

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS AND ORDERS

IN THE MATTER OF

SHARPE'S APPLIANCE STORE, INC., ET AL.

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

Docket C-2335. Complaint Jan. 4, 1973—Decision, Jan. 4, 1973.

Consent order requiring an Atlanta, Georgia, retailer and distributor of furniture and appliances, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the 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 Sharpe's Appliance Store, Inc., a corporation, and William H. Sharpe, individually and as an officer of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and 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 Sharpe's Appliance Store, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal offices and place of business located at 457 Moreland Avenue, N. E., Atlanta, Georgia.

Respondent William H. Sharpe is an officer of the corporate respondent. He formulates, directs and controls the policy, acts and practices of the corporation, 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 retail sale and distribution of furniture and appliances to the public.

PAR. 3. 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 business and in connection with their credit sales, as "credit sale" is defined in the aforesaid Regulation Z, have caused and are causing customers to execute retail installment contracts, hereinafter referred to as the "contract." Respondents make no consumer credit cost disclosures other than on the contract.

PAR. 5. By and through the use of the contract respondents:

1. Fail, in some instances, to furnish customers with a duplicate of the contract or a statement by which the disclosures are made and the creditor is identified, as required by Section 226.8 (a) of Regulation Z.

2. Fail, in some instances, to disclose the "annual percentage rate," and fail in some instances to disclose the annual percentage rate accurately to the nearest quarter of one percent in accordance with Section 226.5 of Regulation Z, as required by Section 226.8 (b) (2) of Regulation Z.

3. Fail, in some instances, to disclose accurately the "total of payments" as the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8 (b) (3) of Regulation Z.

4. Failed to disclose the type of security interest on the face of the contract, as required by Section 226.8 (a) (1) and (b) (5) of Regulation Z.

5. Fail to identify the "certain conditions" under which the respondents will rebate the unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8 (b) (7) of Regulation Z.

6. Failed to disclose the "unpaid balance" to describe the sum of the unpaid balance of the cash price and all other charges which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8 (c) (5) of Regulation Z.

7. Failed to use the term "finance charge" to describe the sum

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of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i).

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

9. Fail, in some credit transactions in which the charge for credit life insurance is included in the "amount financed," to secure a signed and dated credit life insurance authorization, as required by Section 226.4(a)(5) of Regulation Z.

PAR. 6. In the ordinary course of their business as aforesaid, respondents have caused to be published advertisements of their goods and services, as "advertisement" is defined in Regulation Z. These advertisements aid, promote or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods and services. By and through the use of the advertisements, respondents state the period of payment which can be arranged in connection with a consumer credit transaction, without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

- (i) The cash price;
- (ii) The amount of the downpayment required or that no downpayment is required as applicable;
- (iii) The number, amount and due dates or period of payments scheduled to repay the indebtedness if credit is extended;
- (iv) The amount of the finance charge expressed as an annual percentage rate;
- (v) The deferred payment price.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108(c) 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 Atlanta Regional Office proposed to present to the Commission for its

consideration and which, if issued by the Commission, would charge respondents with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and 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 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 described in Section 2.34(b) of the rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sharpe's Appliance Store, Inc., is a corporation organized, existing, and doing business under and by virtue and principal place of business located at 437 Moreland Avenue, N. E., Atlanta, Georgia.

Respondent William H. Sharpe is an individual and is a corporate officer of Sharpe's Appliance Store, Inc. He directs, formulates, and controls the acts and practices of the respondent corporation including the acts and practices under investigation.

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 Sharpe's Appliance Store, Inc., a corporation, its successors and assigns, and its officers, and William H. Sharpe, individually and as an officer of said corporation, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist

directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §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 furnish customers with a duplicate of the contract or a statement by which the disclosures are made and the creditor is identified, as required by Section 226.8(a) of Regulation Z.

2. Failing to disclose the annual percentage rate, and failing to disclose that rate accurate to the nearest quarter of one percent computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

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

4. Failing to disclose the type of security interest on the face of the contract, as required by Section 226.8(a)(1) and (b)(5) of Regulation Z.

