

It is ordered, That the aforesaid motion be, and it hereby is, denied with respect to both requests.

IN THE MATTER OF
G C SERVICES CORPORATION, ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2511. Complaint, Apr. 16, 1974—Decision, Apr. 16, 1974

Consent order requiring a Houston, Tex., collection agency, among other things to cease using printed material which cause harassment, fear or undue embarrassment to alleged debtors receiving them or which simulates legal process; misrepresenting that past due accounts have been referred to an attorney for collection or legal action has been or is about to be instituted; or threatening to contact a debtor's employer or to institute legal processes.

Appearances

For the Commission: *Joseph Hickman.*

For the respondents: *John C. Bagalay*, Houston, Tex.

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 G C Services Corporation, formerly doing business as Gulf Coast Collection Agency, a corporation, and Jerold B. Katz, William A. Inglehart and Martin M. Katz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent G C Services Corporation formerly doing business as Gulf Coast Collection Agency is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas with its principal office and place of business located at 3333 Fannin Street, in the city of Houston, State of Texas.

Respondents Jerold B. Katz, William A. Inglehart and Martin M. Katz are individuals and are officers of the corporate respondent. They formulate, direct, and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the business of collection of delinquent accounts for business

organizations throughout the United States. Respondents' collection procedures include sending through the United States mail various collection forms, letters and other printed materials to alleged debtors, from respondents' place of business in Tex. and branches in Calif., Fla., Ga., Ill., Mo., N. Y. and Ohio to various other States in the United States and receiving through the United States mail forms, letters, checks, payment and other printed materials from alleged debtors located in these states and other states other than the aforesaid states. Respondents maintain, and at all times hereinafter mentioned have maintained, a substantial course of trade in their said collection business in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents' forms, letters and other printed materials, as hereinbefore described, are designed and intended to be, and are, used by respondents for the purpose of obtaining information concerning alleged debtors of customers of respondents and in the collection of delinquent accounts which are to be paid directly to respondents for benefit of customer.

PAR. 4. In the course and conduct of their business respondents have caused and cause to be sent through the mail from their place of business located in the State of Texas and various other States of the United States letters, forms and other printed materials for the purposes set forth in Paragraph Three. Typical, but not all inclusive of such letters, forms and other printed materials are the following:

Does your child know that the books from Doubleday Book Club are not paid for? Is it fair for your child to be embarrassed at school when you are legally responsible for the bill?

\$9.20 is a small amount. Pay it now to avoid further contact.

It will be humiliating for your child when our collector calls. You owe the \$9.20 to Doubleday Book Club. Your child does not.

* * * * *

Why are you forcing us to have our collector in San Jose, California contact you at your home or place of employment?

He will spend whatever time and expense is necessary to liquidate this debt. We mean business.

It's up to you. * * * We must have \$7.58. Your deadline is October 22, 1970.

* * * * *

"You" ordered the merchandise from 69 Grolier Annual, Lawrence Bauer.

"You" ran up the bill, Lawrence Bauer.

"You" owe the money, Lawrence Bauer.

"You" are going to pay this bill, Lawrence Bauer.

"You" are going to send us full payment today.

"We" are going to see that you do

* * * * *

Where is the money Pete Rodriquez? We want the \$5.66 now! No more chances Pete Rodriquez, this is it. Your time is up. Either you pay now or our collector will get every last cent.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, the respondents thereby make implied threats that respondents will embarrass and harass alleged debtor so as to force him to pay bills sent to him.

PAR. 6. Such forms, letters and other printed materials are placed in the mail at fifteen day intervals. Respondents usually continued to mail such forms, letters and other printed materials at such intervals, regardless of notification by alleged debtor that the account is disputed or not owed.

PAR. 7. The use of the forms, letters and other printed materials described in Paragraphs Four and Five mailed at periodic intervals as described in Paragraph Six which causes embarrassment and harassment of alleged debtors is contrary to the established public policies of the United States and is an unfair practice.

PAR. 8. The use by respondents, as hereinabove set forth in Paragraph Four 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 public and to the erroneous and mistaken belief that said statements and representations were and are true and to induce payment by respondents for benefit of respondent's customers, whether the amounts claimed by respondents are in fact due and owed.

PAR. 9. In the course and conduct of their business, respondents cause, and have caused, to be sent from their various places of business throughout the United States letters, forms, and other printed materials to alleged debtors whose accounts have become delinquent. Said letters, forms and other printed materials contain many statements or representations as to actions that have been taken or will be taken to effect the collection of such delinquent accounts. Typical, but not all inclusive of such statements, are the following:

We are forwarding the file of T L Posten to our lawful agent in Monterey Pk, California. We will instruct that firm to enforce the purchase agreement as follows:

Plaintiff	:	Grolier Enterprise
Defendant	:	T L Posten
Jurisdiction	:	Monterey Pk, California
For	:	\$11.99

Our date of action is Sept 08 1970. The \$11.99 in our office before this date is the only way for dismissal.

* * * * *

We are transferring the above claim from delinquent accounts to our legal file.

Enclosed you will find the necessary papers and information to sue the above named debtor, as he has not paid his legal obligation nor has he been willing to work out a reasonable schedule of payments.

Service of Citation may be served at place of employment or residence. Upon obtaining a judgement, please file for a Writ of Execution.

We request you hold the enclosed papers for five (5) days, in order to give debtor an opportunity to make payment to this office.

* * * * *

When your account was turned over to us for collection, we were requested to take all necessary legal action for the immediate collection of this past due debt that you owe our client.

Due to your claim of hardship, we made special arrangements with you to give you ample time to pay this account on an installment basis.

