOT OFFER YOU DISCOUNTS BUT RATHER WHOLESALE PRICES THAT GIVE YOU A REAL BREAK ON TOOLS FOR YOUR OWN USE, AND PRICES THAT GIVE YOU A HANDSOME PROFIT WHEN SELLING TOOLS TO OTHERS.

GIANT NEW WHOLESALE TOOL AND HARDWARE CATALOG 180 PAGES OF HAND AND POWER TOOLS FOR THE SERIOUS MINDED CRAFTSMAN, MECHANIC OR HANDYMAN FOR HOME, FARM, WORKSHOP, BUSINESS.

BRAND NEW WHOLESALE TOOL & HARDWARE CATALOG

I ENCLOSE $1—PLEASE SEND ME MY GIANT NEW FULLY ILLUSTRATED WHOLESALE TOOL CATALOG. I UNDERSTAND THAT WITH MY CATALOG I WILL RECEIVE A CERTIFICATE WORTH $1 ON MY FIRST PURCHASE OR MY $1 WILL BE REFUNDED IF I AM NOT 100% SATISFIED.

$1.00 CREDIT CERTIFICATE—This credit certificate is worth $1.00 to you. Simply sign your name below and attach to your order. It will be accepted as part payment on your first order. This certificate must be enclosed with your order to insure refund of your $1.00 catalog deposit.

No need to write a letter to get your own Giant Wholesale Tool Catalog. Just enclose a Dollar Bill in this convenient postage paid envelope and mail right now. You'll get the biggest value a dollar ever bought. This wholesale catalog is guaranteed to make and save you money. You cannot lose! If you are not completely satisfied your dollar will be refunded—no questions asked!!!

NO RISK—MONEY BACK GUARANTEE

GUARANTEE—We guarantee all merchandise to be first quality and brand new. Everything is guaranteed by us and the manufacturer.

You can sell with confidence knowing that every item offered carries a double guarantee, ours and the manufacturers.

The prices listed in this catalog are competitive retail prices.

THIS OFFER IS LIMITED—While the supply of catalog lasts. ACT NOW!

WHOLESALE PRICES—UP TO 50% OFF AND MORE

GET UP TO 50% OFF ON NATIONALLY ADVERTISED NAME BRANDS —START YOUR OWN BUSINESS—HUGE PROFITS! MORE MONEY!

The retail prices are plainly shown, but your confidential low wholesale costs are concealed in a code known only to you. You save as much as 50% and more off the advertised retail prices of over 12,000 items of famous name **merchandise!**

PAR. 5. Through the use of the aforesaid statements and representations, and others of similar import and meaning, respondents have represented that:

(a) All merchandise is shipped to customers within 24 hours;

(b) Delivery is guaranteed;

(c) If dissatisfied, for any reason, the purchaser's money is returned at once and there is a no-risk money back guarantee;

(d) Only in rare cases may an item be out of stock;

(e) The products offered for sale in U.S. General Supply Corporation's mail order catalogs, published twice a year, are wholesale prices and that substantial money savings are made by purchasing merchandise through said mail order catalogs;

(f) The $1 cost of the catalog will be reimbursed by use of a $1 credit certificate enclosed in the catalog which will be accepted as part payment on the purchaser's first order;

(g) If the consumer is dissatisfied, the $1 cost of the catalog will be refunded, without question;

(h) All merchandise is guaranteed by both U.S. General Supply Corporation and the manufacturer;

(i) The retail price comparatives listed in the catalog are competitive retail prices;

(j) The supply of catalogs is limited;

(k) Discounts of 50 percent and more off the retail prices of over 12,000 famous brand name items are being offered to those who purchase the mail order catalog and place an order for merchandise.

PAR. 6. In truth and in fact:

(a) U.S. General Supply Corporation does not ship merchandise to purchasers within 24 hours and delays of from one month to one year have occurred;

(b) There is no "guaranteed delivery" as parcels are lost in transit and there is a risk in ordering merchandise from respondents as parcels under the value of $50 are not insured, and no record of any kind is kept by respondents of orders under the value of $50;

(c) Respondents do not promptly replace merchandise lost in transit or refund money at once, and will not replace the merchandise, refund the purchaser's money or make any other adjustments unless the original order blank is returned to respondents.

The customer whose order is lost in transit has no effective means of obtaining a refund, replacement or adjustment since the respon-

dents ship the customers original order blank with the merchandise. If the parcel is lost in transit, the original order blank enclosed in such parcel is also lost and the purchaser is thereby unable to comply with respondents' requirement that the original order blank must be returned in order to obtain refunds, replacements or adjustments. Customers are not advised that they must bear the cost of postage and insurance when returning merchandise to respondent for any reason.

If merchandise is not available, money is not returned to customers "at once" but is deposited in respondents' checking account. Respondents have unduly delayed and hindered their customers from securing refunds or replacements and have granted such refunds or replacements only as a last resort;

(d) In numerous instances, items are often out of stock in respondents' warehouse and are back-ordered from manufacturers located in all parts of the country;

(e) The wholesale prices listed for items in the catalog, including prices for Panasonic television sets, clock radios, transistor radios, tape recorders and table radios, Smith Corona Merchant's manual and electric typewriters and adding machines, Arrow Fastener's stapling machines and staples, Great Neck Saw Manufacturer's saws, axes, hammers, screwdrivers and planes, Milwaukee Electric Tool Corporation's electric drills, electric hacksaws, sander-grinders, plumber's kits, electrician's kits and blade assortments, as well as the prices of other products appearing in U.S. General Supply Corporation's mail order catalogs, do not fall within the usual and customary wholesale selling prices of these products by bona fide wholesale distributors and jobbers located throughout the United States.

In numerous instances, the 10 percent additional charge for "postage, handling and guaranteed delivery" raises the "wholesale" selling prices appearing in respondents' mail order catalogs above the prices that a consumer might pay for the identical merchandise in a retail store;

(f) The $1 credit certificate enclosed in respondent's mail order catalog is not available to customers unless a minimum initial order of $20 is placed, and this fact is not revealed to consumers until after the catalog has been paid for and received by them;

(g) The $1 refund for the cost of the catalog cannot be obtained by dissatisfied purchasers unless the catalog is returned by the purchaser who must pay the postage expense involved. This fact is not

made known in respondents' advertising prior to the purchase of the catalog;

(h) Respondents' merchandise is not unconditionally guaranteed since certain undisclosed conditions must be met prior to the refund of the customer's money;

(i) The retail price comparatives appearing in U.S. General Supply Corporation's mail order catalogs are inflated, in numerous instances, above the usual and customary retail selling prices at which such products have been sold in retail stores throughout the country;

(j) The supply of mail order catalogs is not limited and additional catalogs are offered for sale by respondent for 50¢ each;

(k) Discounts of 50 percent and more off the usual and customary retail selling prices are not offered on many products and customers purchasing through respondents' mail order catalog may be paying prices above those which they might ordinarily pay in a retail store;

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

PAR. 7. In the further course and conduct of their mail order business, as aforesaid, respondents, on numerous occasions have either failed altogether to answer letters of inquiry or have made inadequate and uninformative responses and have thereby delayed, thwarted, frustrated, and prevented purchasers seeking deliveries of merchandise or refunds.

Respondents do not provide a business telephone listing in the official telephone directory for its location or in any published telephone directory and, in fact, maintain an unlisted business telephone number which is not available to purchasers.

Such practices have resulted in substantial inconvenience, hardship and irritation to purchasers. Therefore, the said practices are unfair, misleading and deceptive.

PAR. 8. The use by respondents of the aforesaid false, misleading, deceptive and unfair statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public, unfairly divert trade from respondent's competitors and constitute unfair

methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof 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 accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure 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. Respondents U.S. General Supply Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 100 General Place, Jericho, Long Island, New York.

Respondents Harold Rashbaum and Murray Harrow 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 respondent U.S. General Supply Corporation, a corporation, its subsidiary and affiliated corporations, its successors and assigns, and respondents Harold Rashbaum and Murray Harrow,

individually, and as officers of said corporate respondent, and respondents' agents, representatives, officers and employees, directly or through any corporate or other device or under any other name or names, in respondents' advertisements, catalogs, or in any other advertising material, in connection with the offering for sale, sale, and distribution of tools, hardware, home appliances, office equipment, auto supplies, garden equipment and any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Failing to make shipments of advertised merchandise within the time period specified in respondents' advertisements, catalogs or in any other advertising material when payment for such goods has been received, or if no time is specified, within a reasonable time not to exceed 21 days, and if shipment is not made within said period, to offer in writing to promptly refund the full purchase price therefor to the purchaser, except as hereinafter provided in Paragraphs (b), (c) and (d) for drop-shipped merchandise. Upon request for said refund, the return of the full purchase price shall be made within 15 days from the date of the receipt of said written request.

(b) Failing to clearly and conspicuously disclose in its catalog and in all other advertising materials, where specific items of merchandise are mentioned, all of those items which are not stocked in respondents' warehouse but are drop-shipped at respondents' request directly to their customers by any manufacturer or supplier.

(c) Failing, in its catalog and in all other advertising materials, to adequately inform all purchasers of drop-shipped merchandise, ordered and paid for, that refunds are available within 15 days from the date of receipt of any written request therefor, if the merchandise has not been received within the time specified in respondents' catalog or in any other advertising material, or within 21 days where no time period has been specified.

(d) Failing to make refunds of all monies paid by purchasers of drop-shipped merchandise within 15 days from the date of receipt of any written request therefor made in accordance with the conditions set forth in Paragraph (c) above.

(e) Failing to disclose in its mail order catalog, when representations are made that merchandise is insured, that only parcels of merchandise in excess of a given dollar amount are insured by respondents or that parcels below such dollar amount are not insured.

(f) Representing, directly or by implication, that delivery of all merchandise is guaranteed or assured unless all the terms and conditions relating to respondents' replacement of any merchandise not received by purchasers is clearly and conspicuously stated.

(g) Failing when requested, pursuant to a guarantee of satisfaction money back guarantee, or a full refund guarantee, to refund either by cash or by check, the full purchase price of merchandise, together with all charges paid by the purchasers in connection with such purchase, voluntarily, and within the time specified in respondents' advertisements, or if no time is specified, within a reasonable time not to exceed 15 days, or failing to make any other refunds to which a purchaser is entitled within 15 days from the date of the receipt of the written request for such refund.

(h) Misrepresenting, directly or by implication, the dollar amount or quantity of merchandise which is in stock in respondents' warehouse at any given time or that any specific item of merchandise is in stock in said warehouse when in fact said merchandise may be shipped directly to the purchaser by suppliers other than respondents.

(i) Representing, directly or by implication, that respondents are wholesalers unless they in fact (1) make a substantial and significant number of sales to retailers and (2) sell items which they offer at wholesale prices, at prices which do not exceed those usually and customarily paid by retailers for such merchandise to any source of supply.

(j) Representing, directly or by implication, that respondents offer merchandise for sale at wholesale prices, at the lowest wholesale prices, or at prices which do not exceed the prices usually and customarily paid by retailers for such merchandise to any source of supply unless they, in fact, sell items which they offer at wholesale prices, at prices which do not exceed those usually and customarily paid by retailers for such merchandise.