5. Failing to identify the "certain conditions" under which the respondents will rebate the unearned finance charge in event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

6. Failing to disclose the "unpaid balance" to describe the sum of the unpaid balance of the cash price and all other charges which are included in the amount financed but which are not part of the finance charge as required by Section 226.8(c) of Regulation Z.

7. Failing to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z.

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

9. Failing, in any credit transaction in which the charge for credit life insurance is included in the "amount financed," to secure a signed and dated credit life insurance authorization, as required by Section 226.4(a)(5) of Regulation Z.

10. Stating the period of payments which can be arranged in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) (2) thereof:

- (i) The cash price;
- (ii) The amount of the downpayment required or that no downpayment is required, as applicable;
- (iii) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if credit is extended;
- (iv) The amount of the finance charge expressed as an annual percentage rate; and
- (v) The deferred payment price.

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

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

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

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents 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.

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IN THE MATTER OF
SCOTT CARPET MILLS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-2336. Complaint, Jan. 8, 1973—Decision, Jan. 8, 1973.

Consent order requiring a Beachwood, Ohio, manufacturer and seller of carpets and rugs among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

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 Scott Carpet Mills, Inc., a corporation, and Steve Sellinger, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Scott Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio. Respondent Steve Sellinger is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at 23950 Commerce Park Drive, Beachwood, Ohio.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and 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 terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products 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 carpets and rugs Style "Chatham," subject to Department of Commerce Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70).

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 Scott Carpet Mills, Inc., is a corporation orga-

nized, existing and doing business under and by virtue of the laws of the State of Ohio.

Respondent Steve Sellinger is an officer of the said corporation. He formulates, directs, and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with the office and principal place of business of respondents located at 23950 Commerce Park Drive, Beachwood, Ohio.

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

Is is ordered, That respondent Scott Carpet Mills, Inc., a corporation, its successors and assigns, and its officers, and respondent Steve Sellinger, 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, 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 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 the 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 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 identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) 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, (5) any disposition of said products since February 17, 1972, and (6) 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 to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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 individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

Complaint

IN THE MATTER OF
FOUNDATION CARPET MILLS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-2337. Complaint, Jan. 8, 1973—Decision, Jan. 8, 1973.

Consent order requiring a Dalton, Georgia, manufacturer and seller among other things, to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the Flammable Fabrics Act, as amended.

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 Foundation Carpet Mills, Inc., a corporation, and Eugene Hannah, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Foundation Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Eugene Hannah is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at Chattanooga Avenue, P.O. Box 367, Dalton, Georgia.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and 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 terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products fail to con-

form 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 carpets and rugs in style "Horizon," subject to Department of Commerce Standard For the Surface Flammability of Carpets and Rugs (DOC FF 1-70).

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 Bureau of Consumer Protection proposed to present to 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 Foundation Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Eugene Hannah is an officer of the corporation. He formulates, directs, and controls the acts, practices and policies of the said corporation.

Respondent corporation is engaged in the manufacture and sale of carpets and rugs. Its office and principal place of business is located at Chattanooga Avenue, P.O. Box 367, Dalton, Georgia.

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 Foundation Carpet Mills, Inc., a corporation, its successors and assigns, and its officers and respondent Eugene Hannah, 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, 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 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 the 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 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 identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) 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 the results thereof, (5) any disposition of said products since April 19, 1972, and (6) 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 to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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 individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

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.

Order

IN THE MATTER OF

THE BENDIX CORPORATION, ET AL.

Docket 8739. Interlocutory Order, Jan. 9, 1973.

Order granting the application of respondent Fram Corporation for consent to the sale of the assets of its Industrial Fabricating Division which is engaged in manufacturing heat transfer exchangers used in petro-chemical refineries, gasoline cracking plants and power plants.

ORDER GRANTING RESPONDENT FRAM CORPORATION'S APPLICATION
FOR CONSENT TO SELL CERTAIN ASSETS

This matter is before the Commission upon the administrative law judge's certification of the motion filed by respondent Fram on December 20, 1972, requesting certification to the Commission of its application for Commission consent to the sale of certain assets. The administrative law judge made no recommendation on the merits of the application. He reported that complaint counsel did not oppose the certification and that such counsel expressed no position on the merits of the application. The administrative law judge also indicated his belief that Fram's application will not delay the proceeding.

