

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

BANKERS LIFE AND CASUALTY COMPANY, ET AL.

Docket 9075. Interlocutory Order, Jan. 3, 1979

ORDER AFFIRMING ORDER OF ADMINISTRATIVE LAW JUDGE AMENDING COMPLAINT TO SUBSTITUTE EXECUTRIX

Administrative Law Judge Lewis F. Parker (the "ALJ") has certified for review by the Commission an order he entered on October 11, 1978, substituting as a party in this proceeding the executrix of the estate of a deceased respondent. The executrix has appealed from the ALJ's order, contending that the action against her decedent abated as a matter of law with his death and that, in any event, substitution is improper where the only relief presently sought by complaint counsel is injunctive in nature and where no determination of liability had been made by the ALJ prior to respondent's death. For the reasons set forth below, we affirm the ALJ.

Albert R. Linnick, who was named in the complaint individually and as an officer of three corporations, died in January 1978. Complaint counsel thereafter moved to amend the complaint by substituting Alice Holguin, executrix of Mr. Linnick's estate, for Mr. Linnick. Notwithstanding that the complaint itself seeks only a cease-and-desist order against Mr. Linnick, complaint counsel desire the amendment because, if they prevail herein, the complaint (Par. 25) indicates their intention to ask the Commission to file suit against respondents in U.S. District Court to obtain restitution on behalf of consumers under Section 19 of the F.T.C. Act. Accordingly, complaint counsel assert that the executrix of Mr. Linnick's estate, who is now custodian of his assets, must be substituted as a party in order to facilitate making accurate findings with respect to Mr. Linnick's conduct and in order to preserve access to his assets. To lay the foundation for such a Section 19 action, complaint counsel, on behalf of the Commission, have also filed a contingent claim against Mr. Linnick's estate in probate court.¹

We believe, as did the ALJ, that proper disposition of this case is largely controlled by the Commission's decision in *Holiday Magic*.

¹ The executrix's arguments regarding the propriety of that claim are not properly addressed to the Commission. Hence, we do not reach them here.

Inc., 84 F.T.C. 347 (1974). In that case, following the death of a respondent, the Commission ordered substitution of his executor into the litigation, specifically holding that the Section 5 cause of action had not abated because there remained a prospect of recovery of funds from his estate for the purpose of providing redress to injured consumers. The Commission assessed the Federal Survival Statute, 28 U.S.C. 2404, and the Federal common law in *Holiday Magic*, and concluded that an equitable action seeking, in part, redress to consumers did not abate. We see no reason to disturb that holding here, and we specifically find that in the instant case, amendment of the complaint will effectuate one of the Commission's initial purposes in issuing that complaint, *viz.* to reach assets with which redress may be made to consumers, assuming liability is first established. Hence, we hold that the pending action did not abate with Mr. Linnick's death.

The executrix protests, however, that two features distinguish *Holiday Magic* from this case. First, she notes that the Section 5 complaint in *Holiday Magic*, unlike the complaint in the instant case, expressly included redress to consumers as a part of the relief sought therein. Second, she notes that the ALJ in *Holiday Magic* had already entered his initial decision finding violations on the part of respondents, whereas in the instant case the trial has not yet begun. We find these distinctions to be without significance.

With respect to the first asserted distinction, the difference between the complaints is wholly a product of an amendment to the Commission's statutory scheme and does not imply a distinction with respect to complaint counsel's ultimate objectives in the two cases. The decision in *Heater v. F.T.C.*, 503 F.2d 321 (9th Cir. 1974), and the 1975 amendment of the F.T.C. Act in response thereto, led to a change in Commission procedure with respect to seeking restitution for injured consumers. *Heater* held, contrary to the Commission's argument, that Section 5 of the F.T.C. Act did not include authority for complaint counsel to seek or for the Commission to order restitution to consumers. Rather, the court said, that section limited the Commission primarily to issuance of injunctive, cease-and-desist orders.² Thereafter, the F.T.C. Act was amended by the Congress in 1975 to add Section 19, which authorizes the Commission, *inter alia*, to file suit in U.S. District Court to seek restitution, once there is outstanding against a respondent a final Commission cease-and-desist order. In light of both the amended statutory scheme and the doubts raised by *Heater*, customary Commission practice was modi-

² Certain exceptions to this principle were set out by the court at 323, n.7.

fied so that redress is now ordinarily sought only in Section 19 proceedings. Current Commission practice is thus necessarily at variance with that which was extant at the time of *Holiday Magic*, the complaint in which antedated *Heater, supra*.