Now that you have breached your agreement we must protect the interest of our client and refer this account to an Attorney with instructions to proceed as follows:

- A. Service of Citation at your home or place of employment.
- B. The taking of depositions and written interrogatories.
- C. Summons to appear in Court with your Attorney.
- D. Default judgments, garnishments, foreclosures and attachments.

The choice is yours. * * *

Either we receive payment from you within the next five days as agreed or we will proceed as outlined above.

* * * * *

We are forwarding the file of Marian Diorio to our collection agent for Lansdowne, Pennsylvania. We will instruct that firm to enforce the purchase agreement as follows:

Creditor	:	RCA Record Club
Debtor	:	Marian Diorio
Location	:	Lansdowne, Pennsylvania
For	:	\$2.89

Our date of action is December 05, 1970. The \$2.89 in our office before this date is the only way to prevent this encounter.

* * * * *

We will not hesitate to employ every available lawful means which we have at our disposal until we collect all money owed our client. The only way for you to settle this matter without legal involvement and further notice is for you to pay what you owe without further delay.

By means of the foregoing statements or representations respondents represent, directly or by implication, that if delinquent accounts are not settled to respondents' satisfaction they will be collected by legal action.

In truth and in fact legal action with respect to the alleged delinquent accounts has not been, nor in many cases is it about to be initiated. Therefore, the aforesaid statements and representations were and are false, misleading and deceptive.

PAR. 10. Respondents, directly and through their representatives request and for some time last past have requested alleged debtors to

give to respondents a series of postdated checks which, when obtained are from time to time presented to the alleged debtors' banks for payment.

By and through the use of these postdated checks respondents have the means of threatening alleged debtors with criminal prosecution for violation of the laws of various states, relating to the issuance of worthless checks, in case sufficient funds are not on deposit in alleged debtors bank accounts.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are to the prejudice and injury of the public and constituted, and now constitute unfair or deceptive acts or 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 Dallas Regional Office staff 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, G C Services Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 3333 Fannin Street, Houston, Tex.

Respondents, Jerold B. Katz, William A. Inglehart, and Martin M. Katz, are officers of said corporation. They formulate, direct and control the policies, acts, and practices of said corporation and their address is the same as that of said corporation.

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

ORDER

It is further ordered, That respondents G C Services Corporation, formerly doing business as Gulf Coast Collection Agency Company, a corporation, its successors and assigns, and its officers and Jerold B. Katz, William A. Inglehart, and Martin M. Katz, 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 collection of accounts in commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any forms, letters, or other printed materials which cause, or which respondents should know are likely to cause, harassment, fear, or undue embarrassment to alleged debtors who receive them.

2. Representing orally or in writing, or placing in the hands of others the means and instrumentalities by and through which they may represent, directly or by implication that:

(a) Past due accounts that are being or have been referred for collection to an attorney when these accounts are not being nor have they been so referred;

(b) Legal action with respect to an allegedly delinquent account has been or is about to be or may be initiated unless the respondents are able to establish that at the time the representation was made (1) legal action has been initiated or was about to be initiated, and (2) the true nature of the legal action was clearly and completely disclosed.

3. Using forms or any other items of printed or written matter which simulates legal process.

4. Representing orally or in writing that alleged debtor's employer has been notified or may be notified that any or all of the following actions have been or will be taken when no such action or actions have been or will be taken:

(a) Suit instituted against the alleged debtor to collect the alleged sum due;

(b) The alleged debtor's wages attached;

(c) The alleged debtor's wages garnished.

5. Using any means or devices for the collection of delinquent accounts from alleged debtors in circumstances where it has been brought to respondents' attention:

(a) That said debt has been paid;

(b) That said debt is being billed to an improper person;

(c) That alleged debtor is not liable to respondents' client for the reason that the client has not provided any articles, devices, services or other items of value to the alleged debtor;

(d) That materials ordered have been returned;

(e) That materials received were unordered merchandise, and debtor is under no obligation to pay for such merchandise, or

(f) That there would be a defense in an action brought on the disputed debt;

until such time as respondents can furnish to alleged debtor an affirmative written reply from their clients that said debt is, in fact, a just one.

6. Receiving from alleged debtors post-dated checks, which will not be deposited immediately or which will be held by respondents or their representatives for more than fifteen business days after date of receipt.

It is further ordered, That respondents maintain and make available records relative to complaints received by respondents involving the acts and practices prohibited by this order and which describe steps taken by respondents to investigate and dispose of said complaints. Said records shall be maintained for a period of six (6) months from the date such complaint is received, for inspection and copying by the Federal Trade Commission.

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

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

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment

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

It is further ordered, That the respondent 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

TALENT, INC., TRADING AS TALENT, INC., ETC., ET AL.

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

Docket C-2512. Complaint, Apr. 19, 1974—Decision, Apr. 19, 1974

Consent order requiring a North Quincy, Mass. solicitor of contracts and fees from songwriters and seller/distributor of records and lead sheets, among other things to cease misrepresenting the products or services offered; misrepresenting the size of its staff; misrepresenting the prices of its services and failing to inform customers of the terms and conditions of its services.

Appearances

For the Commission: *David I. Keniry.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Talent, Inc., a corporation, trading and doing business as Jerry Dee, Grand Recording Company, Cathedral Recording Company, Chapel Recording Company, Country and Western Recording Company, Music Hall Recording Company and Melody Lan, and Theodore Rosen, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Talent, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 91 Newbury Avenue, North Quincy, Mass. Respondent Talent, Inc. is also trading and doing business as Jerry Dee, Grand Recording Company, Cathedral Recording Company, Chapel Recording Company, Country and Western Recording Company, Music Hall Recording Company and Melody Lane.