The complaint issued in this matter June 29, 1967 [77 F.T.C. 731], charging respondents with violations of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act as a result of the acquisition of Fram Corporation by the Bendix Corporation. By letter agreement of June 16, 1967, prior to the issuance of the complaint, the Bendix Corporation assured the Federal Trade Commission, among other things, that until the final order in this proceeding is issued "[n]o substantial property or other assets of New Fram will be sold, leased, otherwise disposed of or encumbered, other than in the normal course of business, without the consent of the Federal Trade Commission * * *."

The assets which Fram desires to sell are those concerning its Industrial Fabricating Division, which it states is engaged in manufacturing heat transfer exchangers used in petro-chemical refineries, gasoline cracking plants and power plants. Respondent Fram asserts in its application, among other things, that its principal business is the manufacture and sale of automotive filters and commercial filters and liquid separators; that the assets of the Industrial Fabricating Division constitute a tiny fraction of

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the total assets of Fram's, that is, 2.9 percent; that the net sales of the division amount to about 3.8 percent of Fram's net sales; that Fram desires to sell the division because of its poor performance and that the sale of these assets in no way will affect or impair the continued operation of Fram as a financially strong and economically viable entity.

In the circumstances, the Commission has determined to grant Fram's application for consent to sell the described assets. Accordingly,

It is ordered, That respondent Fram be, and it hereby is, granted consent to the sale of the assets of its Industrial Fabricating Division.

IN THE MATTER OF
PHILIP MORRIS, INCORPORATED

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

Docket 8838. Complaint, March 12, 1971—Decision, Jan. 9, 1973.

Consent order requiring a New York City distributor and seller of razor blades, among other things to cease distributing razor blades attached to, inserted in or included with other products which are unsolicited and sent or distributed to recipient's home or distributed or sold to retailers for resale to customers unless accompanied with a clear and conspicuous disclosure that a razor blade is present; distributing razor blades which are unsolicited without "special packaging."

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 Philip Morris, Incorporated, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Philip Morris, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 100 Park Avenue in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past, through its American Safety Razor Company, a division of respondent, has been, engaged in the advertising, offering for sale, sale and distribution of razor blades to distributors and jobbers, to retailers for resale to the public, and to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondent now causes, and for some time last passed have caused, its said product, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its razor blades, respondent is causing and has caused the distribution of sample razor blades directly to members of the general public by means of home-delivered newspapers in various cities throughout the United States. The distribution of the razor blades as aforesaid constitutes a hazard to the health and safety of persons engaged in the distribution of newspapers and persons receiving such newspapers in their houses, particularly young children, and also to family pets.

PAR. 5. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of razor blades of the same general nature and kind as sold by respondent.

PAR. 6. The aforesaid act and practice, as herein alleged, was and is to the prejudice and injury of the public and of respondent's competitors and did constitute, and now constitutes, an unfair method of competition in commerce and an unfair and deceptive act and practice in commerce in violation of Section 5 of the Federal Trade Commission Act.

STATEMENT

BY JONES, *Commissioner*:

I think it is too bad that such a gross disregard of the public welfare should be resolved by such a minimal consent order the prohibitions of which are limited to the precise dimensions of

the law violation charged here. This order leaves the public essentially unprotected from any future actions of this respondent involving a similar lack of foresight of the hazards flowing to the public from its promotional efforts.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 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. Respondent Philip Morris, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 100 Park Avenue, New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Philip Morris, Incorporated, a corporation, its successors and assigns, and its officers, agents

and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of razor blades in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Distributing or causing distribution of razor blades attached to, inserted in, or included with other products by respondent which are:

(a) Unsolicited by recipient and sent or delivered to recipient's home, or

(b) Distributed or sold to retailers for resale to consumers;

unless there is a clear and conspicuous disclosure that there is a razor blade present.

2. Distributing or causing the distribution of razor blades which are unsolicited by recipient and sent or delivered to recipient's home without special packaging. For purposes of this order, the term "special packaging" means packaging that is designed or constructed to be significantly difficult for children under six years of age to open within a reasonable time although not difficult for adults to open, but does not mean packaging which all such children cannot open within a reasonable time.