(k) Failing to disclose in all advertising offering its mail order catalog for sale that a fee of $1, or any amount, is required on all orders under a certain dollar amount.

(l) Failing to disclose, clearly and conspicuously, that charges for postage, insurance, or any other fee or charge in connection with the return of merchandise, or of the catalog itself, shall be borne by the purchaser.

(m) Representing, directly or by implication, that any products are guaranteed, unless the nature and extent of the guar-

antee, the identity of the guarantor, the obligations, if any, of the consumer who purchases said guaranteed product, and the manner in which said guarantor will perform thereunder are clearly and conspicuously disclosed.

(n) Utilizing comparative retail prices which are inflated above the usual and customary current selling prices for such products in retail stores throughout the country.

(o) Misrepresenting, directly or by implication, that there is a limited supply of mail order catalogs available.

(p) Misrepresenting, directly or by implication, the amount of savings available to purchasers of respondents' merchandise.

(q) Failing to maintain adequate records which disclose the facts upon which all representations as to wholesale and retail prices of merchandise, claims of savings afforded to purchasers, and representations of similar import and meaning are based, and from which the validity of any such claims can be established.

It is further ordered, That the corporate respondent maintain a business telephone and list such number in the official telephone directory for its location and in all of its mail order catalogs.

It is further ordered, That respondents shall maintain full and adequate records of purchaser's orders and shipments of merchandise so that requests for refunds, claims or adjustments may be made for non-delivered merchandise or for any other reason.

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all personnel of respondents responsible for the preparation, creation, production or publication of the advertising of all products covered by this order.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner in which they have complied with this order, *Provided, however*, That with respect to those portions of the order which require changes to be made in respondents' mail order catalog which is published semi-annually in January and August, a second such report shall be filed within sixty (60) days after June 1, 1972, the date upon which all changes in respondents' catalog required by the terms of this order shall take effect.

IN THE MATTER OF

KENREC SPORTS INC., ET AL.

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

Docket C-2226. Complaint, May 23, 1972—Decision, May 23, 1972

Consent order requiring a New York City seller of a swimming-aid device to cease misrepresenting the device as a Swim Teacher, that the device assures ideal body position, has been tested and approved by experts in the United States and abroad, misrepresenting the device as safe and secure and requiring on any future packaging and advertising, a statement that the device is not a life preserver.

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 Kenrec Sports, Inc., a corporation, Dennis Eichler and Ezra Waldman, individually and as officers and directors of said corporation, hereinafter referred to as the 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 Kenrec Sports Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 200 Fifth Avenue, New York, New York.

Respondents Dennis Eichler and Ezra Waldman are both individuals and also officers and directors of Kenrec Sports Inc. Their business address is 200 Fifth Avenue, New York, New York.

The individual respondents, Dennis Eichler and Ezra Waldman, formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time past have been engaged in the advertising, offering for sale, sale and distribution of a swimming-aid device designated "Bema Swim Teacher" to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said swimming-aid device and other products, when sold, to be shipped from their place of business in the State of New York 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 swimming-aid devices and other products, in 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 sale of said devices, respondents have made certain statements and representations and furnished illustrations with respect thereto in advertising flyers distributed at trade shows, in trade catalogues and on the product packaging itself. Among and typical of said statements, representations and illustrations are the following:

1. Bema Swim Teacher
2. Teaches Swimming in Three Easy Steps
3. Ideal body positioning in the water assures swift development of correct swimming motions.
4. Approved and Endorsed by Don Schollander
5. Tested and Approved by European and U.S. swimming experts
6. Completely Safe and Dependable
7. Designed and Made with Your Safety in Mind
8. An Approved Circle of Safety Sports Product
9. Bema Safety Swim Teacher can be used with confidence on infants, children and adults to overcome their fear of water and to teach them to swim (Depiction of a young 9–11 year old boy in a bathing suit)

PAR. 5. By and through the use of the aforesaid statements, representations and illustrations and others of similar import not specifically set out herein the respondents represented that:

1. Persons using said device, including infants and children, are likely to learn how to swim in three easy steps.

2. Such device assures ideal body positioning in the water for the swift development of correct swimming motions.

3. Such device has been subjected to practical tests conducted under controlled conditions and approved as to all aspects, including safety, by European and U.S. swimming experts, including Don Schollander.

4. Such device is completely safe and dependable, was designed with safety in mind and, therefore, can be used with confidence on infants and other children to overcome their fear of the water and to teach them to swim.

PAR. 6. In truth and in fact:

1. Persons using said device by itself are not likely to learn how to swim in three easy steps. To the contrary its use is limited to the aid of flotation and it will not enable the user to swim in three easy steps. Additional training and instruction would be required.

2. Such device does not assure ideal or even proper body positioning for the swift development of correct swimming motions; furthermore, such device tends to make a person float vertically with his head in the air instead of horizontally, which is the proper position for swimming.

3. Such device has not been tested and approved. In fact no formal tests of any sort have ever ben conducted.

4. Such device is not completely safe and dependable and cannot be used with confidence on infants and other children to overcome their fear of the water and to teach them to swim. Furthermore there are situations and circumstances where the unsupervised use of said device by infants and children could lead to hazardous or dangerous results.

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 course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of swimming-aid devices and other products of the same general kind and nature as those sold by respondents.

PAR. 8. The use by 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 product by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office

proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Kenrec Sports Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 200 Fifth Avenue, New York, New York.

Respondents Dennis Eichler and Ezra Waldman are officers and directors 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 Kenrec Sports Inc., a corporation, and its officers, and Dennis Eichler and Ezra Waldman, individually and as officers and directors of said corporation, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of a swimming-aid device designated "Bema Swim Teacher" or any other device of similar design, construction or intended use, in commerce, as "commerce" is

defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Such device is a Swim Teacher and can teach swimming in three easy steps or any number of steps.

2. Such device assures ideal body positioning in the water for the swift development of correct swimming motions.

3. Such device has been tested and approved as to any and all aspects, including safety, by European and United States swimming experts, including Don Schollander, unless said device has been subjected to practical and effective tests under controlled conditions.

4. Such device is safe and secure by the use of such phrases as "Completely Safe and Dependable," "Designed and Made with Your Safety in Mind," "An Approved Circle of Safety Sports Product" or any other language of similar import.

5. Such device can be used with confidence on infants and children to overcome their fear of the water and teach them to swim unless respondents shall state clearly and conspicuously and in immediate conjunction with any such representation that such device is not a life preserver, should not be used by non-swimmers without proper supervision and should be used only in shallow water.

It is further ordered, That on all future packages, brochures, flyers or other pieces of advertising material describing said device or any other device of similar design, construction or intended use, respondents affirmatively disclose in clear and conspicuous language that said device is not a life preserver, should not be used by non-swimmers without proper supervision and in all cases should be used only in shallow water.

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

It is further ordered, That respondents distribute a copy of this order to all operating divisions and subsidiaries of said corporation and also distribute a copy of this order to all of respondents' personnel involved in the formulation and implementation of respondents' business policies and all other personnel engaged in the advertising, marketing and sale of respondents' products.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Com-

mission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

NATIONWIDE SAFTI-BRAKE DISTRIBUTORS, INC., ET AL.

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

Docket C-2227. Complaint, May 23, 1972—Decision, May 23, 1972

Consent order requiring a Rockville, Maryland, seller and distributor of automobile parts, including brake parts, and its parent company to cease misrepresenting prices of particular automotive repair services, representing that any merchandise or service is for sale when in fact it is not, using deceptive representations in order to obtain prospective customers, misrepresenting respondent's size and extent, and using the word "Safti" or any other similar misrepresentation in respondent's trade name or service mark within one year.

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 Nationwide Safti-Brake Distributors, Inc., a corporation, Globe Advertising Co., Inc., a corporation, Market Tire Company of Maryland, Inc., a corporation, and Allan Bratman and David Lawson, individually and as officers of Market Tire Company of Maryland, Inc., 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 Market Tire Company of Maryland, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5481 Randolph Road, Rockville, Maryland.

Said respondent controls and dominates the acts and practices of respondent Nationwide Safti-Brake Distributors, Inc., a wholly-owned subsidiary, which is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5481 Randolph Road, Rockville, Maryland.

Said, respondent, Market Tire Company of Maryland, Inc., controls and dominates the acts and practices of respondent Globe Advertising Co., Inc., a wholly-owned subsidiary, which is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5481 Randolph Road, Rockville, Maryland.

Respondents Allan Bratman and David Lawson are individuals and are officers of respondent Market Tire Company of Maryland, Inc. The said individual respondents formulate, direct and control the acts and practices of respondent Market Tire Company of Maryland, Inc., including those hereinafter set forth. By and through the aforesaid corporation, the said individual respondents formulate, direct and control the acts and practices of said corporate respondents Nationwide Safti-Brake Distributors, Inc., and Globe Advertising Co., Inc. Their address is the same as that of the corporate respondent.

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

PAR. 2. Respondents Market Tire Company of Maryland, Inc., and Nationwide Safti-Brake Distributors, Inc. are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of automobile brake parts, motor vehicle tires, and other automotive products and in the installation thereof. In the course and conduct of their aforesaid business, respondents use the trade names Nationwide Safti-Brake Centers and Market Tire Co.

Respondent Globe Advertising Co., Inc., is now, and for some time last past has been, an advertising agency of Market Tire Company of Maryland, Inc. and Nationwide Safti-Brake Distributors, Inc., and now prepares and places for publication, and for some time last past has prepared and placed for publication, advertising material, including but not limited to the advertising referred to herein in Paragraphs Three, Four and Seven.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning the said automobile brake repair services, motor vehicle tires and other automotive products and services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation, and by means of television broadcasts transmitted by television stations located in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of respondents' said products and services.

In the further course and conduct of their business, as aforesaid, respondents have caused, and now cause, their said products to be shipped from their place of business in the State of Maryland to their various retail outlets for sale, together with their services, to purchasers thereof located in States of Virginia and Maryland and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. By means of advertisements inserted in newspapers and disseminated, as aforesaid, respondents have made various statements and representations of which the following are typical and illustrative, but not all inclusive thereof:

BRAKES
RELINED

by skilled mechanics—while you watch All 4 Wheels
Including Labor & Bonded Linings

$13.95 Plymouth, Chevy, Chevy II, Valiant, Corvair

Ford, Mustang, Falcon (riveted lining) and Most Other American Cars 16.95

Volkswagen Sedans 19.95

7-POINT OVERHAUL
BRAKE
SPECIAL

INCLUDES PARTS AND LABOR
SAVE

9.57 to 12.57 — 33.95 Plymouth Chevy Chevy II Valiant Corvair

Ford, Mustang, Falcon (riveted linings) and Most Other American Cars and Volkswagen Sedans 37.95

Disc Brakes Not Included

1. Reline All Four Wheels with "Mighty-Grip" Bonded Linings. 2. Rebuild All Four Wheel Cylinders. 3. Turn the Drums on all Four Wheels. 4. Bleed, Flush and Refill Hydraulic System with approved SAE Fluid. 5. Clean, Inspect and Repack Front Wheel Bearings. 6. Rotate All Four Wheels. 7. Adjust Brakes on All Four Wheels.