Respondent Theodore Rosen is an officer of the corporate respondent and, as such, he formulates, directs, and controls the acts and practices of the corporate respondent and the aforesaid affiliated businesses, including the acts and practices hereinafter set forth. His business 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 solicitation of contracts and fees from songwriters and prospective songwriters for the recording of songs, and in the sale and distribution of records and lead sheets containing the songs of writers contracting with them. Said solicitations are made through advertisements placed in magazines, and through form letters and other written solicitations circulated to songwriters and prospective songwriters located in the various States of the United States and in the District of Columbia.

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

PAR. 4. In the course and conduct of their aforesaid businesses, and for the purpose of soliciting contracts for the recording of songs of songwriters and prospective songwriters, and for the purpose of inducing the purchase of records, lead sheets, and related products and services offered by respondents pursuant to said contracts, and for the purpose of receiving monetary fees from songwriters in connection with said contractual arrangements, respondents have made, and are now making, statements and representations by repeated advertisements inserted in numerous magazines of interstate circulation, and by manifold statements and representations, explicit and implicit, contained in contracts, form letters and other written instruments of a solicitous nature, to songwriters and prospective songwriters with respect to respondents' business status, products and services, and the benefit to be derived by said songwriters and prospective songwriters utilization of such products and services.

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

SONGS—POEMS WANTED FOR PUBLISHING AND RECORDING
CONSIDERATION.

Accepted songs will be published and recorded at our expense—for information write to Talent, 17 Longwood Rd., Quincy, MA 02169.

1530 FEDERAL TRADE COMMISSION DECISIONS

Complaint

83 F.T.C.

SONGWRITERS! POETS!

Spiritual and religious poems and songs wanted for recording by the Chapel Symphony Orchestra and Choir. We pay all recording costs.

Information: Write Dept. Chapel Recording Co., P.O. Box 162, Wollaston, MA 02170.

* * * * *

Talent will pay all costs in the producing and in the recording of the above song.

That there will be no charge made to the author for the producing and the recording of the above song.

* * * * *

A publishing contract will be issued by Talent prior to the release of the above song by a major record company.

* * * * *

I would be glad to record your song if a more suitable and commercial melody could be set to your lyric.

It takes a great deal of time and effort to produce a recording of this nature, and unless the music is commercial, it will all be in vain.

The fabulous demonstration recording that you will receive of your completed song will be as beautiful and commercial as our talents will allow.

* * * * *

In view of the greatness of sound and quality of your recording, I certainly hope and feel that many of the songs that I will record will be accepted and released by record companies, as others have in the past. In order that I may retain the publishing royalties on your song, a publishing contract will, therefore, be issued by an ASCAP or BMI publisher on all songs accepted for release by a major record company.

* * * * *

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. Songs and poems submitted to respondents for recording and publishing consideration will be subjected to a good faith evaluation in order to determine the likelihood of these songs or poems achieving commercial success.

2. Songs and poems failing to meet the qualitative criteria employed by respondents in analyzing and determining the likelihood of these songs achieving commercial success will not be accepted by respondents for publishing and recording.

3. All costs and expenses involved in the production and recording of accepted songs will be borne by respondents and that there is no charge to the author for the production and recording of his song.

4. Respondents' primary interest in contracting with songwriters for

the production and recording of their songs is in attaining the commercial success of these recordings.

5. By and through the use of the words, "A publishing contract will be issued by Talent prior to the release of the above song by a major record company," and other words of similar import and meaning not set out specifically herein, that there is a reasonable expectation that songs produced and recorded by respondents may be released by a major record company or achieve commercial success, and that in the normal course of their business respondents negotiate, enter into, or otherwise issue publishing contracts to songwriters.

6. By and through the use of the words, "In order that I may retain the publishing royalties on your song, a publishing contract will, therefore, be issued * * * " and through the use of the words, "all royalties that the above song may earn from the sales of records, sheet music, motion pictures, etc. are to be divided as follows: 90% to the above author and 10% to Talent," and other words of similar import and meaning not set out specifically herein, that there is a reasonable expectation that songs produced and recorded by respondents may earn royalties from the sales of records, sheet music, and motion pictures, and that the retention, by respondent, of a percentage of the royalties realized from the sales of records, sheet music, and motion picture rights is the means whereby respondents recoup the financial investment involved in their producing and recording songs at no cost or expense to the songwriter.

PAR. 6. In truth and in fact:

1. Songs and poems submitted to respondents for recording and publishing consideration are not subjected to a good faith, qualitative evaluation in order to determine the likelihood of these songs or poems achieving commercial acceptance or success. Respondents do not maintain or employ a selective review process based upon qualitative considerations. To the contrary, substantially all songs and poems submitted by songwriters and prospective songwriters are accepted for recording without any evaluation or assessment regarding the likelihood of commercial acceptance or success.

2. Respondents do not reject or refuse to accept songs and poems submitted by songwriters and prospective songwriters for publishing and recording as a result of a deliberative determination that these songs and poems may fail to achieve commercial acceptance or success. To the contrary, the minimal number of songs and poems rejected by respondents each year are rejected due to a determination by respondents that the lyrics are coarse or offensive or because the song or poem is illegible.

3. All costs and expenses involved in producing and recording accepted songs are not borne by respondents, nor are songs produced and

recorded at no charge to their authors. To the contrary, all costs and expenses incurred by respondents in the producing and recording of accepted songs are included, along with a profit, in a musical setting fee or a fee for studio use, which all songwriters are required to pay as a condition precedent to the recording of their song by respondents.