We therefore reject the executrix's argument. By giving notice in the complaint that restitution may be sought under Section 19, the Commission has adequately indicated that redress is an objective. It is of no moment that the Section 5 complaint itself seeks no more than a cease-and-desist order. To be sure, the Commission's interest in restraining Mr. Linnick from engaging in continued unfair or deceptive practices ended with his death, but the same cannot be said with respect to the Commission's continued interest in assets which may have been unlawfully acquired by him as a consequence of violations of the Federal Trade Commission Act. As the ALJ noted, respondent's death does not preclude findings with respect to his activities, which findings may be the predicate for a subsequent Section 19 action, notwithstanding the absence of a cease-and-desist order specifically directed against the decedent. Accordingly, the post-1975 form of actions such as this cannot be a ground for excusing Mr. Linnick's successor in interest, his estate.

With respect to the second distinction advanced by the executrix, we find the timing of issuance of the initial decision to be without importance. Concededly, the ALJ in *Holiday Magic* had already issued an initial decision finding the decedent to have violated the law, but the absence of that factor in this case cannot be controlling. Substitution of estates as parties cannot be limited solely to those estates whose decedents have already been adjudged to have violated the law, but must encompass as well the estates of those decedents who may have violated the law, and if so, whose assets may be available to provide redress to injured consumers. Thus, the amendment to the complaint merely serves to ensure that the potential Section 19 action will not be frustrated by the death of Mr. Linnick.

The executrix raises other jurisdictional, due process and collateral objections, but we find these to be without merit and to have been adequately answered by the administrative law judge. Accordingly,

It is ordered, That Order of October 11, 1978 by Administrative Law Judge Lewis F. Parker amending the complaint by substituting Alice Holguin, executrix of the estate of Albert R. Linnick, for decedent respondent Albert R. Linnick be, and it hereby is, affirmed.

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93 F.T.C.

IN THE MATTER OF

THE ADVERTISING CHECKING BUREAU, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2947. Complaint, January 4, 1979 — Decision, January 4, 1979*

This consent order, among other things, requires a New York City administrator and auditor of cooperative advertising programs to cease designing or implementing cooperative advertising programs for their clients which limit or restrict the rights of dealers to obtain cooperative advertising allowances for merchandise they have advertised or sold at other than regular or suggested retail prices.

*Appearances*For the Commission: *Jeffrey Klurfeld.*For the respondent: *Michael W. Palmer, Baker & McKenzie, San Francisco, Calif. and Abner J. Golieb, Golieb & Golieb, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Advertising Checking Bureau, Inc. has violated the provisions of Section 5 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 as follows:

PARAGRAPH 1. Respondent The Advertising Checking Bureau, Inc. ("ACB") is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 353 Park Ave. South, New York, New York. ACB is the parent corporation of four corporate subsidiaries which respectively maintain offices in Chicago, Illinois; San Francisco, California; Memphis, Tennessee; and Columbus, Ohio.

For purposes of this complaint, the following definitions shall apply:

"Client" is defined as any person, partnership, corporation or firm which has retained The Advertising Checking Bureau, Inc. to conduct, administer or audit, or to assist in the design or implementation of, any cooperative advertising program or portion thereof.

"Dealer" is defined as any person, partnership, corporation or firm which is eligible to participate in any client's cooperative advertising program.

PAR. 2. ACB is now and has been for many years engaged in administering or auditing cooperative advertising programs on behalf of clients; it has also assisted in the design or implementation of such programs. ACB has been retained by over 400 prominent manufacturers of branded products to perform cooperative advertising services. Sales of these clients' products represent a significant volume of commerce in such industries as wearing apparel, footwear, cosmetics and watches. Annually, ACB processes over one million claims for cooperative advertising allowances that are submitted by dealers of these clients. In addition to its cooperative advertising services, ACB monitors newspapers to determine the content and frequency of advertisements disseminated by a company's dealers and those of a competitor's dealers. In this connection, it offers a tearsheet service and prepares comprehensive retail store advertising reports.