NOTE: Replacement of grease seals and brake springs or repair to master cylinder, if needed, is additional.

NATIONWIDE
SAFTI-BRAKE
CENTERS

PAR. 5. By and through the use of the above-quoted statements and representations, and others similar thereto, but not specifically set forth herein, respondents represented, directly or by implication:

1. That they are offering complete brake repair service for a Plymouth, Chevrolet, Chevy II, Valiant or Corvair automobile for $13.95; Ford, Mustang, Falcon and most other American cars for $16.95; and Volkswagen Sedans for $19.95.

2. That they are offering to completely overhaul the brake system of a Plymouth, Chevrolet, Chevy II, Valiant or Corvair automobile for $33.95; Ford, Mustang, Falcon and most other American cars and Volkswagen Sedans for $37.95.

3. That their business is nationwide in scope.

PAR. 6. In truth and in fact:

1. Respondents are not offering complete brake repair service for a Plymouth, Chevrolet, Chevy II, Valiant or Corvair automobile for $13.95; Ford, Mustang, Falcon and most other American cars for $16.95; and Volkswagen Sedans for $19.95, but are engaged in the practice of "lo-balling" wherein the customers are attracted into respondents' establishments by their advertised low prices, then induced into purchasing additional repairs when faced with respondents' refusal to provide a guarantee unless the said repairs are effected. This fact is not disclosed until after the consumer responds to the advertisement and attempts to purchase the advertised service.

The format of respondents' advertising and the prominent manner in which the price of brake repairs is set forth, lead a substantial number of customers to the impression that this is the full price for a complete brake repair service. This mistaken impression is enhanced by the fact that in many instances car owners are not always aware of the additional repairs necessary for a complete brake repair service. Respondents' failure to disclose in their advertisements that such additional repairs are normally necessary further enhances the capacity and tendency of said advertisements to lead prospective customers to believe that a complete brake repair service is being offered.

2. Respondents are not offering to completely overhaul the brake system of a Plymouth, Chevrolet, Chevy II, Valiant or Corvair automobile for $33.95; Ford, Mustang, Falcon and most other American cars and Volkswagen Sedans for $37.95, but are making such offer for the purpose of attracting prospective customers to their places of business where respondents can convince them that additional repairs are needed. Although respondents' advertising discloses that an additional charge is made for certain repairs not

included in the offer, the disclosure is obscured by small type size, location, and an attractive low priced offer, and fails to disclose that such additional repairs are needed in most cases. In many instances, this disclosure is either not noticed or misunderstood by consumers.

3. Respondents' business is not nationwide in scope; their operations are limited to two states.

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

PAR. 7. In the further course and conduct of their business, as aforesaid, respondents, by means of a television advertisement, disseminated as aforesaid, depict a scene in which drivers of two separate automobiles encounter the same hazardous situation requiring an emergency stop. During such advertisement, respondents make the following representations:

This man just had his brakes fixed—by a guy who pumps gas, fixes flats, changes oil, and fixes brakes.

This man just had his brakes fixed by a specialist—a Nationwide Safti-Brake specialist—a specialist who concentrates on brakes—because you never know—when your brakes will have to be perfect.

The car fixed by a Nationwide brake specialist, or the other one—

[Sound of tires squealing as automobile drivers begin making emergency stop]

Which car would you rather be driving in? At Nationwide, we'll give your brakes a free check-up, and we'll **give you peace of mind.**

PAR. 8. By and through the foregoing representations, and through the use of the trade name "Nationwide Safti-Brake Centers," separately and in connection with the aforesaid newspaper and television advertisements, respondents have represented, directly and by implication, that respondents' utilize unique products in the performance of their brake repair service and that the workmanship of respondent's employees is superior to that of others engaged in similar brake repair services, and results in safer brake performance.

PAR. 9. In truth and in fact, respondents do not utilize unique products in the performance of their brake repair service and the workmanship of respondents' employees is not superior to that of others engaged in similar brake repair services, and does not result in safer brake performance. In fact, in a number of instances, repairs which were made by respondents' employees had defects in workmanship and customers had to return their automobiles to have the unsatisfactory "repairs" corrected.

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

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

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

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered

the comments filed thereunder pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Nationwide Safti-Brake Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5481 Randolph Road, Rockville, Maryland.

Respondent Globe Advertising Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5481 Randolph Road, Rockville, Maryland.

Respondent Market Tire Company of Maryland, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5481 Randolph Road, Rockville, Maryland.

Respondents Allan Bratman and David Lawson are individuals and are officers of respondent Market Tire Company of Maryland, Inc. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Nationwide Safti-Brake Distributors, Inc., a corporation, Globe Advertising Co., Inc., a corporation, Market Tire Company of Maryland, Inc., a corporation, their successors and assigns and their officers, and Allan Bratman and David Lawson, individually and as officers of Market Tire Company of Maryland, Inc. and each of said respondents trading as Nationwide Safti-Brake Centers or under any other trade name or names, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of automobile brake repair services, or any other products or or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising the price of particular automotive repair services such as relining brakes, unless in immediate conjunction

therewith disclosure is made, in a prominent place and in legible type that additional charges may be required, which additional charges are listed covering usual and customary parts and/or labor for the repair services advertised; or in lieu thereof, clearly disclosing in immediate conjunction with the advertised price, and in the same type size, the current average total cost at the time of publication for such services, including the additional parts and labor normally required.

2. Representing, orally or in writing, directly or by implication, that any merchandise or service is offered for sale when the the purpose of the representation is not to sell such merchandise or service in the represented manner; or misrepresenting, in any manner, the nature, cost or extent of any such service or related parts necessary to repair automotive components.

3. Using, in any manner, a sales plan or procedure wherein false, misleading or deceptive representations are made in order to obtain prospects for the sale of merchandise or services.

4. Failing to disclose in all media advertising in close conjunction with respondents' trade name and servicemark "Nationwide Safti-Brake Centers" the geographic trading area or areas where respondent in fact does business, or otherwise misrepresenting apart from said trade name and servicemark usage that respondents' business serves a geographic area larger than is the fact.

5. Using the word "Safti" or any other word, term or phrase of similar import or meaning in respondents' trade name or servicemark; *Provided, however*, That respondents shall be permitted to phase out such term (a) in all media advertising within one month from the date this order is accepted, (b) in all stationery, invoices and other business forms (and in-store promotional material) as the current supply is exhausted, but no later than one year from the date this order is accepted, and (c) in all store signs within one year from the date this order is accepted.

It is further ordered, That respondents deliver a copy of this order to each of their operating departments and divisions engaged in the advertising, offering for sale, sale or distribution to the public at retail of automobile brake repair services or any other products or services and to the manager and employees of each present and every future retail outlet owned and operated by respondents, and obtain a signed statement acknowledging receipt of said order from each individual receiving a copy of same.

It is further ordered, That respondents maintain for at least a two (2) year period, copies of all advertisements, including television and radio advertisements, direct mail and in-store solicitation literature, and any other such promotional material made for the purposes of offering for sale, sale or distribution to the public at retail of automobile brake repair services or any other products or services.

It is further ordered, That respondents maintain for at least a one (1) year period, full and adequate records which disclose the facts upon which representations of the type dealt with in Paragraphs One and Two of this order are based, and from which the validity of such claim can be established.

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

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

IN THE MATTER OF

CARLSON ORIGINALS, INC., ET AL.

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

Docket C-2228. Complaint, June 1, 1972—Decision, June 1, 1972

Consent order requiring a New York City manufacturer of ladies' apparel to cease misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Carlson Originals, Inc., a corporation, and Harvey Axelrod and Stanley Axelrod, individually and as officers of said corporation sometimes hereinafter referred to as respondents have violated the provisions of said Acts and the rules and regula-

tions promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Carlson Originals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Harvey Axelrod and Stanley Axelrod are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of ladies' apparel with their offices and principal place of business located at 512 Seventh Avenue, New York, New York.

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

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

Among such misbranded wool products, but not limited thereto, were wool products, namely ladies' coats and suits, stamped, tagged, labeled or otherwise identified as 100 percent Wool, whereas in truth and in fact, such fabric contained substantially different fibers and amounts of fibers than represented.

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

Among such misbranded wool products, but not limited thereto, were wool products, namely ladies' coats and suits, with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not

exceeding 5 percentum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 percentum or more; and (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act, as amended; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent Carlson Originals, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Harvey Axelrod and Stanley Axelrod are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation.

Respondents are manufacturers of ladies' apparel with their office and principal place of business located at 512 Seventh Avenue, New York, New York.

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 Carlson Originals, Inc., a corporation, its successors and assigns, and its officers, and Harvey Axelrod and Stanley Axelrod, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

Complaint

IN THE MATTER OF

LEO PAYNE PONTIAC, INC., ET AL.

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

Docket C-2229. Complaint, June 1, 1972—Decision, June 1, 1972

Consent order requiring a Lakewood, Colorado, dealer and seller of automobiles, campers and mobile homes to cease violating the Truth in Lending Act by failing to list the cash price, the downpayment required, the annual percentage rate, the deferred payment price, and any other disclosures required by Regulation Z of the said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulations promulgated thereunder and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Leo Payne Pontiac, Inc., a corporation, and Leo Payne, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulations, 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 Leo Payne Pontiac, Inc., is a corporation organized, existing, and doing business under and by virtue of the State of Colorado, with its principal office and place of business located at 300 Wadsworth Boulevard, Lakewood, Colorado.

Respondent Leo Payne is president of the corporate respondent. He formulates, directs, and controls the policies, 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 last past have been, engaged in the advertising, offering for sale, and sale of new and used automobiles, motor homes, and campers to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused, and are now causing, advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, to be placed in various media for the purpose of aiding, promoting, or assisting, directly or indirectly, the credit sales, as "credit sale" is

defined in Section 226.2(n) of Regulation Z, or respondents' said automobiles, motor homes, and campers.

PAR. 4. Subsequent to July 1, 1969, certain of the advertisements referred to in Paragraph Three above have stated the amount of the downpayment required or that no downpayment is required, or the period of repayment, without also stating, as required by Section 226.10(d) (2) of Regulation Z, in terminology prescribed under Section 226.8 of Regulation Z, and in the manner and form prescribed under Section 226.6(a) of Regulation Z, all of the following:

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

PAR. 5. 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.

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 Bureau of Consumer Protection proposed to present to the Commissinon for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its com-

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

1. Respondent Leo Payne Pontiac, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 300 Wadsworth Boulevard, Lakewood, Colorado.

Respondent Leo Payne is president of the corporate respondent. He formulates, directs, and controls the policies, 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.

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 Leo Payne Pontiac, Inc., a corporation, and Leo Payne, individually and as an officer of said corporation, trading under said corporate name or under any trade 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 arrangement, extension, or advertisement of consumer credit in connection with the sale of automobiles, motor homes, campers, travel trailers, or other products or services, as "advertisement" and "consumer credit" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Pub.L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Causing to be disseminated to the public in any manner whatsoever any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, which advertisement states the amount of the downpayment required, or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments of the period of repayment, or that there is no charge for credit, unless it states all of the following items in the manner and form as required by Section 226.10(d) (2) of Regulation Z:

a. the cash price;

b. the amount of the downpayment required or that no downpayment is required, as applicable;

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

d. the amount of the finance charge expressed as an annual percentage rate; and

e. the deferred payment price or the sum of the payments, as applicable.