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

It is further ordered, That respondent notify the Commission at the time of 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.

Commissioner Jones dissenting.

Complaint

82 F.T.C.

IN THE MATTER OF
SPIEGEL, INC.*

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

Docket 8869. Complaint, Nov. 8, 1971—Decision, Jan. 9, 1973.

Order requiring a Chicago, Illinois, catalog retailer, among other things to cease representing free trial offers, percentage savings, or reductions in price to prospective and established credit customers without stating in immediate conjunction therewith, any conditions or restrictions; failing to disclose that savings offers are only offered on condition of approved credit.

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 Spiegel, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Spiegel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2511 West 23rd Street, Chicago, Illinois.

PAR. 2. Respondent is a catalog retailer and is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of clothing, household appliances, kitchenware, bedding, furniture, radios, luggage, tools, tires and various other articles of merchandise.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other states of the United States and the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

*Petition for Review was filed on March 12, 1973 in the Court of Appeals for the Seventh Circuit.

PAR. 4. For the purpose of inducing the purchase of said products, respondent has made various statements in certain of its circulars and seasonal catalogs respecting merchandise being offered for a free trial or at a reduction in price.

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

A. ON CATALOG SENT TO NEW CUSTOMERS:

30 DAY FREE TRIAL—SEND NO MONEY—TRY BEFORE YOU BUY
These outstanding values are yours to try for 30 Days Free! You're invited to order any item that you would like to see and use * * * without risking a penny * * * without obligation to buy. Send No Money * * * list your selections on the special order blank enclosed in this 30 DAY FREE TRIAL OFFER!

SEND NO MONEY!—Try any of these values 30 days FREE!

B. ON CIRCULAR SENT TO ESTABLISHED SPIEGEL CUSTOMERS:

Dear Customer:

You're invited to see and use any or all of the enclosed 20 outstanding values in your home for 30 days FREE! Each item is of the high quality that Spiegel customers have come to expect and prices are the lowest we can offer. We want you to try them *at our risk*, free from pressure or persuasion, with absolutely no obligation to buy!

DON'T SEND A PENNY * * * just make your selections, fill out the order blanks and mail them in the enclosed postage-free envelope.

SEND NO MONEY! Just choose the items you wish to try * * * fill out and sign the order blanks * * * detach and mail them to us. We'll rush your merchandise to you. After you've checked the performance and beauty of these items (and compared prices anywhere), we're confident you'll be delighted and want to keep them. However, if for any reason you are not completely happy, send them back and we'll even pay the return postage. No questions asked. If you do keep the merchandise we'll add the amount to your Spiegel Budget Power account.

C. ON CIRCULAR TO NEW CUSTOMERS:

25% OFF!—on everything we sell * * *

25% off on your first credit order!

What better way to get our cash customers to try the Budget Power Credit Plan than to offer *25% off* on the FIRST CREDIT ORDER ONLY?

—Naturally to be accepted for a Spiegel Budget Power account, you must be steadily employed, reside at a permanent address, and have a good record.

PAR. 5. Through the use of said statements and representations, and others of similar import and meaning but not specifi-

cally set out herein, respondent has represented, and is now representing, directly or by implication, that the free trial offer and the 25 percent discount offer are available without condition or restriction to anyone receiving such offers.

PAR. 6. In truth and in fact, the offers of a free trial and of 25 percent off are not available without condition or restriction to anyone receiving such offers since:

(a) Such of these offers as are directed to new Spiegel customers are not available and the merchandise is not shipped to them unless and until they qualify for credit under Spiegel's credit standards;

(b) Such of these offers as are directed to established Spiegel credit customers are not available and the merchandise is not shipped to them if the total price of the merchandise ordered when added to the customers' pre-existing credit charges exceeds the total amount of the credit which Spiegel had previously determined to allow such customers under its "Budget Power" account; and

(c) Spiegel does not accept orders from persons in certain geographical areas where it has experienced high credit losses unless the person is an established credit customer whose account is not delinquent.

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

PAR. 7. In the conduct of its business, and at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of clothing, household appliances, kitchenware, bedding, furniture, radios, luggage, tools, tires and various other articles of merchandise of the same kind and nature as that sold by respondent.