4. Respondents' primary interest in contracting with songwriters for the producing and recording of their songs is not directed toward attaining the commercial acceptance or success of these recordings. To the contrary, respondents' primary interest in contracting with songwriters is to obtain payment under these contracts and to establish a relationship with these songwriters which is conducive to further overtures by which respondents induce the purchase of additional recordings and services for the alleged purpose of achieving the commercial acceptance and success of these recordings.

5. There is no basis in fact which would reasonably support the expectation that songs produced and recorded by respondents may be released by a major record company or achieve commercial success, nor do respondents, in the normal course of business, negotiate, enter into, or otherwise, issue publishing contracts to songwriters. To the contrary, songs produced and recorded by respondent have failed to be released by major record companies or to achieve commercial success. Further, any publishing contracts issued by respondents have been, and are, insubstantial in number, not pursuant to release of a recording by a major recording company, but utilized primarily to induce the purchase of additional recordings and services from respondents.

6. There is no basis in fact which would reasonably support the expectation that songs produced and recorded by respondents may earn royalties from the sale of records, sheet music, and motion picture rights, or that any or all of the costs and expenses incurred by respondents in the producing and recording of songs will be recouped by respondents as a percentage of the royalties earned by the sale of records, sheet music, and motion picture rights. To the contrary, respondents have failed to produce or record, for any customer, any songs which have earned royalties from the sale of records, sheet music, or motion picture rights. Accordingly, respondents do not rely upon the receipt or collection of royalties earned from the sale of records, sheet music, or motion picture rights for the recoupment of the costs and expenses incurred by them in producing and recording songs. All costs and expenses incurred by respondents in producing and recording accepted songs are included, along with a profit, in a musical setting fee or a fee for studio use, which all songwriters are required to pay as a condition precedent to the recording of their song by respondents.

Therefore, the statements and representations as set forth in Para-

graphs Four and Five, hereof, were and are false, misleading and deceptive.

PAR. 7. In addition to those statements and representations set forth in Paragraphs Four and Five, hereof, and in furtherance of a sales program for inducing the purchase of their products and services, respondents have made, and are now making, further statements and representations to songwriters and prospective songwriters with respect to respondents' business status, procedures, products and services, and the benefit to be derived by said songwriters and prospective songwriters' utilization of such products and services.

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

Our company has made provisions with professional writers who * * * have agreed with Grand Record Company to write a limited amount of melodies each month at a cost of only \$47.50 for each musical setting.

* * * * *

TALENT will furnish copyright advisory services including all necessary papers to register song (as author's sole property) in U.S. Copyright Office in Washington, D.C.

In view of the very commercial aspects of your song, and considering the fact that many people will be hearing your recording, we feel that a copyright certainly should be secured in your name in order to protect your rights and ownership to your song.

* * * * *

SONGS AND POEMS NEEDED IMMEDIATELY.

We are interested in ballads, spirituals, Country and Western, and all types of songs and poems that have the possibility of becoming hits.

* * * * *

A great deal of time, money and effort is involved in the producing of your recording. The average cost of a 32-piece, fully orchestrated recording would cost over \$1500.

We have indicated to you in our correspondence, that the cost of reproducing the recording of your song would normally cost from \$600 to \$900.

* * * * *

Because our writers are collaborating with the musicians and the choir, as well as the featured vocalist, the result is a much more magnificent recording that could not possibly be done by anyone not working in such close harmony with everyone concerned.

Our selected writers will be working in close contact with the vocalist, and the background orchestra, and the vocal group.

* * * * *

Hoping to hear from you soon,
I remain,

Yours truly,

Don Richards
Artist and Repertoire (sic)
Department

* * * * *

PAR. 8. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the statements and representations set forth in Paragraphs Four and Five, above, respondents have represented, and are now representing, directly or by implication, that:

1. Respondents have entered into agreements, or otherwise made arrangements with independent professional songwriters for the creation of musical settings for the represented fees and that the sole cost to respondents' customers for obtaining the services of these independent professional songwriters is the payment of the represented fees.

2. Respondents maintain a copyright advisory service which renders and performs valuable and knowledgeable copyright advisory services for the purpose of assisting songwriters to secure copyrights for their songs because the imminent commercial success and impending exposure of their songs to a large segment of the public necessitates the immediate acquisition of copyright protection.

3. Completed songs, that is, lyrics and music, submitted by songwriters will be accorded a good faith evaluation by respondents as to the songs' acceptability for purposes of recording and publishing.

4. The normal, regular or average cost of producing a recording, similar to those recordings produced by respondents, varies from six hundred dollars to fifteen hundred dollars, and that individuals contracting with respondents for the production of recordings will realize a substantial monetary savings by retaining respondents to produce and record their songs.

5. Professional songwriters are utilized by respondents to write the music which accompanies the lyrics submitted by customer-songwriters, and that the aforesaid professional songwriters, as part of the preparation and writing of this music, frequently establish a personal, working relationship with, or otherwise confer and consult with, the vocalist, vocal group, and background orchestra participating in the producing and recording of customer-songwriters' songs.

6. Respondents maintain an "Artist and Repertoire (sic) Department" as a distinct, separate and functional entity within their organizational

framework and that this department is staffed by personnel who render specialized services or advice to songwriters.

PAR. 9. In truth and in fact:

1. Respondents have not entered into agreements or otherwise made arrangements with independent professional songwriters for the creation of musical settings at the represented fees. To the contrary, the independent professional songwriters utilized by respondents are compensated on an hourly basis for the creation of musical settings and the represented fees are established by respondents and include therein, production and recording costs, and a margin of profit for respondents.