2. Failing to print the term "annual percentage rate" more conspicuously than other terminology required by Regulation Z, when that term is required to be used by Regulation Z.

3. Failing, in any consumer credit transaction or advertisement, to make all the 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.

4. Failing to deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in any aspect of preparation, creation, and placing of advertising, all persons engaged in reviewing the legal sufficiency of advertising, and all present and future agencies engaged in preparation, creation, and placing of advertising on behalf of respondents, and failing to secure from each such person or agency a signed statement acknowledging receipt of said order.

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

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.

IN THE MATTER OF

PRESTIGE FASHIONS, INC., ET AL.

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

Docket C-2230. Complaint, June 5, 1972—Decision, June 5, 1972

Consent order requiring a New York City manufacturer, distributor, and seller of wearing apparel, including custom-made wedding, cocktail and party

dresses, to cease importing or selling fabrics so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions to the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Prestige Fashions, Inc., a corporation and Ollie Salkind, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Prestige Fashions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Ollie Salkind is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

The respondents are engaged in the business of the manufacture, sale and distribution of wearing apparel, including but not limited to custom-made wedding, cocktail and party dresses, with their office and principal place of business located at 530 7th Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture for sale, the sale or offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products as the term "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were custom-made wedding, cocktail and party dresses.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Prestige Fashions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Ollie Salkind is an officer of the corporate respondent. He formulates, directs and controls the acts and practices and policies of said corporate respondent.

Respondents are engaged in the business of the manufacture and sale of ladies' custom-made bridal and "mother-of-the-bride" gowns with their office and principal place of business located at 530 Seventh Avenue, New York, New York.

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 Prestige Fashions, Inc., a corporation, its successors and assigns and its officers, and Ollie Salkind,

individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from manufacturing for sale, selling or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce any product, fabric, or related material; or manufacturing for sale, selling or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of said products, and effect recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since July 18, 1971, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square

yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric or related material with this report.

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

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

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

IN THE MATTER OF

CHARNITA, INC., ET AL.

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

Docket 8829. Complaint, Jan. 11, 1971—Decision, June 6, 1972***

Order requiring a Fairfield, Pennsylvania, real estate firm to cease violating the Truth in Lending Act by failing to disclose to customers the total cash price, the total downnpayment, the unpaid balance of the cash price, the finance charges, the annual percentage rate, failing to give customers notice of their right to rescind within three days, and other disclosures required by Regulation Z of the said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Charnita, Inc., a corporation, and Charles G. Rist, individually and as an officer of said corporation, hereinafter referred to as

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* Complaint reported as amended by hearing examiner's order of April 6, 1971.

** Respondent filed Petition to Review on August 11, 1972 with the U.S.C.A., 3rd. Cir.

respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Charnita, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Route 1, Fairfield, Pennsylvania.

Respondent Charles G. Rist is an officer of corporate respondent. He formulates, directs and controls the policies, 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 last past have been, engaged in the advertising for sale and sale of real property to the public.

PAR. 3. Since July 1, 1969, in the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time last past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing their customers to execute personal loan notes, installment loan contracts, or retail installment contracts, each hereinafter referred to as the "contract." By and through the use of the contract respondents:

1. Failed, in a number of instances, to designate the amount of cash price for the property as "cash price," as required by Section 226.8 (c) (1) of Regulation Z.

2. Failed, in a number of instances, to disclose the amount of the downpayment in money, and to designate it as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

3. Failed, in a number of instances, to disclose the difference between the cash price and the total downpayment, and to designate that difference as the "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.

4. Failed, in a number of instances, to disclose the sum of the cash price, all charges other than the cash price which are included in the amount financed but which are not part of the finance charge,

and to designate that sum as the "deferred payment price," as required by Section 226.8(c)(8) of Regulation Z.

5. Failed, in a number of instances, to identify respondent Charnita, Inc. as the creditor, as required by Section 226.8(a) of Regulation Z.

6.* By providing in the contract for seller's retention of the deed to the real property until buyer has made scheduled payments under the contract for four months, which provision is a security interest retained by the creditor under Section 226.2(z) and Section 226.8(b)(5) of Regulation Z, failed to make such identification together with all other required disclosures, as required by Section 226.8(a) of Regulation Z.

PAR. 5. Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have extended and are extending to their customers a five percent (5%) discount from the stated price of the property in the event they pay for that property in cash or on or before a specified date. Respondents thereby:

1. Fail to make the separate disclosures required by Section 226.8(o), as amended, of Regulation Z, on the invoice or other evidence of sale, as required thereby.

2. By failing to deduct the amount of the discount for the purpose of computing and disclosing the cash price, as required by Amended Section 226.8(o)(7) of Regulation Z, fail to state accurately the amount of the cash price, as required by Section 226.8(c)(1) of Regulation Z.

3. Fail to itemize the amount of the discount as part of the finance charge, as required by Section 226.8(c)(8)(i) and Section 226.8(o), as amended, of Regulation Z and to include that amount in the finance charge, when disclosing the amount of the finance charge as required by Section 226.8(c)(8)(i) of Regulation Z and when computing the annual percentage rate, as provided in Section 226.8(b)(2) and Section 226.8(o), as amended, of Regulation Z.

PAR. 6. Subsequent to July 1, 1969, respondents have disseminated and are disseminating to prospective purchasers a multi-page brochure which constitutes an advertisement to aid, promote, or assist directly or indirectly extensions of consumer credit, as "advertisement" is defined in Regulation Z.

By and through the use of the statement "Up to five years to pay" in said advertisement, respondents have stated the period of repayment without also disclosing all of the following items, in termin-

* Added to the complaint by hearing examiner's order of April 6, 1971.

ology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z.

(a) The cash price;

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

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

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

(e) The deferred payment price.

PAR. 7. Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing, their customers to execute a promissory note containing a confession of judgement clause (also known as a cognovit note provision), hereinafter referred to as "the note."

*Additionally, respondents have caused and are causing their customers to execute an agreement of sale containing a provision that seller shall deliver to buyer the deed to the real property four months after consummation of the credit sale provided that buyer is not in default on said contract.

*Pursuant to Sections 226.9(a) and 226.2(z) of the Regulation Z, the note and the agreement of sale provision each constitutes a security interest which respondents retain in real property used or expected to be used by some customers as their principal residence. Therefore, pursuant to Section 226.9(a) of Regulation Z, those customers have the right to rescind the credit transaction as provided therein.

*Respondents have failed, and are failing, to provide those customers with the required notice of right to rescind, in manner and form specified in Section 226.9(b) of Regulation Z, in violation of that section.

PAR. 8. Pursuant to Section 103(k) 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 thereby violated the Federal Trade Commission Act.

Mr. Ronald J. Dolan and *Mr. Lewis H. Goldfarb* supporting the complaint.

Mr. Leroy W. Preston, O'Connor and Preston, Baltimore, Maryland and *Mr. H. Thomas Pyle*, Gettysburg, Pennsylvania for respondents.

* Added to the complaint by hearing examiner's order of April 6, 1971.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

MAY 14, 1971

PRELIMINARY STATEMENT

This is a proceeding brought by the Federal Trade Commission by complaint served January 22, 1971. The complaint charges that Charnita, Inc., a real estate development company, and Charles G. Rist, one of its officers, violated the Truth in Lending Act title of the Consumer Credit Protection Act[1] and the regulations issued thereunder,[2] and hence the Federal Trade Commission Act.[3]

By answer filed February 18, 1971 the corporate respondent admitted substantially all of the allegations of the complaint, except that it denied that any purchasers of real estate from it were entitled to recision because the land was not purchased for a home; the individual respondent admitted that he was an officer of the corporate respondent but denied the other allegations of the complaint. Several affirmative defenses were interposed in the answer alleging: that the lots sold were not intended by the purchasers to be used as principal residences; that the alleged violations were unwitting and had been corrected; and that no right to grant certain relief had been delegated to the Commission by the Act.

A public prehearing conference was held on February 26, 1971. During the conference the parties agreed that: (1) there were no issues of fact regarding the corporate respondent, except regarding the purpose for which properties were purchased and its action to comply with Regulation Z after alleged violations were brought to its attention; (2) the only issue of law related to the last three paragraphs of the proposed order annexed to the complaint. It was also agreed that the individual respondent should reconsider his answer. A timetable was set up for discovery in the event the individual respondent decided not to file an answer which paralleled that of the corporate respondent. The initial hearing and subsequent post-hearing procedures were also scheduled.[4]

Complaint counsel served respondents' counsel with a Motion to Amend the Complaint a few days prior to the scheduled formal hearing held March 16, 1971. Respondents at the hearing consented to the amendment on condition that they be granted until March 26, 1971, to answer the amendment and to introduce any evidence

[1] 15 U.S.C. 1601, *et seq.*
[2] Regulation Z, 12 C.F.R. § 226, issued by the Federal Reserve Board.
[3] 15 U.S.C. 41, 45.
[4] Prehearing Order No. 1 dated February 26, 1971.

deemed necessary. Thereupon the complaint was amended as requested [5] and a stipulation agreed upon by the parties was incorporated in the record as CX 1 [6] and the exhibits referred to therein were also received in evidence (Tr. 18–21). The hearing was then adjourned.

On March 25, 1971, respondents filed their answer to the amended complaint in which they deny that the provisions of the agreement constitute a security interest or that any purchaser is entitled to the right of recision by reason of the use of a note or the contract or either of them. The answer repeated the original answer in other respects.

On March 26, 1971, the hearing reconvened and an amendment to the stipulation (CX 1) was incorporated in the record (Tr. 27). Thereafter, the hearing was concluded and the record closed (Tr. 27). Findings, conclusions and briefs were filed April 14, 1971, and comments thereon April 23, 1971.

BASIS FOR DECISION

This decision is based solely on the admissions contained in the answer, the stipulations of the parties and the exhibits received pursuant thereto.

The hearing examiner has studied the proposed findings, conclusions and order submitted and the briefs filed. All findings not adopted in terms or in substance are denied as irrelevant, immaterial or erroneous. The following are the findings of fact, reasons for decision, conclusions and order.

FINDINGS OF FACT

1. Respondent Charnita, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Route 1, Fairfield, Pennsylvania. Charnita, Inc., was originally 97 percent owned by respondent Charles G. Rist and all directors, save one, were employees. In October 1970, an independent board of direc-

[5] The amendment, among other matters, added allegations to Paragraphs 4 and 7 of the complaint that the seller's contract provided for the retention of the deed for 4 months after consummation of the sale and its delivery if the buyer was not in default, (see order filed April 7, 1971, confirming order on the record (Tr. 16).

[6] The following abbreviations will sometimes hereafter be used:
C.—Complaint
A.—Answer
S.—Stipultion
CX—Commission Exhibit
RX—Respondents Exhibit
Tr.—Transcript

tors was elected. Respondent Rist whose stock was diluted to 62 percent in 1969, trusteed 80 percent thereof in November 1970 (CX 1; RX 1).