PAR. 3. The acts and practices of ACB are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth herein, every client's dealers have been and are now in substantial competition with other dealers of the same client.

PAR. 5. ACB has assisted clients to design or implement, or has itself administered or audited on behalf of clients, cooperative advertising programs or plans which limit or restrict the rights of dealers to obtain cooperative advertising credits or allowances for any merchandise which has been:

- a. Sold or advertised at other than the dealers' regular selling price.
- b. Sold or advertised at a sale price, at a discount price, at a promotional price, at a reduced price, at an off-price, or at a mark-down.
- c. Sold or advertised at less than the suggested retail price, at less than the preticketed price, or at less than any minimum resale price.
- d. Sold or advertised using a price comparison.

PAR. 6. The administering or auditing by respondent, or respondent's assisting in the design or implementation of, cooperative advertising programs or plans with any of the limitations or restrictions described in Paragraph Five hereinabove has the capacity, tendency and effect of establishing, maintaining, fixing, stabilizing or otherwise illegally influencing the resale prices of

dealers in clients' products, and has had and still has the capacity, tendency and effect of hindering, suppressing or eliminating competition between or among those dealers selling a client's products.

PAR. 7. The aforesaid acts and practices of respondent have injured, hindered, suppressed, lessened or eliminated actual and potential competition in a wide variety of products, and thus are to the prejudice and injury of the public; and constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Advertising Checking Bureau, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 353 Park Ave. South, in the City of New York, State of 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

For the purposes of this order, the following definitions shall apply:

"Client" is defined as any person, partnership, corporation or firm which has retained The Advertising Checking Bureau, Inc. to conduct, administer or audit, or to assist in the design or implementation of any cooperative advertising program or portion thereof.

"Dealer" is defined as any person, partnership, corporation or firm which is eligible to participate in any client's cooperative advertising program.

I

It is ordered, That respondent The Advertising Checking Bureau, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the designing, implementing, conducting, administering or auditing of any cooperative advertising program, or portion thereof, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

Designing, implementing, conducting, administering or auditing any plan, program or scheme, in whole or in part, in such manner as to restrict, condition or limit the right of any dealer to obtain cooperative advertising credits or allowances because of any of the following:

- a. Selling or advertising any product at other than the dealer's regular selling price.
- b. Selling or advertising any product at a sale price, at a discount price, at a promotional price, at a reduced price, at an off-price, or at a mark-down.
- c. Selling or advertising any product at less than the suggested retail price, at less than the preticketed price, or at less than any minimum resale price.
- d. Selling or advertising any product using comparative prices.

II

Any cooperative advertising plan or program which limits or restricts any dealer from obtaining cooperative advertising credits or

allowances for the advertising of close-outs, irregulars or seconds shall not be deemed to violate this order.

III

It is further ordered, That respondent shall:

1. Within thirty (30) days after service of this order, mail under separate cover a copy of this order and complaint to every client whose cooperative advertising program is designed, implemented, conducted, administered or audited by respondent in such manner as to restrict, condition or limit the right of any dealer to obtain cooperative advertising credits or allowances because of any of the restrictions or limitations contained in Paragraph I hereinabove. An affidavit of mailing shall be sworn to by an official of respondent verifying that said mailing was performed.

2. Within sixty (60) days after service of this order, distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel and auditing personnel, and secure from each such entity or person a signed statement acknowledging receipt of said order.

IV

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

V

It is further ordered, That respondent 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.

IN THE MATTER OF
KELCOR CORPORATION, ET AL.

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

Docket C-2948. Complaint, Jan. 8, 1979 — Decision, Jan. 8, 1979

This consent order, among other things, requires a Dallas, Tex. finance company to cease, in connection with the extension of consumer credit, failing to compute finance charges and provide relevant disclosures in the manner and form required by Federal Reserve System regulations.