2. Respondents do not maintain a copyright advisory service for the purpose of assisting songwriters secure copyrights because the immediate acquisition of copyright protection for customers' songs is necessitated by the likelihood that these songs will achieve commercial success or be exposed to a large segment of the public. To the contrary, respondents urge virtually all songwriters to secure copyright protection, irrespective of the commercial merit of the songwriters' completed recordings. Respondents' purpose in urging that songwriters secure copyrights for their songs is to enable respondents to obtain an additional fee for the preparation of a lead sheet which must accompany all songs submitted to the United States Copyright Office.

3. Completed songs, that is, lyrics and music, submitted by songwriters are not accorded a good faith evaluation by respondents with respect to the songs' acceptability for purposes of recording and publishing. To the contrary, all songwriters submitting completed songs to respondents with but few insubstantial exceptions, are informed by means of a series of form letters that respondents have determined that the lyrics thereof, but not the music, are acceptable for recording and that respondents, for a fee, will provide for the creation of an acceptable musical setting. Respondents' solicitation of songs is not directed towards the acquisition of songs for recording and publishing consideration but, rather, towards obtaining fees from songwriters.

4. The normal, regular, or average cost of producing a recording, similar to those recordings produced by respondents, does not vary from six hundred dollars to fifteen hundred dollars, and individuals contracting with respondents for the production of recordings do not realize a substantial monetary savings by retaining respondents to produce and record their songs. To the contrary, respondents aforesaid pricing representations contemplate a live, fully orchestrated recording session, whereas respondents utilize taped, pre-recorded orchestrations which, in most instances, have been purchased by respondents for substantially less than six hundred dollars.

5. In most instances, professional songwriters are not utilized by

respondents to write the music which accompanies the lyrics submitted by customer-songwriters, and the aforesaid professional songwriters, as part of the preparation and writing of this music, do not frequently establish a personal working relationship with, or otherwise confer and consult with, the vocalist, vocal group, and background orchestra participating in the producing and recording of the customer-songwriters' songs. To the contrary, in most instances, lyrics submitted by customer-songwriters are sung by a vocalist who "creates" the songs' melodies or music extemporaneously during a recording session without benefit of written music. As a result of this informal, *ad hoc* recording procedure, the professional songwriters utilized by respondents do not maintain a close working relationship with vocalists pursuant to the preparation and writing of music for songs submitted by respondents' songwriter-customers. Further, the aforesaid vocal group and background orchestra utilized by respondents are pre-recorded vocal choruses and pre-recorded background orchestrations, which are selected from respondents' tape library, thereby precluding any personal contact between or among respondents' professional songwriters and members of the background orchestra or vocal groups.

6. Respondents do not maintain an "Artist and Repertoire (sic) Department" as a distinct, separate and functional entity within their organizational framework which renders specialized services or advice. To the contrary, "Don Richards" is a pseudonym for the individual respondent, Theodore Rosen, whose business activities are not confined or limited to any specific department of, or service offered by, respondents.

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

PAR. 10. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their products and services, respondents have engaged in the following additional unfair, false, deceptive and misleading acts and practices:

1. Respondents have inserted or caused to be inserted, in numerous magazines of interstate circulation, certain advertisements over the trade names of Talent, Inc., Grand Recording Company, Cathedral Recording Company, Chapel Recording Company and Country and Western Recording Company and, in a substantial number of instances, have inserted, or caused to be inserted, in a single edition of the aforesaid magazines, advertisements appearing over the trade name of two or more of the aforesaid recording companies. Through the use of such advertisements respondents have, and are, representing that the businesses conducted under the aforesaid trade names were, and are,

separate and distinct competing recording businesses and have unfairly and deceptively concealed the fact that all of the aforesaid recording companies are owned, controlled and managed by respondents. In such manner and by said means respondents induce the submission of songs and poems from songwriters and prospective songwriters who are thus misled into the mistaken and erroneous belief that they are dealing with companies and individuals other than respondents and who, if the true identity of the company soliciting their songs and lyrics were known to them, would not submit their songs and poems because many of said songwriters and prospective songwriters have been previously deceived and misled by respondents acting under the pretense and in the name of one or several of the aforesaid recording companies.

2. In a substantial number of instances, through the use of the false, deceptive and misleading statements, representations and practices set forth in Paragraphs Four through Nine, above, separately, and in connection with others of similar import and meaning but not expressly set out herein, respondents have been able to induce a substantial number of songwriters to purchase additional products and services such as commercially pressed records, hand prepared lead sheets, listings of record publishers, recording artists, record companies, and radio stations, song portfolios and record disbursement services, all of which products and services are offered by respondents for the alleged purpose of precipitating the commercial acceptance and success of customers' songs and the financial enhancement which accompanies such commercial acceptance and success.

The literature employed by respondents in the offering and sale of the aforesaid additional products and services, directly, by implication, and by a failure to disclose material facts, leads respondents' customers to the erroneous and mistaken belief that their songs have been selected by respondents for further promotional efforts because the songs possess distinctive quality, individual merit, and commercial promise, and that the promotional products and services offered by respondents considerably enhance the likelihood that customers' songs will achieve commercial acceptance and success.

3. Respondents' initial offers to produce and record songs for customers are replete with the statements and representations set forth in Paragraphs Four through nine concerning the commercial nature of respondents' endeavors. In making such offers, respondents have failed to disclose that the recordings produced by them are hand-cut, demonstration records, and inferior in quality and fidelity to commercially pressed records, and unsuitable for use in commercial promotional efforts.