According to respondent Charnita's annual report, its sale of land in the fiscal year 1970 amounted to $4,280,747 and it had contracts receivable in the amount of $1,723,474. As of September 30, 1970, $1,325,000 of the net receivables had been pledged to banks as collateral on loans amounting to $996,910. The sales figure reported includes sales where a downpayment of 10 percent of the sale price was received (CX 7, Consolidated Balance Sheet, Consolidated Statement of Operations and Notes 2 and 3).

2. Respondent Charles G. Rist is president and a member of the board of directors of the corporate respondent. Prior to October 29, 1970, he formulated, directed and controlled the policies, acts and practices hereinafter set forth. His address is the same as that of the corporate respondent. Respondent Rist is beneficial owner of some 62 percent of the stock of the corporate respondent and previously owned 97 percent of it (CX 1; RX 1).

3. Respondents are now, and for some time last past have been, engaged in the advertising for sale and sale of real property to the public (CX 1).

4. Since July 1, 1969, in the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time last past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System (CX 1).

5. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing their customers to execute promissory notes and agreements for sale, hereinafter referred to as the "contract." By and through the use of the contract, respondents:

(a) Failed, in a number of instances, to designate the amount of the cash price for the property as "cash price," as required by Section 226.8(c)(1) of Regulation Z.

(b) Failed, in a number of instances, to disclose the amount of the downpayment in money, and to designate it as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

(c) Failed, in a number of instances, to disclose the difference between the cash price and the total downpayment, and to designate

that difference as the "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.

(d) Failed, in a number of instances, to disclose the sum of the cash price, all charges other than the cash price which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to designate that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

(e) Failed, in a number of instances, to identify Charnita, Inc., as the creditor as required by Section 226.8(a) of Regulation Z.

(CX 1.)

In the promissory note (CX 4B) the following language appears in the authority to confess judgment "provided however that all real estate used or expected to be used as the principal residence of the undersigned shall be exempt from the lien of a confessed judgment hereunder." In the Agreement of Sale the following question appears with space for a Yes or No answer. "Do you expect to use this lot as your principal residence?". (CX 4.)

6. Subsequent to July 1, 1969, respondents in the ordinariy course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, extended to their customers a five percent (5 percent) discount from the stated price of the property in the event they pay for that property in cash on or before a specified date. Respondents thereby:

(a) Failed to make the separate disclosures required by Section 226.8(o), as amended, of Regulation Z, on the invoice or other evidence of sale, as required thereby.

(b) By failing to deduct the amount of the discount for the purpose of computing and disclosing the cash price, as required by Amended Section 226.8(o)(7) of Regulation Z, failed to state accurately the amount of the cash price, as required by Section 226.8(c)(1) of Regulation Z.

(c) Failed to itemize the amount of the discount as part of the finance charge, as required by Section 226.8(c)(8)(i) and Section 226.8(o), as amended, of Regulation Z and to include that amount in the finance charge, when disclosing the amount of the finance charge as required by Section 226.8(c)(8)(i) of Regulation Z and when computing the annual percentage rate, as provided in Section 226.8(b)(2) and Section 226.8(o), as amended, of Regulation Z.

(CX 1.)

7. Subsequent to July 1, 1969, respondents disseminated to prospective purchasers a multi-page brochure accompanied by a letter. The

brochure constituted an advertisement to aid, promote, or assist directly or indirectly extensions of consumer credit, as "advertisement" is defined in Regulation Z. (CX 1.)

8. By and through the use of the statement "Up to five years to pay" in said brochures (CX 6), respondents stated the period of repayment without also disclosing all of the applicable items, in terminology prescribed under Section 226.8 of Regulation Z, required by Section 226.10(d)(2) of Regulation Z. (CX 1.)

9. Subsequent to July 1, 1969, some customers have purchased and do purchase lots on credit from respondents with the intention of building a principal residence thereon at some future date (CX 1). The corporate respondent's sales brochure on its cover described the property offered as "A Residential and Recreation Community." (CX 6.)

10. Subsequent to July 1, 1969, and prior to March 20, 1970, in connection with their credit sales, respondents have caused their customers to execute and deliver to respondent Charnita, Inc., a promissory note containing a confession of judgment clause, as represented by CX 2 and CX 3. (CX 1.)

11. From July 1, 1969, through March 20, 1970, approximately 470 customers purchased property from respondent Charnita, Inc. on credit (CX 1).

12. Subsequent to November, 1970, as provided in the Agreement of Sale (CX 5), when a customer finances the purchase of real property through Charnita, Inc., by the execution of a promissory note, Charnita, Inc., shall make, execute and deliver the deed for such real property, four months from the date of said agreement, provided that buyer is not in default on the note. This provision does not appear on the same page as the Truth in Lending disclosure statement (CX 1). The Agreement of Sale (CX 5) contains no representation that the lot is to be used or not used as a residence but the promissory note contains the following proviso in the clause authorizing a confession of judgment: "provided however that all real estate used or expected to be used as the principal residence of the undersigned shall be exempt from the lien of confessed judgment hereunder." (CX 5, 5A.)

REASONS FOR DECISION

Since there are not factual questions of credibility because this record is based entirely on a stipulation and on the exhibits introduced in connection with the stipulation, the hearing examiner's task in expressing his reasons is largely one of stating his opinion con-

cerning the impact of the facts and applicable law and the terms of the order.

At the outset the problem is whether or not respondent Charles G. Rist, the entrepreneur of respondent Charnita and originally the owner of substantially all of the common stock, should be held individually as well as an officer of the corporation. For almost the entire period under consideration, that is from July 1, 1969 until October 29, 1970, it was stipulated that respondent Rist formulated, directed and controlled the policies, acts and practices of the corporate respondent including the acts and practices set forth in the balance of the stipulation. He signed the letter accompanying the respondent's advertising brochure and until the independent board of directors was selected late in 1970, he presumably controlled the board of directors which consisted, save for an accountant, entirely of employees of the company. At the time the complaint was served, his stock interest had been substantially diluted, he had trusteed his stock (for what purpose we have no information) and an independent board of directors was in control. The corporation is a substantial one although its assets are heavily pledged and there is no indication that it will be dissolved for the purpose of avoiding the order. However, since the corporate respondent is dependent upon continued financing and there were continuing violations for a long period of time under the individual respondent's direction and control, it appears to the hearing examiner that the order should include respondent Rist as well as the corporate respondent. This opinion is reinforced by counsel's decision to stipulate the facts rather than to litigate the question; because, in the stipulation the acts described as the basis for the violations are described as those of respondents.

The next serious question is the authority of the Federal Reserve Board to make its rulings under Regulation Z. This hearing examiner considered substantially the same problem in the matter of *Zale Corp.*, Docket No. 8810 [78 F.T.C. at 1223–1224], and reached the conclusion that if the regulations were designed to implement the underlying intent of the Act, then clearly the Federal Reserve Board had the power to promulgate them and its regulations must be meticulously observed. Since the *Zale* matter is before the Commission on appeal and it has published no decision as yet, the hearing examiner adheres to his position taken in that case.

The third serious question deals with the power of the Commission in 1971 to grant a right of recision to a purchaser who may have bought his property right after the effective date of the Truth in Lending Act, that is sometime in July of 1969. The language of

the Act and of the regulation, Section 226.9 which gives the right of recision for three business days from the date of consummation of the transaction "or the date of delivery of the disclosures required under this section, whichever is later," make it clear that the right of recision continues to the date when the disclosures are made and three days thereafter. The disclosure of the right of recision being one of the disclosures required, the regulation seems to be very clear on this subject.

Thus, wherever the right of recision attaches, it continues for three days after the notification of the right of recision is supplied the purchaser as well as al the other disclosures. Having been required to make such a disclosure, respondents continue in violation of the Act and the regulations until they have made it.

Some practical problems are likely to occur but these can be avoided by the form of the order which has been changed from the form proposed. The first practical problem that comes to mind is that there must be some provision for notification by the purchaser to the seller of the fact that he intends to use the parcel of land purchased for the purpose of a principal place of residence. For a time respondents provided for such notification in the agreement of sale. Thus, as to these purchasers respondents cannot now claim that they did not know to whom they were required to send out a notice of recision. At a later time, respondents changed the form of their agreement and did not provide for any such notification. Because of the change and in order that the right may not hereafter be confused because of confusion concerning the intention of the parties at the time the sale is made, it seems that the order should provide that the seller require notification to be given by the purchaser at the time of signing the contract as to his intention, so that notice of the right of recision can be given if the property is intended for use as a residence. To the extent that the corporation has a record, and it is a corporate record rather than that of the individual, the corporation should be required to cease remaining in violation of the Act by delivering the appropriate notice of recision to owners of property from whom it has obtained a security interest. This will mean an examination of all of the sales agreements on credit since July 1969, a determination of whether the papers show that a security interest was retained and a determination of whether there was notification by the purchaser that he intended to use the property as a principal place of residence. If the particular papers fail to disclose that a security interest was retained or to be retained; then, of course

the notice of recision was not required and none should hereafter be required. The order should not require a notice of recision where the facts were not clear. If it did, disgruntled purchasers would be tempted to claim an intent they never had.

Another practical problem concerns persons who have sold the property after paying the entire purchase price. It would seem to the hearing examiner that since the Act was intended to protect the home owner who was purchasing his home on credit with a security interest reserved that the right of recision is a personal right of the original owner and is not transferred to a subsequent purchaser. It seems to this examiner also that when the promissory note expressly excludes a lien on the property to be used as the principal residence of the purchaser, there would not be a security interest on that home and it would not be within the terms of the Act. On the other hand, if, as respondents seem to admit, there is a lien for the purchase price until the delivery of the deed arising by reason of a contract (see respondents' findings of fact and conclusions of law filed April 14, 1971, page 22), it would seem clear that under the present agreement which calls for delayed delivery of the deed there is retention of a security interest for a period of four months. Hence, the notice of the right of recision should have been given.

The final question deals with the right of the Commission to require that respondents now place themselves in a position of compliance with the Act and the regulations. In the proposed order this is couched as an affirmative obligation. An identical effect, however, is secured by amending the order and requiring the corporate respondent to cease remaining in violation of the Act by delivering the notice of recision it was originally required to deliver. This portion of the order has been further amended to limit it to the corporate respondent and to cases where the customer notified the respondent that he expected to use the property as his principal place of residence. There is a further statement that this portion of the order shall not apply to customers who have sold the property purchased. It seems to the hearing examiner that the Federal Trade Commission has ample power to require that the respondent cease violating the act and that this is all that the order following prescribes. For the foregoing reasons the following conclusions and order are made.

CONCLUSIONS

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

2. Respondents have violated the provisions of Regulation Z and of the Truth in Lending Act title of the Consumer Credit Protection Act (15 U.S.C. 1061 *et seq.*).

3. The following order should issue.

ORDER

It is ordered, That respondents Charnita, Inc., a corporation, and its officers, and Charles G. Rist, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with any consumer credit sale of real property or in any advertisement to aid, promote, or assist directly or indirectly any extension of credit, as "credit sale" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to use the term "cash price" to designate the cash price of the property which is the subject of the transaction, as required by Section 226.8(c)(1) of Regulation Z.