PAR. 8. The use by respondent 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as

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

Mr. Charles W. O'Connell, supporting the complaint.

Mr. Jacob A. Stein, and *Mr. Martin W. Bell*, Washington, D. C. for respondent.

INITIAL DECISION BY DAVID H. ALLARD, HEARING EXAMINER
JUNE 23, 1972

PRELIMINARY STATEMENT

The Federal Trade Commission on November 8, 1971, issued its complaint in this proceeding, charging Spiegel, Inc., a corporation, with violating Section 5 of the Federal Trade Commission Act.

A hearing was held at Chicago, Illinois on April 18, 1972. At that hearing, testimony and documents were incorporated into the record in support of the complaint as well as in opposition thereto. This proceeding thus is before the hearing examiner upon the complaint, answer, testimony and other evidence, proposed findings of fact and conclusions, and briefs filed by counsel supporting the complaint and by counsel for respondent. The proposed findings of fact, conclusions, and briefs in support thereof submitted by the parties have been carefully considered by the examiner, and those findings not adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matter.

The sole issue in this proceeding, as stipulated by the parties, is whether Spiegel's advertisements of free trial offers are unfair or deceptive because of the manner in which consumers are notified of respondent's requirement of credit approval in order to obtain the benefits of such offers.¹

Having heard and observed the witnesses and having care-

¹ At the prehearing conference on March 7, 1972, the following stipulation was agreed upon by the parties. This stipulation set forth the only issue in the proceeding: "Credit approval is the only qualification or condition by Spiegel, Inc. with respect to free trial offers advertised * * *. As a corollary to that, and it would remain the issue, is the manner in which Spiegel notifies the consumer of the need for credit approval such that, it requires the issuance of an order." (Prehearing Conference p. 75, 76; see also CX 1-A-B)

fully reviewed the entire record² in this proceeding, together with the proposed findings, conclusions, and briefs submitted by the parties as well as replies, the examiner makes the following findings as to the facts, conclusions, and order:

FINDINGS OF FACT

1. Respondent Spiegel, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2511 West 23rd Street, Chicago, Illinois (Comp. par. 1; Ans. par. 6).

2. Respondent is a catalogue retailer. It is now, and for some time last past has been, engaged in the advertising, offering for sale, sale, and distribution of clothing, household appliances, kitchenware, bedding, furniture, radios, luggage, tools, tires, and various other articles of merchandise (Comp. par. 2; Ans. par. 6).

3. Respondent had net sales in 1968 of \$320,248,000 (CX 7, p. 14). It does business nationwide, strictly through catalogue sales (Tr. 22). Over 90 percent of Spiegel's business is in interstate commerce (Tr. 22).

4. As a method of merchandising its products, respondent has made various statements in certain of its circulars and seasonal catalogues in which it offered its merchandise for free trial or at a reduction in price.

A. *On Catalogues Sent to New Customers*

Among and typical, but not all inclusive, of said statements are the following, which appear on the face of almost all of the catalogues:

30 DAY FREE TRIAL—SEND NO MONEY—TRY BEFORE YOU BUY
 These outstanding values are yours to try for 30 days Free! You're invited to order any item that you would like to see and use * * * without risking a penny * * * without obligation to buy. Send No Money * * * list your selections on the special order blank enclosed in this 30 DAY FREE TRIAL OFFER!" (CX 1-C)

(1) Catalogues sent to prospective credit customers are referred to internally by Spiegel, and hereinafter, as "hot merchandise" catalogues (Tr. 23).

² References to the record are made in parenthesis, and certain abbreviations are used as follows:

Comp.—Complaint	Tr.—Transcript page
Ans.—Answer	CX—Commission Exhibit
	RX—Respondent Exhibit

(2) The hot merchandise catalogues are sent out weekly from January through November each year and the number totals 40 million annually (Tr. 42).

(3) Names of persons to whom these catalogues are sent are obtained from mailing lists which conform to Spiegel's demographic model (Tr. 46).

(4) Respondent also makes general solicitation, without regard to demographic standards, by inserting hot merchandise catalogues in metropolitan newspapers. No particular criteria are used to determine which newspapers or which cities will receive distribution of the catalogues. The essential consideration is the cost of distribution (Tr. 83-84).