The aforesaid failure of the respondents to disclose said material facts

to customers and prospective customers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the aforesaid recording companies are separate, distinct and independent businesses; that the represented promotional products and services will cause, substantially contribute to, or materially affect the commercial success of customers' recordings; and that the recordings produced by respondents are of a quality suitable for use in commercial promotion.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

PAR. 11. 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, firms and individuals in the sale and distribution of records, lead sheets, and related products and services of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Talent, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 91 Newbury Avenue, North Quincy, Mass.

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

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

ORDER

It is ordered, That respondents Talent, Inc., a corporation, trading and doing business in its own name and as Jerry Dee, Grand Recording Company, Cathedral Recording Company, Chapel Recording Company, Country and Western Recording Company, Music Hall Recording Company and Melody Lane, and Theodore Rosen, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of records, lead sheets and related products or services, or any other products or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing that:

(a) Songs, poems or lyrics submitted to respondents are assessed or evaluated in order to determine the likelihood of their achieving commercial acceptance or success.

(b) Songs, poems or lyrics failing to meet qualitative stan-

dards established by respondents will not be accepted for recording.

(c) There is no charge to customers for the production or recording of their songs; or misrepresenting in any manner that products or services are provided at either no cost or a reduced cost.

(d) Respondents' primary interest in contracting or dealing with songwriters is in assisting them to achieve commercial success or acceptance for their songs or recordings.

(e) Songwriters whose songs are accepted for recording by respondents may reasonably expect that their songs will ultimately be released by a record company; or that respondents frequently, or in the normal course of business, issue publishing contracts.

(f) Songwriters whose songs are accepted for recording by respondents may reasonably expect that their songs will earn royalties from the sales of records, sheet music, or radio, television or motion picture rights.

(g) The sole charge to customers for the services of professional songwriters employed by respondents is respondents' cost for obtaining the services of these professional songwriters; or that respondents provide customers with any products or services at respondents' cost for such products or services.

(h) It is necessary or desirable that customers secure copyright protection because of their songs' distinctive merit, commercial character, or the likelihood that their songs will gain wide public attention or acceptance; or that respondents maintain a copyright advisory service for the purpose of assisting songwriters secure copyrights on songs that are of commercial quality.

(i) Songs are or may be accepted for recording.

(j) Any price for respondents' products and services is a special price or substantially less than prices charged by other companies or individuals for similar products or services.

(k) Respondents employ or utilize songwriters to write music for customers' lyrics prior to the recording of these customers' songs; or that songwriters employed or utilized by respondents work closely with, or confer and consult with, respondents' vocalists, vocal groups or background orchestra.

(l) Respondents maintain separate and functional departments within their organizational framework; or misrepresenting, through the use of pseudonyms, or by any other means, the number of personnel employed by respondents.

2. Representing, directly or by implication, in their advertising or in any other manner, that any recording company or business owned, operated, or controlled by them or either of them is otherwise owned, operated, or controlled; or that one of two or more such recording companies or businesses owned, operated, or controlled by either or both of them is separate, distinct, or competitive with the others similarly owned.

3. Inducing the purchase of any products or services by representing, directly or by implication, that the purchase of these products or services will cause, substantially contribute to, or materially affect either the commercial success or acceptance of a song or recording, or the customer's financial enhancement.

4. Failing to inform each customer or prospective customer, in clear and conspicuous language, prior to the execution of a recording contract, that the recording provided by respondents is hand cut, a demonstration record, and unsuitable for use in commercial promotion.

5. Failing to inform each customer or prospective customer, in clear and conspicuous language, prior to the execution of a recording contract, that the background orchestrations and vocal choruses provided by respondents are pre-recorded; and that respondents' use of these pre-recorded background orchestrations and vocal choruses is not exclusive to, or limited to, his song or recording.

6. Selling, or offering for sale, commercially pressed recordings, without disclosing in clear and conspicuous language, contemporaneous with the sale or offering for sale, that many radio stations, as a matter of policy, refuse to play demonstration records.

7. Making any agreement, arrangement, provision or representation concerning the disposition of royalties a song may earn without affirmatively disclosing that respondents have never produced or recorded a song for a customer which has earned any royalties.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale or sale of respondents' products or services or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging the receipt of the 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 address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

IN THE MATTER OF
AUSLANDER DECORATOR FURNITURE, INC., TRADING AS
A.D.F., ETC., ET AL.
ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 8911. Complaint, Jan. 30, 1973—Order & Opinion, Apr. 23, 1974

Order requiring a Hanover, Md., seller and distributor of furniture and related products, among other things to cease failing to deliver ordered merchandise; delivering damaged or defective merchandise; failing to repair or replace damaged goods as advertised; misrepresenting the availability of merchandise in stock; misrepresenting prices as being "sale" prices unless such prices are reduced significantly to afford a meaningful savings over the regular selling prices; and failing to maintain records to substantiate savings claims. Further, respondents are required to refund all monies paid by customers if respondents fail to deliver merchandise within five (5) business days from an agreed-upon date of delivery.

Appearances

For the Commission: *James D. Tangires, Michael Mpras and Alan Cohen.*

For the respondents: *John S. Yodice and Edwin W. Holden, III.*
Wash., D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Auslander Decorator Furniture, Inc., a corporation, doing business as A.D.F. and A.D.F. Warehouse, and Maxwell Auslander, Sandra Tye, and Linda Decker,

individually, and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Auslander Decorator Furniture, Inc., doing business as A.D.F. and A.D.F. Warehouse, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 7451 Race Road, Hanover, Md. Its warehouse, shipping and storage facilities are located at 701 Edgewood Street, N.E., and Fourth and Channing Streets, N.E., Wash., D.C., and 7451 Race Road, Hanover, Md. It operates furniture outlets in the States of Maryland and Virginia and in the District of Columbia.