Appearances

For the Commission: *Richard Gateley.*

For the respondents: *T. Kellis Dibrell, Dibrell, Dotson & Dibrell,*
San Antonio, Texas.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the regulations promulgated thereunder and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kelcor Corporation, a corporation, and C. K. Wingo, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kelcor Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 907 Hedrick Building, San Antonio, Texas.

Respondent Kelcor Corporation does not engage in any consumer loan transactions itself, but operates through wholly-owned subsidiary offices located in the States of Texas, Louisiana and Oklahoma. Each subsidiary is incorporated in the respective state in which it is located under such names as Family Plan Corporation, Credit Plan Corporation, Credit Plan Corporation of Houston, Credit Plan Corporation of Corpus Christi, Credit Plan Corporation of Fort Worth, Mutual Plan Corporation, Mutual Plan of Tulsa, Inc., or Mutual Plan Corporation of Shreveport.

Respondent C. K. Wingo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent and its subsidiaries, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents Kelcor Corporation and C. K. Wingo formulate and control the policies, acts and practices of each of the wholly-owned subsidiaries, including the acts and practices hereinafter set forth.

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

PAR. 2. Respondents, by and through their corporate subsidiary structure, are now and have been engaged in the offering to extend, and the extension of, consumer credit to the public including the financing and the granting of consumer loans.

COUNT I

Charging violations of Section 5 of the Federal Trade Commission Act and the Truth in Lending Act, the allegations of Paragraphs 1 and 2 hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, as aforesaid, have charged and are now charging a substantial number of consumers for credit life, accident and health insurance, written in connection with consumer loans.

Typical and illustrative, but not all inclusive, of the circumstances in which these insurance charges are incurred are the following:

A. Prior to presenting the loan disclosure statement to the consumer, respondents automatically include the cost of credit life and accident and health insurance on such statement, and unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

B. In some instances, respondents have placed a check-mark, an "x" mark or some other mark next to blank lines on the loan disclosure statement to obtain borrower's signatures for credit life and accident and health insurance and/or have placed the date in

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the designated position in the insurance disclosure portion of said statement without permission or authority of the consumer.

C. Respondents record the charges for credit life and accident and health insurance as disbursements and these charges become part of the amount financed, but are excluded from the finance charge in computing the annual percentage rate, as "finance charge" and "annual percentage rate" are defined in Regulation Z.

PAR. 5. By and through the acts and practices described in Paragraph 4, and others of similar import, meaning and consequence, but not specifically set forth herein, respondents, in a substantial number of instances, and particularly in connection with the sale of credit life and accident and health insurance, obtain consumers' signatures through acts and practices which operate, directly or indirectly, to defeat the elective language on the loan disclosure statements by obscuring from consumers knowledge about the option. In some instances, respondents lead consumers to believe that their signatures are necessary solely for the purpose of obtaining credit. In other instances, respondents allow consumers to sign the loan disclosure statement, electing insurance, in the mistaken belief that such insurance is required by respondents. Respondents also discourage the declination of the insurance coverage when it is questioned. These acts and practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain credit life and accident and health insurance.

Therefore, respondents, in a substantial number of instances, induce consumers to incur charges for credit life and accident and health insurance without said consumers making a knowing, affirmative election to have such insurance and, thereby, respondents fail to obtain from each of their customers a "specifically dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a)(5) of Regulation Z, in spite of the existence of language to the contrary in the loan disclosure statement.

PAR. 6. By and through the acts and practices described in Paragraphs 4 and 5 hereof, respondents fail to include the charges for credit life and accident and health insurance in the finance charge when a specific dated and separately signed affirmative written indication of the consumers desire for such insurance has not been obtained, as required by Section 226.4(a)(5) of Regulation Z, and thereby respondents:

A. Fail to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and

B. Fail to compute and disclose accurately the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5, as required by Section 226.8 of Regulation Z.