(a) CX 1-Z-25 is an example of a hot merchandise catalogue that was distributed in this manner to the Cincinnati Enquirer of February 15, 1970;

(b) RX 1-Z-40 with the Chicago American of August 3, 1969.

(5) About 75 percent of the hot merchandise catalogues go to Spiegel's prospective credit customers and 25 percent to cash customers (Tr. 53).

B. *On Circulars Sent to Established Spiegel Customers*

Among and typical, but not all inclusive, of said statements are the following, which appear in the cover letter to the circular.

Dear Customer:

You're invited to see and use any or all of the enclosed 19 outstanding values in your home for 30 days FREE! Each item is of the high quality that Spiegel customers have come to expect and prices are the lowest we can offer. We want you to try them *at our risk*, free from pressure or persuasion, with absolutely no obligation to buy.

DON'T SEND A PENNY * * * just make your selections, fill out the order blanks and mail them in the enclosed postage-free envelope.

* * * * *

SEND NO MONEY. Just choose the items you wish to try * * * fill out and sign the order blanks * * * detach and mail them to us. We'll rush your merchandise to you. After you've checked the performance and beauty of these items (and compared prices anywhere), we're confident you'll be delighted and want to keep them. However, if for any reason you are not completely happy, just send them back and we'll even pay the return postage—with no questions asked. If you do keep the merchandise we'll add the amount to your Spiegel Budget Power account. (CX 1-Z-104)

(1) The free trial mailings to these customers consist of about 19 sheets, each of which offers an article of merchandise and has an order blank attached.

(2) A business reply envelope that requires no postage is also enclosed (Tr. 48).

(3) From 1,800,000 to 2,500,000 of these mailings (depending upon the number of solicitable accounts) are sent out ten or eleven times a year to respondent's credit customers (Tr. 48).

C. On Circulars Sent to New Customers

Among and typical, but not all inclusive of said statements are the following, which begins on the cover memorandum of the circulars.

25% OFF! on everything we sell * * * 25% off on your first credit order!

What better way to get our cash customers to try the Budget Power Credit Plan than to offer 25% off on the FIRST CREDIT ORDER ONLY?

-Naturally to be accepted for a Spiegel Budget Power account, you must be steadily employed, reside at a permanent address, and have a good record. (Comp. par. 4(c); Ans. par. 4(c); CX 1-Z-130)

(1) Two types of "25% off" circulars were utilized by respondent. One was sent to respondent's credit customers; the other to respondent's cash customers on file (CX 1-Z-130).

(2) This type of mailing was used in 1969 and up to July in 1970 when it was discontinued because it was unprofitable (Tr. 48-49). For that reason the practice will not be resumed (Tr. 73).

(3) Approximately 1,500,000 circulars were sent to credit customers, and 1,500,000 to cash customers (Tr. 49).

5. The order blank for each of these offers is treated by respondent as an application for credit (Tr. 79).

6. The application form always noted that the order was subject to acceptance by Spiegel (Tr. 73-74).

7. In truth and in fact, respondent's advertisements of offers of a free trial and of 25 percent off fail to disclose on their face that they are not available without condition or restriction because:

A. Offers Directed to New Customers

(1) Some of these offers are directed to new Spiegel customers, but the offers are not available and the merchandise is not shipped to these new customers unless they qualify for credit under Spiegel's credit standards (Comp. par. 6(a); Ans. par. 6(a)).

B. Offers Directed to Established Credit Customers

(1) Offers that are directed to each of Spiegel's established credit customers are not available and the merchandise is not shipped if the total price of the merchandise ordered, when added

to the customer's pre-existing credit charges, exceeds the total amount of the credit that Spiegel had previously determined to allow such customer under his "Budget Power" account (CX 5).

(a) The customer has three choices: First, he can reduce the amount of the order; second, he can pay the difference between the amount of available credit and the total amount of the order; and third, he can make another selection which would not exceed the amount of available credit (Tr. 64-65).

(b) An established credit customer who receives mailings, illustrated by CX 1-Z-57 thru 129, must have his account up to date; he must have made required monthly payments on time; and he must also have had an account less than 12 months previous to the free trial order (Tr. 66).