Respondents, Maxwell Auslander, Sandra Tye and Linda Decker are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth, and their address is that of said corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of furniture and related products to the public at retail.

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

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their merchandise, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation, and by materials disseminated through the mails, and on tags or labels and in signs posted in respondents' stores. Typical and illustrative of the foregoing, but not all-inclusive thereof, are the following:

FREE DELIVERY
LAY-A-WAY * * * 8 MONTHS FREE STORAGE
ADF WAREHOUSE SALE PRICE!!
SAVINGS!!! AT ALL 7 ADF OUTLETS
ADF WAREHOUSE SALE

ADF WAREHOUSE CLEARANCE SALE
BUY NOW AND SAVE

In addition to the aforesaid statements and representations, the respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the terms and conditions under which merchandise will be sold and delivered and services provided by respondents.

PAR. 5. By and through the use of the above-quoted statements and representations in Paragraph Four, and others of similar import and meaning not expressly set out herein, including the aforesaid oral statements and representations made by respondents and their sales representatives, respondents have represented, and are now representing, directly and by implication, that:

1. Respondents will deliver their furniture to customers on or near the dates they have promised those customers for delivery.

2. Respondents maintain in their warehouse stock which is adequate to insure that furniture ordered by customers will be available for delivery on the promised delivery dates.

3. Respondents' customers may purchase furniture on the layaway plan, and, while the payments are being made, the furniture will be stored in their warehouse, ready for delivery upon completion of all payments.

4. Respondents are offering furniture at prices which are a reduction from the prices at which respondents have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of business.

PAR. 6. In truth and in fact:

1. Respondents, in many instances do not deliver their furniture to customers on or near the dates they have promised those customers for delivery.

2. Respondents, in many instances, do not maintain in their warehouse stock which is adequate to insure that furniture ordered by customers will be available for delivery on the promised delivery dates.

3. Furniture purchased by respondents' customers on the layaway plan is not, in many instances, stored in the warehouse ready for immediate delivery upon completion of all payments, but is sold to other customers, necessitating reordering of the merchandise when the layaway payments are completed, with resultant delays in delivery.

4. Respondents, in many instances, do not offer furniture at prices which are a reduction from the prices at which respondents have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of business.

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 aforesaid business and for the purpose of inducing the sale of their furniture, respondents have maintained, and are now maintaining, in their salesrooms, floor models and displays of furniture being offered for sale, on the bases of which their customers select and order the furniture they purchase from the respondents. In this connection, respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the quality and durability of the furniture being offered for sale, the terms and conditions under which merchandise will be sold and delivered, and the services that will be provided by the respondents. Moreover, subsequent to making sales and deliveries, respondents and their employees have made, and are now making, numerous oral statements, representations and promises to their customers regarding the time and the manner in which respondents will perform various adjustments, replacements and/or repairs.

PAR. 8. By and through the use of floor models and furniture displays discussed in Paragraph Seven, together with the aforesaid oral statements, representations and promises made by respondents, their sales representatives and other employees, respondents have represented, and are now representing, directly or by implication, that:

1. Furniture which is delivered to respondents' customers will be identical to that which the customers have selected and ordered on the bases of respondents' floor models and/or furniture displays.

2. Furniture delivered to customers which is different from that which the customers have selected and ordered on the bases of respondents' floor models and/or furniture displays, will be replaced within a reasonable time, to the satisfaction of the customers, and in accordance with promises made to the customers by respondents' employees.

3. Furniture which is delivered to respondents' customers will be free from damages and/or defects.

4. Furniture which is delivered to purchasers with damages and/or defects, will be repaired or replaced within a reasonable time.

5. Furniture which is delivered to purchasers with damages and/or defects, will be repaired or replaced to the satisfaction of the purchasers.

6. Furniture which is delivered to purchasers with damages and/or defects, will be repaired or replaced in accordance with promises made to the purchasers by respondents' employees.

PAR. 9. In truth and in fact:

1. Furniture is delivered to customers which, in many instances, is different from that which the customers have selected and ordered on the bases of respondents' floor models and/or furniture displays.

2. Furniture delivered to customers which is different from that which the customers have selected and ordered on the bases of respondents' floor models and/or furniture displays, in many instances, is not replaced within a reasonable time, to the satisfaction of the customers, and in accordance with promises made to the customers by respondents' employees.

3. Furniture delivered to purchasers, in many instances, is damaged and/or defective.

4. Furniture which is delivered to purchasers with damages and/or defects, in many instances, is not repaired or replaced within a reasonable time.

5. Furniture which is delivered to purchasers with damages and/or defects, in many instances, is not repaired or replaced to the satisfaction of the purchasers.

6. Furniture which is delivered to purchasers with damages and/or defects, in many instances, is not repaired or replaced in accordance with promises made to the purchasers by respondents' employees.

Therefore, the statements, representations, acts and practices set out in Paragraphs Seven and Eight 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, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

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

PAR. 12. The acts and practices of the respondents as set forth above 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.