PAR. 7. In the further course and conduct of their business as aforesaid and particularly in connection with their extensions of consumer credit, respondents write an insurance policy that is denominated "Cash Benefit Hospital Policy." The charge for said policy is imposed directly or indirectly by respondents as an incident to or as a condition of the extension of credit. The charges or premiums are usually paid by the consumer from the proceeds of such consumer's loans to respondent C. K. Wingo, who also does business as Eustace Insurance Agency, a sole proprietorship. Respondents do not include the charge or premium for said insurance in the finance charge.

Therefore, respondents are violating Sections 226.4 and 226.8 of Regulation Z, by failing to include the charge for the "Cash Benefit Hospital" insurance in the finance charge and by failing to specifically disclose such charge as an element of the finance charge.

PAR. 8. By and through respondents' failure to include the charge for the "Cash Benefit Hospital" insurance in the finance charge as described in Paragraph 7, respondents:

A. Fail to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and

B. Fail to compute and disclose accurately the "annual percentage rate" accurately to the nearest quarter of one percent in accordance with Section 226.5, as required by Section 226.8 of Regulation Z.

PAR. 9. 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 and are violating the Federal Trade Commission Act.

COUNT II

Charging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs 1 and 2 hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. In the course and conduct of their aforesaid business, respondents now cause and have caused, monies, contracts, business

forms and other commercial paper and printed materials in connection with consumer financing and the granting of consumer loans to be sent by United States mail from respondents' principal place of business in the State of Texas to their subsidiary corporations located in various other States of the United States, and maintain and at all times have maintained a substantial course of trade in services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 11. In a substantial number of instances, respondents charge consumers for household goods-fire insurance written in connection with consumer loans. Typical and illustrative, but not all inclusive of the circumstances in which such charges are incurred are the following:

A. Prior to presenting the loan disclosure statement to the consumer, respondents' include the charge for household goods-fire insurance in the amount financed. Unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

B. Respondents do not provide a place on the loan disclosure statement for the consumer to indicate his desire to obtain the household goods-fire insurance from or through respondents.

C. Respondents represent, directly or by implication, that the consumer must obtain household goods-fire insurance from or through respondents.

D. Respondents fail to disclose the cost of such insurance clearly and conspicuously in conjunction with the insurance disclosure portion in their loan disclosure statement.

PAR. 12. By and through the acts and practices described in Paragraph 11, and others of similar import, meaning and consequence but not specifically set forth herein, respondents, in a substantial number of instances, lead consumers to believe that household goods-fire insurance must be purchased from or through respondents or that such insurance is an integral part of the entire agreement, not necessitating a separate decision, despite language to the contrary in the loan disclosure statement. These practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain household goods-fire insurance through respondents or whether to obtain it through other agents.

Therefore, the acts and practices set forth in Paragraph 10 are false, misleading, deceptive and unfair and a violation of Section 5 of the Federal Trade Commission Act.

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

PAR. 14. The use by respondents of the aforesaid unfair, false, misleading or deceptive acts and practices, and their failure to disclose certain facts, as alleged above, has had and now has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that those statements and representations were and are true and complete, and into the purchase of and payment for household goods-fire insurance written in connection with consumer loans by reasons of said erroneous and mistaken beliefs.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

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 proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Truth in Lending Act and the regulation promulgated thereunder and violations 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 respondents of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for the 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 said Acts, and that complaint should issue stating its charges in that respect and having thereupon accepted the executed

consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Kelcor Corporation is a corporation organized, existing and doing business under an by virtue of the laws of the State of Texas, with its office and principal place of business located at 907 Hedrick Building, San Antonio, Texas.

Respondent Kelcor Corporation does not engage in any consumer loan transactions itself, but operates through wholly-owned subsidiary offices located in the States of Texas, Louisiana and Oklahoma. Each subsidiary is incorporated in the respective state in which it is located under such names as Family Plan Corporation, Credit Plan Corporation, Credit Plan Corporation of Houston, Credit Plan Corporation of Corpus Christi, Credit Plan Corporation of Fort Worth, Mutual Plan Corporation, Mutual Plan of Tulsa, Inc., or Mutual Plan Corporation of Shreveport.

Respondent C. K. Wingo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent and its subsidiaries and his address is the same as that of the corporate respondent.