C. Two Categories of Language Used in Advertisements

(1) The following conditional language, which falls into two categories, summarizes the language in respondent's advertisements:

(a) On the face cover of the Spring and Summer '72 catalogue:

All orders subject to Spiegel Credit Approval (RX 1-Z-68).

(b) On the order blank section appearing as a middle insert to the catalogue:

1. The first two or four pages contain an open letter from Spiegel inviting sales and to "TRY BEFORE YOU BUY!"

a. All orders are subject to our acceptance. (CX 1-0, CX 1-Z-39, CX 1-Z-39, CX 1-Z-132, CX 6e).

b. Of course, all orders are subject to our acceptance but be sure to check how you wish to pay on the back of the order blank. (RX 1-N, RX 1-Z-24)

c. All orders are subject to acceptance by Spiegel and we cannot accept any dealer orders (RX 1-Z-11)

d. -Naturally to be accepted for a Spiegel Budget Power account, you must be steadily employed, reside at a permanent address, and have a good record. (Comp. par. 4(c); Ans. par. 4(c))

e. Of course, as with all merchants, we reserve the right to accept or reject any order according to our credit standards. (RX 1-Z-87)

f. Subject to credit approval by Spiegel. (RX-1-Z-88)

2. The order blank:

a. To open a Spiegel account and save 25% you must answer all questions on the other side. (RX 1-Z-10)

3. The credit application:

a. I understand this order is subject to your acceptance * * * (RX 1-Z-53)

b. All orders subject to acceptance by Spiegel. (RX 1-Z-11)

8. In the course and conduct of its business, respondent has been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of clothing, household appliances, kitchenware, bedding, furniture, radios, luggage, tools, tires, and various other articles of merchandise of the same kind and nature as that sold by respondent (Comp. par. 7; Ans. par. 7).

CONCLUSIONS

1. The use by respondent of the aforesaid statements, representations, and practices has had and now has the capacity to mislead members of the purchasing public into the purchase of substantial quantities of respondent's products.

(a) Net sales generated by hot merchandise catalogues were estimated to be \$27 million in 1969, \$27 million in 1970, and \$30 million in 1971 (Tr. 52).

(b) The record shows that estimated mailings of free trial offers to established credit customers account for \$30 million in sales annually for respondent (Tr. 72).

2. An advertisement must be truthful. Its representations should be reasonably free of erroneous or misleading statements. To comply with the Federal Trade Commission Act, an advertisement must be akin to a passport for the complete truthfulness of the statements contained therein. Where, as here, conditions to offers exist, unsophisticated clues to the conditions should be as obvious on the face of the advertisement as the inducing offers themselves.

3. Respondent's failure to make reasonably complete disclosures on the face of the catalogues or circulars of credit conditions, restrictions, or limitations applicable to free trial offers, generally has the tendency and capacity to mislead prospective credit customers mistakenly to believe that the offers are available without qualification to any one who accepts them. Free trial offers, of course, do not involve a credit transaction unless credit is specifically requested. The simple disclosure on the cover of the Spring and Summer '72 catalogue that "all orders are subject to Spiegel credit approval" fails to adequately inform prospective customers what the real impact of the message is. From the lure of free offers on the cover, even established credit customers are not put on notice about further limitations and restrictions which would make their orders unacceptable to Spiegel. Examples of such limitations and restrictions are: orders ex-

ceeding the total amount of credit Spiegel determines to allow the customer; the fact that a customer's account must be up-to-date; the fact that monthly payments must be paid regularly by the customer; and that the customer's account must have been active within a 12-month period prior to the time the customer attempts to take advantage of a free trial order. These conditions appear inside the catalogue or circular, far removed from the enticing offers on the cover. New customers would be even less circumspect.

4. Respondent's advertisements of free trial offers are deceptive and unfair and in violation of Section 5 of the Federal Trade Commission Act because of the manner in which customers are notified of respondent's requirement of credit approval in order to obtain the benefit of the offers. In reaching this inescapable conclusion, the hearing examiner has evaluated respondent's practices in light of the capacity of the advertisements to deceive, and their inherent unfairness, and not on basis of a demonstrated injury to purchasers. *Montgomery Ward & Co. v. FTC*, 379 F.2d 666 (7th Cir. 1967); *Charles of the Ritz Distributors Corp. v. FTC*, 143 F.2d 676 (2nd Cir. 1944).