2. Failing to disclose the amount of any downpayment in money as the "cash downpayment," using that term, as required by Section 226.8(c)(2) of Regulation Z.

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

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

5. Failing to identify respondent Charnita, Inc., as the creditor, as required by Section 226.8(a) of Regulation Z.

6. Failing, in connection with any offer of a discount for prompt payment, to make the separate disclosures required by Section 226.8(o), as amended, of Regulation Z, on the invoice or other evidence of sale, as required thereby.

7. Failing, in connection with any offer of a discount for prompt payment, to exclude from the amount of the cash price the greatest amount of discount for prompt payment of which the customer may avail himself under the terms of the offer, as required by Section 226.8(c)(1) of Regulation Z.

8. Failing, in connection with any offer of a discount for prompt payment, to itemize the amount of the discount as part

of the finance charge, as required by Section 226.8(c)(8)(i) and Section 226.8(o), as amended, of Regulation Z, and to include that amount in the finance charge as required by Section 226.8 (c)(8)(i) of Regulation Z and when computing the annual percentage rate, as required by Section 226.8(b)(2) and Section 226.8(o), as amended, of Regulation Z.

9. Stating in any advertisement the period of repayment, without stating all of the following items, in the manner and form prescribed by Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

(a) the cash price;

(b) the amount of the downpayment required;

(c) the number, amount and due dates or period of repayments scheduled to repay the indebtedness;

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

(e) the deferred payment price.

10. Failing, in any transaction arising in the future in which a customer has the right to rescind as provided in Section 226.9 of Regulation Z, to provide the customer with the notice of right to rescind, in the form and manner provided in that Section prior to consummation of the transaction and in connection therewith to provide a question seeking a statement in writing designating whether or not said customer expects to use the lot as his principal place of residence.

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

12. Failing to deliver a copy of this order to cease and desist to all present and future employees or other persons engaged in the sale of respondents' real property or in the creation of any advertisement therefor, and to secure from each such employee or other person a signed statement acknowledging receipt of said order.

It is further ordered That the corporate respondent herein shall cease to remain in violation of the Truth in Lending Act within sixty (60) days after service upon it of this order, by delivering notice of a right to rescind, in the manner and form set forth in Section 226.9(b) of Regulation Z, to each customer who purchased real property from it in any credit transaction consummated on or

after July 1, 1969, in which the customer notified respondent that he expected to use that property as his principal place of residence and in which respondent has retained or acquired or will retain or acquire a security interest in that property. This portion of this order shall not apply to customers who have previously sold the property purchased.

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

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

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

Opinion of the Commission

JUNE 6, 1972

By MacIntyre, *Commissioner:*

This matter is before the Commission on appeal from an initial decision of a hearing examiner in which it was found that respondent Charnita, Inc., a firm engaged in the development and sale of residential and recreational real property, and its president, Charles G. Rist, had violated the Consumer Credit Protection Act (Truth in Lending title), 15 U.S.C. 1601 *et seq.*, the regulations issued thereunder by the Federal Reserve Board (Regulation Z, 12 CFR § 226), and thus the Federal Trade Commission Act, 15 U.S.C. 41, 45. Several violations of the disclosure provisions of the Truth in Lending Act were found by the hearing examiner, including failure to disclose, in its credit sales of real property, such information as the amount of the "cash price," the "cash downpayment," the "unpaid balance of cash price," the "deferred payment price," and the like. In addition, the hearing examiner found that respondents had failed to provide certain of its customers with notice of their right to rescind under Section 226.9 of Regulation Z.

The only serious issues in dispute in the matter before us relate to respondents' obligation to give certain purchasers an opportunity to

rescind the agreement between them and to provide them with notice of their right to do so.[1]

Section 125(a) of the Consumer Credit Protection Act (hereinafter referred to as the Act) provides that:

> * * * [I]n the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosure required under this section and all other material disclosures required under this chapter, whichever is later * * *.

It is apparent, therefore, that respondents' obligation to give notice of a right to rescind, depends, as a threshold matter, upon whether the confession of judgment clauses retained by respondents in their contracts of sale are security interests subject to the right of recision.

Complaint counsel rely on the regulations promulgated by the Board of Governors (heinafter referred to as the Board) and on the Interpretations issued by the Board which specifically include confessions of judgment among the class of interests giving rise to recision rights under Section 125(a).[2] Respondents argue, however, that by thus defining or expanding upon the definition of security interests, the Board of Governors has exceeded its statutory authority and, therefore, that respondents' retention of confessions of judgment did not make them subject to the requirements of Section 125(a). Inasmuch as Regulation Z and the Interpretations of the regulations clearly make confessions of judgment subject to recision re-

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[1] The examiner, apparently through inadvertence, omitted in his order a provision correcting an additional disclosure violation, respondents failure "to identify Charnita, Inc. as a creditor as required by Section 226.8(a) of Regulation Z." Initial Decision, page 899, Finding 5(e). The order will be modified to include an appropriate prohibition of further such violations.

[2] Section 226.2(z) of Regulation Z defines security interest as: "any interest in property which secures payment or performance of an obligation. The terms include * * * consensual or confessed liens whether or not recorded, * * * Section 226.202 of the Federal Reserve Board's interpretations further define the interests referred to in the statutes:

"Under § 226.2(z) 'security interest' is defined to include confessed liens whether or not recorded and, in general, to include any interest in property which secures payment or performance of an obligation * * *.

"In some of the States, confession of judgment clauses or cognovit provisions are lawful and make it possible for the holder of an obligation containing such clause or provision to record a lien on property of the obligor simply by recordation entry of judgment; the obligor is afforded no opportunity to enter a defense against such action prior to entry of the judgment.

"Since confession of judgment clauses and cognovit provisions in such States have the effect of depriving the obligor of the right to be notified of a pending action and to enter a defense in a judicial proceeding *before* judgment may be entered or recorded against him, such clauses and provisions in those States are security interests under § 226.2(z) and for the purposes of § 226.7(a) 7, § 226.8(b) 5, and § 226.9. This is the case even if the judgment cannot be entered until after a default by the obligor."

quirements of the Act, we could dismiss this aspect of the complaint against respondents only upon a finding that the Board exceeded its authority.

Under Section 105 of the Act, the Board is authorized to promulgate regulations "to carry out the purposes of" the Act. We believe that Section 125(a) was intended to provide and guarantee a cooling off period to persons entering contracts carrying particularly high risks. Specifically, the purpose of the legislation was to insure that purchasers entering certain types of agreements under which they risked to lose their dwellings, should they default, would have a reasonable opportunity to consider the risks and to weigh the merits of subjecting themselves to them. Confession of judgment clauses, by depriving the obligor of an opportunity to enter a defense in an action against him, represent the type of risk which, under the statute, an obligor is entitled to consider for three days without being bound. It is the type of risk which, under the Act, gives rise to the right to rescind; and it is our view, therefore, that by including confession of judgment clauses in the category of interests subject to recision rights, the Board was well within its statutory mandate to prescribe regulations which effectuate the purposes of the legislation.

Commissioner Dennison in his separate statement, and respondents in their argument before the Commission have taken the position, however, that the Board further exceeded its statutory authority by making rescindable transactions in which no present security interest is retained but which may result in the future creation of a security interest. It is argued that the respondents herein will obtain an interest in the property of the obligors only upon the happening of a future and uncertain event and, therefore, that the contract between respondents and the obligator is not a "transaction in which a security *is retained or acquired.*" Commissioner Dennison further refers to *N. C. Freed Co., Inc. v. Board of Governors*, CCH Consumer Credit Guide, Par. 99,356 (W.D. N.Y. 1971), which found that the Board has exceeded its authority by including certain mechanic's liens among those which give rise to the right to rescind.

We note at the outset that confessions of judgment, which the Board has defined as security interests for the purposes of the Act, are retained at the time of and as part of the consideration for the transaction. While it is true that, as with other security interests, certain events may be necessary to perfect the interest and to reduce it to judgment—*i.e.*, recordation, default, a suit by the creditor, judgment confessed, etc.—the confession of judgment/security inter-

est exists at the time of the transaction and *without* the occurrence of these subsequent events.

Furthermore, we feel that the *Freed* decision is not dispositive of the issue presented herein. The confession of judgment which constitutes the security interest retained by respondents in its transactions is distinguished in several important respects from the mechanic's liens dealt with in *Freed*. There the court noted that if the Board was correct in making mechanic's liens subject to recision requirements:

> All of the plaintiff's contracts would be rescindable by the obligor without restriction because of the likelihood that a security interest *would be acquired in the future* by subcontractors, materialmen or others *not creditors under plaintiff's contracts. Even though plaintiffs might effectively waive all lien rights*, present or future, their contracts are still rescindable under [the Regulations] because there is a likelihood that a security interest will be acquired in the future by others not creditors under the contract. Such a result was not contemplated under the provisions of Section 125(a) of the Act. That much of the regulation pertaining to security interests that will be retained or acquired is beyond the Board's power and is an invalid implementation of § 125(a) * * *. That liens which may come into existence in the future by operation of law, such as materialmens and mechanics liens, were not intended to come within the scope of Section 125(a), seems clear from the language of the section which provides that the exercise of the right to rescind voids "any security interest given by the obligor." *An obligor does not give or assent to a mechanics or a materialmens lien. It arises by operation of law, even against the obligor's wishes* * * *. A mechanics or a materialmens lien *is not one in existence* nor is it created by mutual consent * * *.

In contrast, the security interests—confession of judgments here—are held by the creditor in the transaction, arise by mutual consent of the parties and, as previously discussed, do not arise in the future but exist at the time the transaction is consummated. These security interests, therefore, are not the type considered by the court in *Freed;* and they do trigger the rescission rights of Section 125(a).

Respondent claims that even if confessions of judgment are security interests subject to Section 125(a), the obligors' rescission rights have been extinguished by respondents' subsequent waiver of any security interest in residential property. Respondents further argue that if the Commission were to order them to provide a three-day rescission period and notice thereof to obligors, it would be creating and imposing upon respondents obligations which do not already exist under the law. We disagree.

The Act provides that a purchaser will have the right to rescind for three days from the time notice is received provided that in the underlying transaction a security interest is retained in his resi-

dence. Such an interest was retained in this matter, and the purchaser's right to rescind and to notice arose at that time and could not subsequently be extinguished until three days after he had received notice of his Section 125 rights.

Our order, which will require respondents to give notice of that right and will enable purchasers entitled to such notice to rescind the transactions, is not based on a technical reading of the statute, as respondent would have us believe, but is based on our belief that this is the best method by which to restore to these obligors rights to which they were entitled under the statute and to correct the injury they may have sustained by being deprived of these rights. Although these obligors no longer are threatened with the possibility of foreclosure on their residential property, such a threat did exist for the period between the time they signed the agreement containing the confession of judgment and the time that respondents waived their security interest. During that time, an obligor advised of his right to rescind might have chosen to terminate the agreement. We must assume, however, that without notice, such an obligor was unaware of his rights; and in these circumstances it is possible that an obligor may have continued to meet his obligations under a contract he would have preferred to rescind in the fear that should he default, judgment would be executed upon his property. The potential for this type of injury is the result of respondents' failure to comply with the requirements of the Act, a failure which was not cured by their subsequent waiver of security interests in the residential property of purchasers; and, therefore, respondents will be required by our order to give notice of the right to rescind to those purchasers qualifying for such notice under the Act.