Respondents Kelcor Corporation and C. K. Wingo formulates, directs and controls the policies, acts and practices of each of the wholly-owned subsidiaries.

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

I

It is ordered. That respondents Kelcor Corporation, a corporation, its successors and assigns, and its officers, and C. K. Wingo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the granting of consumer loans or with any other extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to include and to itemize in the Truth in Lending disclosure statement the amount of charges for credit life, accident, health or loss of income insurance as part of the finance charge, unless the amount of such charges is excluded from the finance charge because of the option available pursuant to Section 226.4(a)(5) of Regulation Z and disclosures are made in accordance with paragraph 2 following. In the event such charges are included in the finance charge, respondents shall make the following disclosure clearly and conspicuously on the disclosure statement on the front side of the page and immediately above or adjacent to the blank for the consumer's signature which consummates the loan transaction. Said disclosure shall be in the following form and set off from the text of the instrument by a black border:

NOTICE

The charges for credit life, accident, health or loss of income insurance [as applicable] are included in the finance charge. As a result, the annual percentage rate for your loan is higher than it would be if such charges were not included.

2. Offering or presenting to any consumer optional credit life, accident, health or loss of income insurance where respondents seek to invoke the elections provided by Section 226.4(a)(5) of Regulation Z unless respondents:

A. Read to each consumer at the time of the first personal meeting the following statement. A copy of the statement shall be given to the consumer simultaneously therewith. It shall be printed in a clear and conspicuous manner in 12-point bold-faced type on one side of a single sheet of paper which does not contain the consumer credit agreement:

NOTICE

Credit life, accident, health or loss of income insurance is entirely optional. You are not required to buy any such insurance to obtain a loan and your choice regarding insurance coverage will not be considered in our decision on approving a loan.

B. Retain a copy of the statement, signed and dated by the consumer and the employee who reads the statement to the consumer, for a period of two (2) years from the date shown thereon and provide a copy of said executed statement to the consumer at the time of the first personal meeting.

C. Present to the consumer as the first document at the time of consummating the loan or other consumer credit transaction a separate, written insurance authorization form which sets forth clearly and conspicuously that:

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(i) The consumer has received credit approval up to a specified amount;

(ii) The consumer's decision with regard to the insurance available through respondents is not considered in granting the credit;

(iii) Insurance is optional and is not required to obtain the loan;

(iv) The amount of the total charge for credit life insurance, the total charge for credit accident and health insurance and/or the total charge for loss of income insurance along with the net proceeds payable in each instance;

(v) The monthly payments which would result from the consumer's election to take the loan, set forth in the following order from left to right across the document: (1) without credit life, accident and health or loss of income insurance, (2) with credit life insurance only, (3) with credit accident and health insurance only, (4) with loss of income insurance only and (5) with credit life, accident and health and loss of income insurance; and, if applicable, (6) with other available forms of credit insurance; and

(vi) A blank signature and date line for each option set forth in (v) above for the consumer to indicate his election.

(vii) The borrower authorizes respondents on behalf of the borrower to pay the insurance premiums to the insurance company for such personal insurance which has been chosen.

D. Make the disclosures in the manner and form required by subparagraph C above on a separate document which contains no other printed or written material. The disclosures required by subparagraphs (i), (ii) and (iii) above shall not be smaller than 12-point type. A form in conformance with Attachment A herein will be considered as in compliance with disclosure provisions of this subparagraph and subparagraph C. Respondent shall provide the consumer with an executed copy of the said insurance authorization form at the time a loan or other consumer credit transaction is consummated. Respondents shall retain a copy of said form for a period of two (2) years following its execution and make such copy available to the Federal Trade Commission or its staff for inspection and copying on request.

E. Cease and desist from:

(i) Failing to leave the Truth in Lending disclosure statement blank as to the cost of credit life, accident, health or loss of income insurance and all other information or amounts which are affected by the election or declination of insurance until the consumer has signed the written insurance authorization form required by subparagraph C above electing the insurance coverage.

(ii) Making any marks or otherwise instructing a consumer where

to sign or date the separate insurance authorization form required by sub-paragraph C above in advance of the consumer's free and independent choice for such insurance.