5. The aforesaid acts and practices of respondent, as herein found, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. The deception of purchasers constitutes unfair competition. *FTC v. Winsted Hosiery Co.*, 258 U.S. 483 (1922).

ORDER

It is ordered, That respondent Spiegel, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of clothing, household appliances, kitchenware, bedding, furniture, radios, luggage, tools, tires, and various other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

Representing, directly or by implication, that merchandise is being offered on a free trial basis or at a percentage or

amount off the usual and regular price unless substantially all credit restrictions or conditions applicable to such offers are clearly and conspicuously disclosed in reasonably immediate connection therewith.

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

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

SEPARATE STATEMENT OF COMMISSIONER KIRKPATRICK

I cannot agree that consumers would fail to appreciate that Spiegel's free-trial offers necessarily were subject to acceptance by Spiegel. The nature and amount of information obtained by Spiegel on its application forms, in my opinion, puts the consumer on notice that Spiegel has established criteria which prospective customers must meet prior to receiving the merchandise on a free-trial basis. It seems to me unlikely that a consumer would conclude that the information provided on the application form was irrelevant to Spiegel in deciding whether or not to provide the consumer with the offered merchandise.

Of course, it is arguable that some few prospective customers who sent in filled-in application forms may not have fully understood the conditional nature of the offer. Also, I appreciate that economic injury is not always a condition precedent to an order under Section 5. However, in the circumstances of this case where no economic loss of any consequence appears and where no testimony was received with respect to consumers' understanding of the import of the application forms or whether Spiegel's disclosures were in fact sufficient, the entry of an order is not warranted.

FINAL ORDER

This matter is before the Commission upon the cross-appeals of complaint counsel and respondent from the administrative law judge's initial decision filed June 23, 1972, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having determined that complaint counsel's appeal should be granted and respondent's appeal denied and that the initial decision as modified by this order should be adopted as that of the Commission:

It is ordered, That the appeal of complaint counsel be, and it hereby is, granted and the appeal of respondent be, and it hereby is, denied.

It is further ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

ORDER

It is ordered, That respondent Spiegel, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of clothing, household appliances, kitchenware, bedding, furniture, radios, luggage, tools, tires, or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, to prospective credit customers that merchandise is being offered on a free trial basis, or at a percentage or amount off the usual and regular price, unless respondent clearly and conspicuously discloses in immediate conjunction with such offer that it is subject to respondent's credit approval.

2. Representing, directly or by implication, to respondent's established credit customers that merchandise is being offered on a free trial basis unless respondent clearly and conspicuously discloses in immediate conjunction therewith any credit restriction or condition which would make a customer ineligible to qualify under

such offer or any other restriction or condition applicable to such offer.

3. Failing to clearly and conspicuously disclose at the top of questionnaires requesting information from prospective credit customers ordering merchandise pursuant to a free trial offer or other offer that it is an application for credit and that merchandise will be sent to the prospective customer only if such customer is approved for credit by respondent.

4. Representing, directly or by implication, that an offer of a free trial of merchandise, a reduction in the price of merchandise, or any other kind of offer is made or is available without conditions or restrictions when such offer is subject to conditions or restrictions not revealed therein.

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

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

It is further ordered, That the initial decision, as modified by this order, be, and it hereby is, adopted as the decision of the Commission.

Chairman Kirkpatrick submitted a separate statement.

Complaint

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

Docket C-2338. Complaint, Jan. 9, 1973—Decision, Jan. 9, 1973.

Consent order requiring a York, South Carolina, manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

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 Springs Mills, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 Springs Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina.

Respondent is engaged in the manufacture and sale of carpets and rugs with an office and place of business located in York, South Carolina.

PAR. 2. Respondent is now and for some time last past has been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, carpets and rugs, as the terms "carpet," "rug" and "commerce" are defined in the Flammable Fabrics Act, as amended, or any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act, which fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