Respondent, Charnita, Inc., a Pennsylvania corporation with its principal office and place of business located at Fairfield, Pennsylvania, is engaged in the business of selling land for recreational and residential homesite purposes, its sales for fiscal 1970 amounting to $4,280,747. A number of its sales are credit transactions, its contracts receivable amounting to $1,723,474 in 1970.

Section 226.9 of Regulation Z, issued by the Federal Reserve Board pursuant to the Truth in Lending Act, provides that, with certain exceptions not applicable here, any purchaser of real estate shall have a three-day right to rescind the transaction where, first, it is a "credit transaction in which a security interest is or will be retained or acquired" by the seller and where, secondly, the property "is used

or is expected to be used as the principal residence" of the buyer.[3] From July 1, 1969 (the effective date of Regulation Z) through March 20, 1970, approximately 470 customers purchased property from Charnita on credit.[4] In all of these credit sales, and in others made since July 1969 except for those consummated between March 20 and November 1970, respondents retained a "security interest" in the property in the form of promissory notes containing confession of judgment clauses or retention of the deed until a specified number of installment payments had been made.[5] Because respondent Charnita sells both *recreational* and residential homesites, however, not all of these 470 purchasers bought property which "is used or is expected to be used as the *principal residence* of the customer" (emphasis added) and which are thus entitled to rescind under Section 226.9 of Regulation Z. The record discloses only that "some" of those customers satisfy this "use" criteria of the regulation, *i.e.*, some but not all of Charnita's customers have purchased since July 1, 1969, and do purchase, lots on credit from respondents with the intention of building a principal place of residence thereon at some future date.[6]

As to those customers who bought lots from respondents on credit since July 1, 1969, and who, in addition, intended at some future time to erect their principal place of residence thereon, respondents have an unfulfilled and continuing duty to give notice, in accordance with Section 226.9 of Regulation Z, of the customers' right of rescission. Until such notice is given, respondents are thus in continuing violation of the statute. Before such notice can be given, however, the particular customers entitled to it—those that had the necessary "use" intent at the time of purchase—must be identified.

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[3] "Section 226.9—Right to Rescind Certain Transactions. (a) General rule. Except as otherwise provided in this section, in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day [ftn. omitted] following the date of consummation of that transaction or the date of the delivery of the disclosures required under this section and all other material disclosures required under this Part, whichever is later, by notifying the creditor by mail, telegram, or other writing of his intention to do so. * * *

"(b) Notice of opportunity to rescind. Whenever a customer has the right to rescind a transaction under paragraph (a) of this section, the creditor shall give notice of that fact to the customer by furnishing the customer with two copies of the notice set out below, one of which may be used by the customer to cancel the transaction. * * *"

[4] CX 1; Initial Decision of the hearing examiner (May 17, 1971), p. 7 [p. 900 herein].

[5] See Finding 15 of the Commission's Findings as to the Facts, Conclusions and Order, *infra* 917.

[6] CX 1, I(9), p. 4. Initial Decision of the hearing examiner (May 17, 1971), p. 7 [p. 900 herein].

The appropriate way to make such a determination in the first instance is of course simply to ask the purchaser, at the time of the initial transaction, whether he intends to use the property as his principal place of residence either then or at some time in the future. If he says no, then no right of rescission accrues to him; if, on the other hand, he says yes, then he is entitled, under Section 226.9 of Regulation Z, to notice of his right to rescind.

Here, however, except for a brief period in 1970,[7] respondents failed to make any such inquiry of its customers at the time the land was initially purchased, the result being that, if respondents are not to remain in continuing violation of the law in this regard, a fair and workable method must be devised for distinguishing those of respondents' post-July 1969 customers that intended to use the property as their principal place of residence from those that did not so intend. Counsel supporting the complaint proposes, for example, that respondents should simply be directed to send *all* of their post-July 1969 customers a notice informing them that they (a) have a right to rescind *if* they intended to so use the property and that (b) they can claim that right by informing respondents, within fourteen (14) days, that they in fact had such an intent. The argument here is that unless the customers are told the legal significance of their answers to the inquiry—that is, unless they are told how their property rights will be affected—they may give either casually-considered or perhaps no answers at all when asked what use they intended to make of that property.

Respondents argue, on the other hand, that to inform all of its post-July 1969 customers that they can acquire a right to rescind by simply signing an affidavit that they had the intent in question at the time they bought the property would have the practical effect of giving a right of rescission to at least some customers that are not in fact entitled to it. The contention is that there are always a number of buyers of any commodity that, for reasons unrelated to the Truth in Lending Act or any other statute, would like to rescind the purchase transaction and get their money back. To prevent such an unfair enlargement of the number of customers entitled to rescind, therefore, respondents argue that a narrower form of notice must be devised.

We agree that the order provision proposed by complaint counsel is too broad in this regard. Only those customers who did in fact intend to use the purchased property as a principal place of residence are entitled to a right of rescission under Section 226.9 of Regu-

[7] Finding 15, note 5, *supra*; CX 4.

lation Z and it would thus be contrary to that regulation to employ an enforcement provision that, in its practical operation, enabled others not entitled thereunder to receive that right as well. Our order will thus direct respondents to end their continuing violation of the statute by (a) first asking each post-July 1, 1969 customer, in writing and in a clear and unambiguous manner (Appendix A and B to our order), whether he did or did not purchase the property for use as his principal place of residence and (b) then, as to each such customer who answers in the affirmative, sending the notice of right to rescind that is prescribed by Section 226.9 of Regulation Z.

An appropriate order will be entered.

Separate Statement of Commissioner Dennison, Concurring In Part and Dissenting In Part

Simply stated, the majority found that "the confession of judgment provisions in the promissory notes respondents caused their customers to execute * * * and respondents' retention of the deed to the real property purchased until the purchaser has made four scheduled payments under the contract * * * constitute a 'security interest' in the property within the meaning of that term as used in * * * [Regulation Z]."

The failure to give customers a 3-day notice of their right to rescind the transaction where a security interest is retained or acquired in property used or expected to be used as the residence constitutes a violation of Section 125 of the Truth in Lending Law (15 U.S.C. 1635). Such violation is also deemed a violation of Section 5 of the Federal Trade Commission Act.[1] As a remedy, the majority has ordered the respondents to cease and desist from violating Regulation Z and required them to send a notice to all post-July 1, 1969, customers ascertaining whether they intended to use the property purchased from respondents as their principal place of residence, and, should the customers' responses be in the affirmative, to give them the required notice and opportunity to rescind.

There exists considerable diversity in the cases being developed by the Federal courts in construing the meaning of "security interest" as that term is used in Section 125 of the Truth in Lending Law and Section 226.9 of Regulation Z (the term is defined at Section 226.2 of Regulation Z). While giving due emphasis to the Board of Governors of the Federal Reserve System (hereinafter referred to as

[1] By virtue of Section 108 of the Truth in Lending Act.

the FED), and being cognizant of the fact their regulations are entitled to great deference,[2] I am of the opinion the FED exceeded their authority in construing confession of judgment or cognovit provisions in promissory notes as being security interests.[3]

There are two cases bearing on this issue. In *Douglas* v. *Beneficial Finance Company of Anchorage*,[4] the court upheld the FED's interpretation of security interest as applying to cognovit provisions. At approximately the same time, another District Court in New York ruled that the FED exceeded its authority in interpreting security interests to include consensual liens predicated upon mechanics' lien law.[5] Notwithstanding the Alaska Court's natural desire to interpret the FED regulations to accomplish what it viewed as the indicated purpose of the Act, I am of the view that since Truth in Lending imposes penal sanctions, its provisions must be strictly construed. See *Mourning* v. *Family Publications Service, Inc.*, CCH Consumer Credit Guide ¶ 99,337 (5th Cir. 1971).

A cognovit provision in a note is nothing more than a warrant whereby the maker authorizes judgment to be confessed for him based upon the record. At the time of the consummation, the creditor does not have a lien or security interest in the property, nor is he entitled to one. It should be pointed out at this juncture that the lien, if any, which may be created by a cognovit provision is a judgment lien; *i.e.*, a lien predicated upon judgment made by a court of competent jurisdiction rendered in accordance with applicable state law.

Under most situations, in order to permit the creditor to obtain a judgment lien based upon a cognovit provision there must be a default by the maker, a suit brought, the warrant exercised, judgment confessed in court and entered prior to filing of the judgment lien. Regardless of one's opinion of the merits and social desirability of cognovit provisions, they are valid in many states, including Pennsylvania where the transactions involved herein took place, and form a part of the judicial system of those states. For the FED to single out judgment liens predicated on cognovit provisions and label them security interest is an unwarranted invasion into a state's internal judicial process.

As pointed out in the *Freed* case, the security interest subject to the notice and right to rescission is that "given by the obligor."[6]

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[2] *Udall* v. *Tallman*, 380 U.S. 1 (1965).

[3] The FED has ruled that a cognovit provision constitutes a confessed lien, ergo a security interest. FED interpretation dated May 26, 1969.

[4] CCH Consumer Credit Guide ¶ 99,295 (D.C. Alaska 1971).

[5] *N.C. Freed Company, Inc.* v. *Board of Governors*, CCH Consumer Credit Guide ¶ 99,356 (D.C.W.D. N.Y. 1971).

[6] Section 125(b) of Truth in Lending Act.

The obligor, by signing a note containing a confession of judgment clause has not given a security interest, rather he has given an inchoate right to confess a judgment. Whether a lien arises therefrom is subject to the occurrence of certain conditions subsequent and much speculation.

Therefore, I am of the opinion that the FED exceeded the authority delegated in Section 105 of the Truth in Lending Law by including confessed liens in the definition of security interest. Consequently, respondents have not violated the Truth in Lending Law by failing to give a notice of rescission when it required its obligors to execute notes containing cognovit provisions.

The second branch of the majority's opinion deals with the respondents' practice of withholding delivery of the deed of conveyance until their customers had made four scheduled monthly payments. This practice is analogous to a land contract situation which the FED had interpreted as a security interest.[7] A plain reading of the statutory provision creating the right of rescission would indicate that security interest must create an interest in the creditor which is paramount to that of the obligor. Expressing this another way, a security interest is an interest in real property which would effectively preclude a bona fide purchaser for value from acquiring an interest superior to that of the obligor. Certainly the withholding of the deed until four installments have been paid constitutes a retention of a security interest which would be as effective as duly filing a mortgage against the obligor's interest.

In conclusion, I find that respondents' use of "confession of judgment" provisions in their note forms does not constitute a security interest, as that term is defined in the Truth in Lending Law, and, consequently, they are not obligated to give notice of opportunity to rescind to customers acquiring lots by this method. I do find, as did the majority, that the retention of the deed for a period of four installments does constitute a security interest. Therefore, I am of the opinion that customers who purchased land under this method and who expected to use it as a residence are entitled to a notice of opportunity to rescind. The method adopted by the majority to determine which customers had such an expectation is appropriate.