INITIAL DECISION BY ERNEST G. BARNES,
ADMINISTRATIVE LAW JUDGE

FEBRUARY 15, 1974

PRELIMINARY STATEMENT

Respondents Auslander Decorator Furniture, Inc., a corporation, doing business as A.D.F. and A.D.F. Warehouse, and Maxwell Auslander, Sandra Tye and Linda Decker, individually, and as officers of said corporation, are charged with violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45). The complaint, issued by the Commission on Jan. 30, 1973, alleges that respondents, through advertisements placed in newspapers of interstate circulation, through brochures disseminated through the mails, by the use of tags or labels and in signs posted in respondents' retail stores, and by oral representations by respondents and their sales representatives, have represented directly and by implication that:

- (1) respondents will deliver furniture to customers on or near the dates they have promised those customers for delivery;
- (2) respondents maintain in their warehouse adequate stock to insure that furniture ordered by customers will be available for delivery on the promised delivery dates;
- (3) respondents' customers may purchase furniture on the layaway plan, and, while the payments are being made, the furniture will be stored in their warehouse, ready for delivery upon completion of all payments; and
- (4) respondents are offering furniture at prices which are a reduction from the prices at which respondents have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of business.

In truth and in fact, the complaint alleges,

- (1) respondents, in many instances, do not deliver furniture to customers on or near the dates promised customers for delivery;
- (2) respondents, in many instances, do not maintain in their warehouse adequate stock to insure that furniture ordered by customers will be available for delivery on the promised delivery dates;
- (3) furniture purchased by respondents' customers on the layaway plan is not, in many instances, stored in the warehouse ready for immediate delivery upon completion of all payments, resulting in delays in delivery; and
- (4) respondents, in many instances, do not offer furniture at prices which are a reduction from the prices at which respondents have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of business.

The complaint further alleges that by and through the use of floor models and furniture displays, together with oral statements, representations and promises made by respondents, their sales representatives and other employees, respondents have represented, directly or by implication, that:

(1) furniture which is delivered to respondents' customers will be identical to that which the customers have selected and ordered on the bases of respondents' floor models and/or furniture displays;

(2) furniture delivered to customers which is different from that which the customers have selected and ordered on the bases of respondents' floor models and/or furniture displays will be replaced within a reasonable time, to the satisfaction of the customers, in accordance with promises made to the customers by respondents;

(3) furniture which is delivered to respondents' customers will be free from damages and/or defects; and

(4) furniture which is delivered to purchasers with damages and/or defects will be repaired or replaced within a reasonable time to the satisfaction of the purchasers and in accordance with promises made to the purchasers by respondents.

In truth and in fact, the complaint alleges,

(1) furniture is delivered to customers which, in many instances, is different from that which the customers have selected and ordered on the bases of respondents' floor models and/or furniture displays;

(2) furniture delivered to customers which is different from that which the customers have selected and ordered on the bases of respondents' floor models and/or furniture displays, in many instances, is not replaced within a reasonable time, to the satisfaction of the customers, and in accordance with promises made to the customers by respondents;

(3) furniture delivered to purchasers, in many instances, is damaged and/or defective, is not repaired or replaced within a reasonable time, is not repaired or replaced to the satisfaction of the purchasers, and is not repaired or replaced in accordance with promises made to the purchasers by respondents.

Therefore, the statements, representations, acts and practices of respondents, as set out hereinbefore, were, and are, false, misleading and deceptive.

Respondents filed an answer to the complaint on Mar. 12, 1973 which consisted of a general denial of all the complaint allegations of unlawful conduct. Thereafter complaint counsel moved to strike respondents' answer on the grounds that it did not conform to the requirements of the Commission's Rules of Practice. Respondents at the same time requested additional time in which to file an amended answer since re-

spondents' attorneys had only recently been retained and needed additional time in which to fully prepare an answer.

Pursuant to permission granted by the undersigned, respondents filed an amended answer on Apr. 6, 1973. The amended answer was in greater detail than the original answer, and respondents generally denied substantially all the allegations of unlawful conduct set forth in the complaint.

Prior to the filing of the aforesaid amended answer, a prehearing conference was held on Apr. 3, 1973. Thereafter, on Apr. 30, 1973 and May 14, 1973, prehearing conferences were held. At the prehearing conference on Apr. 30, 1973, respondents amended their answer in part (P. Tr. 48). On June 11, 1973, respondents filed a motion for permission to further amend their answer, together with a Second Amended Answer. By order filed June 21, 1973, respondents' motion to further amend their answer was granted.

By the Second Amended Answer, respondents Auslander Decorator Furniture, Inc. and Maxwell Auslander admitted the allegations contained in the complaint. Individual respondents Sandra Tye and Linda Decker admitted the allegations of the complaint, except that these respondents denied that (1) they have participated as individuals in any of the acts or practices alleged in the complaint, and (2) denied that they formulate, direct and control the acts and practices of the corporate respondent, Auslander Decorator Furniture, Inc., including the acts and practices set forth in the complaint. All respondents reserved the right to submit proposed findings and conclusions under Section 3.46 of the Rules of Practice, the right to appeal the initial decision herein to the Commission under Section 3.52 of the Rules of Practice, and the right to judicially appeal from any adverse Commission decision.

On June 20, 1973, the undersigned issued an order limiting the factual issues to be tried in this proceeding in view of respondents' admission answer. The factual issues remaining to be tried were set forth as follows:

(1) Do individual respondents Sandra Tye and Linda Decker formulate, direct and control the acts and practices of the corporate respondent Auslander Decorator Furniture, Inc., and

(2) Have individual respondents Sandra Tye and Linda Decker participated in the acts and practices alleged in the complaint?

By letter dated Aug. 1, 1973, the undersigned was advised by John S. Yodice, counsel for respondents, that he was withdrawing his representation of individual respondents Sandra Tye and Linda Decker, but would remain as counsel for the corporate respondent and individual respondent Maxwell Auslander. Thereafter, by telephone, the undersigned was advised by individual respondents Sandra Tye and Linda