Findings As To The Facts, Conclusions And Order

The Federal Trade Commission issued its complaint in this matter on January 11, 1971 (amended on April 7, 1971), charging that

[7] FED letter of June 5, 1970, No. 347, by Frederick Solomon, Director, CCH, Consumer Credit Guide ¶ 30,402.

respondent Charnita, Inc., a firm engaged in the development and sale of residential and recreational real property, and its president, Charles G. Rist, had violated the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and the regulations promulgated thereunder by the Federal Reserve Board (Regulation Z, 12 CFR § 226), in failing to make certain disclosures in its credit transactions with purchasers of its real property and in failing to give certain of its customers notice of their right to rescind as required by those implementing regulations. A prehearing conference was held on February 26, 1971, and hearings were held on March 16 and March 26, 1971, the evidence received consisting of a stipulation between the parties as to the facts (CX 1) and a number of documentary exhibits (CX 2–7; RX 1–2A). In an initial decision of May 17, 1971, the hearing examiner found that respondents had engaged in a number of violations of the disclosure requirements of Regulation Z and had failed to provide, as also required by that regulation, certain of its customers with notice of their right to rescind the purchase transactions involved. An order was entered by the examiner that would require respondents to cease these violations.

The Commission, having considered the appeal filed by respondents and counsel supporting the complaint and the entire record, and having determined that the examiner's findings of fact, conclusions, and order, as modified and supplemented herein, should be adopted as the findings, conclusions, and order of the Commission, now makes its findings as to the facts, its conclusions drawn therefrom, and its order.

FINDINGS AS TO THE FACTS

1. through 12. The Commission finds the facts to be, except as modified or supplemented herein, as set forth in findings 1 through 12 (pages 4 through 7) [pp. 897–900 herein] of the hearing examiner's initial decision of May 17, 1971, and adopts those findings as its own.

13. Respondent Charnita, Inc., is a Pennsylvania corporation with its principal office and place of business at Route 1, Fairfield, Pennsylvania. It is engaged in the development, advertising, and sale of real property, its sales of land for the fiscal year ended September 30, 1970, totaling $4,280,747, at least 40 percent of which ($1,723,474) represented contracts receivable. (CX 7.)

14. Respondent Charles G. Rist is the president of respondent Charnita, Inc., a member of its board of directors, and its principal stockholder. On July 1, 1969, he owned 97 percent of the firm's stock. The other four (4) of the company's five (5) board members were

employees of the corporation. On November 13, 1969, his stock ownership was reduced to 62 percent; on October 29, 1970, an independent board of directors was elected; and on November 27, 1970, 80 percent of Rist's stock was deposited in a trust. Prior to October 29, 1970, respondent Rist formulated, directed, and controlled the policies, acts and practices of respondent Charnita, Inc., including the acts and practices involved in the instant complaint. (CX 1, 7; RX 1.)

15. Since July 1, 1969, respondents, in the course of their advertising and sale of real property, have sold lots on credit, the purchasers executing sales agreements, installment payment contracts, and promissory notes. From July 1, 1969, through March 20, 1970, approximately 470 customers purchased property from respondent Charnita, Inc., on credit, some of whom purchased their lots with the intention of building their principal place of residence thereon at some future date. (CX 1.) In all such credit sales, and in all others since July 1969 except for those consummated between March 20 and November 1970, respondents retained a security interest in the property sold:

a. *Period 1.* From July 1, 1969, to March 20, 1970, respondents caused their credit customers to execute a promissory note containing a confession of judgment clause, as illustrated by CX 2. (CX 1.) No inquiry was made of these credit customers as to whether they intended to use the property as a principal place of residence.

b. *Period 2.* From March 20, 1970, to November 1970, respondents expressly exempted property sold as a principal place of residence from their confession of judgment clauses and included in some of their sales agreements an inquiry as to whether the purchaser intended to so use the property purchased. (CX 4.)

c. *Period 3.* Since November 1970, respondents have caused their credit customers to execute agreements of sale providing for respondents' retention of the deed to the real property purchased until the buyer has made four (4) scheduled monthly payments. (CX 1, 5.) No inquiry was made of these customers as to whether they intended to use the property as a principal place of residence.

16. While it is not known how many of the 470 customers who purchased lots from respondents on credit during Period 1 (and the presumably equal or larger number that have purchased lots from them on credit during Period 3) did so with the intention of using the purchased property as a principal place of residence, respondents have advertised their development as an ideal location for residential and retirement homesites. (CX 6.)

17. On September 24, 1970, apparently in an effort to avoid the duty of giving a right-to-rescind notice to those of its credit customers that had previously purchased lots with the intent of building on them a principal place of residence, respondent Charnita, Inc., adopted a resolution waiving its security interest (confession of judgment liens) in those customers' notes. (CX1; RX 2.) The purchasers themselves were not notified of this resolution.

18. Respondents have not given any purchaser any rescission notice since the effective date of the Truth in Lending Act (CX 1; Respondents' Appeal from Initial Decision, p. 8.)

19. Since July 1, 1969, respondents, in connection with their credit sales, failed in a number of instances to identify Charnita, Inc., as the creditor as required by Section 226.8(a) of Regulation Z.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the respondents, and the subject matter of this proceeding.

2. Respondents have violated the provisions of Regulation Z and of the Truth in Lending Act title of the Consumer Protection Credit Reporting Act, 15 U.S.C. 1601 *et seq.*, in failing to make the required disclosures as found by the hearing examiner herein.

3. Respondents have violated the provisions of Regulation Z and of the Truth in Lending Act title of the Consumer Protection Credit Reporting Act, 15 U.S.C. 1601 *et seq.*, in failing to identify those credit customers that purchased real property in which respondents retained a security interest for use as a principal place of residence and in failing to give such customers notice of their right to rescind as required by said regulation and statute.

4. The confession of judgment provisions in the promissory notes respondents caused their customers to execute in Period 1 herein, and respondents' retention of the deed to the real property purchased until the purchaser has made four (4) scheduled payments under the contract (Period 3), constitute a "security interest" in the property within the meaning of that term as used in said regulation.

5. Repondents' adoption on September 24, 1970, of a resolution waiving their confession of judgment lien in the promissory notes as to those purchasers that had purchased property for use as a principal place of residence did not extinguish the right, created at the time the transaction was consummated by operation of Regulation Z, of those customers to receive notice of their right to rescind under that regulation.

6. Section 226.9 of Regulation Z, in providing that "in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer *shall have the right to rescind* that transaction" for a specified period time (emphasis added), and in further providing that "Whenever a customer has the right to rescind a transaction under paragraph (a) of this section, the creditor *shall give notice of that fact* to the customer" by sending a specified form of notice (emphasis added), creates an absolute right on the part of such customer to receive notice of his right to rescind, a right that is not conditioned on the customer's affirmatively advising the creditor, without being asked, that the property is to be used as a principal residence. Accordingly, it is the creditor's duty under such regulation to affirmatively inquire of its credit customers, at the time of the transaction, whether they so intend to use the property.

ORDER

This matter having been heard by the Commission on the exceptions of respondents Charnita, Inc., and Charles G. Rist to the hearing examiner's initial decision finding respondents in violation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and implementing regulations, and on the exceptions of complaint counsel; and

The Commission having determined that the examiner's findings of fact, conclusions, and order, as modified and supplemented herein, should be adopted as the findings, conclusions, and order of the Commission.

It is ordered, That the third paragraph on page 15 [p. 905 herein] of the examiner's order be, and it hereby is, amended to read as follows:

It is further ordered, That respondent Charnita, Inc., shall within thirty (30) days from the date hereof make a clear and conspicuous inquiry in writing, in the manner and form shown on Appendix A and B attached hereto, via registered mail with return receipt required and with enclosed self-addresed and stamped envelope, to all customers who purchased property from respondent on or after July 1, 1969, and in which respondent has retained or acquired or will retain or acquire a security interest.

It is further ordered, That within sixty (60) days from the date hereof, in the event that all of the questionnaires (Appendix B) have not been completed and returned to respondent Charnita, Inc., respondent shall employ an independent contractor with interviewing

capabilities which is acceptable to the Federal Trade Commission to telephone, and if necessary to meet in person, each customer who fails to return the questionnaire and to provide him with the information contained in the letter set forth in Appendix A in order to elicit his response to and signature on the questionnaire.

It is further ordered, That respondent Charnita, Inc., shall maintain adequate records, to be furnished upon the request of the Federal Trade Commission, which disclose the dates and manner in which customers were contacted pursuant to the above procedures and the dates and manner in which customers responded thereto.

It is further ordered, That respondent Charnita, Inc., shall cease to remain in violation of the Truth in Lending Act by delivering, within ten (10) days after receipt by it of notice from its customers (or from the independent contractor) regarding their expected use of the property in question, notice of the customer's right to rescind, in the manner and form set forth in Section 226.9(b) of Regulation Z, to each customer who purchased real property from it in any credit transaction consummated on or after July 1, 1969, and in which the customer has or shall notify respondent pursuant to the procedures set forth above that he expected to use that property as his principal place of residence and in which respondent has retained or acquired, or will retain or acquire, a security interest therein. *Provided, however*, That this portion of this order shall not apply to customers who have previously sold the property purchased from Charnita, Inc.

It is further ordered, That respondents Charnita, Inc., a corporation, and its officers, and Charles G. Rist, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with any consumer credit sale of real property or in any advertisement to aid, promote, or assist directly or indirectly any extension of credit, as "credit sale" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from failing to identify their security interest as required by Section 226.8(b)(5) of Regulation Z together with all other required disclosures, as required by Section 226.8(a) of Regulation Z.

It is furthered ordered, That the exceptions of respondents Charnita, Inc., and Charles G. Rist to the findings, conclusions, and order of the hearing examiner be, and they hereby are, denied, and that the exceptions of counsel supporting the complaint to said findings, conclusions, and order be, and they hereby are, granted in part and denied in part.

It is further ordered, That the examiner's findings, conclusions, and order, as modified and supplemented herein, be, and they are, adopted as the findings, conclusions, and order of the Commission.

It is further ordered, That respondents herein shall, within three (3) months 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 are complying with this order and shall, within six (6) months thereafter, file a further report in writing setting forth in detail the manner and form in which they have complied therewith.

APPENDIX A

IMPORTANT NOTICE

To: (Customer)

By an order of the Federal Trade Commission entered on _____ _____, we have been directed to determine from you whether at the time you purchased property from Charnita, Inc., you intended to use it as your principal place of residence, either currently or at any time in the future. The Commission has determined that the collection of this information is required under the Truth in Lending Act, and it is important, therefore, that you provide us with your response to the enclosed questionnaire as soon as possible so that we may comply with the Commission's order.

Please indicate your intended use for the property you purchased from Charnita by checking one of the boxes on the enclosed statement and returning it to us within fourteen (14) days. The copy is for your files.

_____

(Signed)
CHARNITA, INC.

APPENDIX B

To: CHARNITA, INC.

[] At the time I purchased property from Charnita, Inc., it was my intention to use that property either as my current or future principal place of residence.

[] At the time I purchased property from Charnita, Inc., it was NOT my intention to use that property either as my current or future principal place of residence.

_____ _____

(Date) (Signature)

_____

(Signature)