(iii) Representing, by any means, that credit life, accident, health or loss of income insurance is required to obtain an extension of credit from respondents.

(iv) Discouraging by any means the declination of credit life, accident, health or loss of income insurance.

3. Offering or presenting to any consumer the "Cash Benefit Hospital Policy" or any insurance other than credit life, accident, health, loss of income or property insurance without including the charge therefor in the finance charge.

4. Failing to tell every consumer the purpose(s) of each signature requested by respondents on any document relating to a consumer credit transaction.

5. Supplying, orally or in writing, any information to a consumer which misleads or confuses the consumer, or which contradicts, obscures or detracts from the information to be disclosed by Section I of this order or by Regulation Z.

6. Failing to compute and disclose accurately the finance charge, as required by Sections 226.4 and 226.8 of Regulation Z.

7. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent as required by Sections 226.5 and 226.8 of Regulation Z.

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

II

It is further ordered. That respondents Kelcor Corporation, a corporation, its successors and assigns, and its officers, and C. K. Wingo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of household goods-fire insurance or other property insurance incident to any extension of consumer credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing to include and to itemize the amount of charges for household goods-fire insurance or other property insurance as part of the finance charge, unless the amount of such premiums or

charges are excluded from the finance charge as allowed by Section 226.4(a)(6) of Regulation Z. In the event such insurance charges are included in the finance charge, respondents shall make the following disclosure clearly and conspicuously on the side of the page and above or adjacent to the place for the consumer's signature. Said disclosure shall be in the following form and set off from the text of the instrument by a black border:

NOTICE

The charges for household goods - fire insurance or other property insurance are included in the finance charge. As a result, the annual percentage rate for your loan is higher than it would be if such charges were not included.

2. Offering or presenting to any consumer household goods-fire insurance or other property insurance unless respondents:

A. Present to the consumer at the time of consummating the loan or other consumer credit transaction a separate, written insurance authorization form which sets forth clearly and conspicuously that:

(i) The consumer's decision of whether to purchase insurance from or through respondents is or is not considered [as applicable] in granting the credit;

(ii) Household goods-fire insurance or other property insurance is or is not required [as applicable] to obtain the loan;

(iii) The total premium for household goods-fire insurance or any other property insurance along with the net proceeds payable;

(iv) The consumer may or may not elect [as applicable] to purchase property insurance through or from respondents;

(v) The consumer may or may not elect [as applicable] to furnish respondents with an existing property insurance policy or one purchased through a third party together with a loss payable clause or endorsement naming respondents as loss payee;

(vi) The consumer has ten (10) days from the date of disclosure to exercise the election, if any, disclosed in accordance with sub-paragraphs 2(A)(iv) and 2(A)(v) of Section II of this order;

(vii) In the event such insurance is not required, a signature and date line for the consumer to indicate his election; and

(viii) In the event such insurance is required, a signature and date line for the consumer to indicate that he has read the disclosures.

B. Make the disclosures in the manner and form required by sub-paragraph A above on a separate document which contains no other printed or written material. The said disclosures shall not be smaller than 12-point type. Disclosures given in the form of Attachment B herein will be considered as in compliance with the disclosure provisions of this sub-paragraph and sub-paragraph A. Respondents

shall provide the consumer with an executed copy of the said insurance authorization form at the time the loan or other consumer credit transaction is consummated. Respondents shall retain a copy of said form for a period of two (2) years from the date shown thereon and make such copy available to the Federal Trade Commission or its staff for inspection and copying upon request.

C. In the event that household goods-fire insurance is optional, cease and desist from:

(i) Making any marks or otherwise instructing a consumer where to sign or date the separate insurance authorization form required by sub-paragraph A above in advance of the consumer's free and independent choice for such insurance.

(ii) Representing, by any means, that household goods-fire insurance or any other property insurance is required to obtain an extension of credit from respondents.

(iii) Discouraging by any means the declination of household goods-fire insurance or other property insurance.

3. Failing to tell every customer the purpose(s) of each signature requested by respondents on any document relating to a consumer credit transaction.

4. Supplying, orally or in writing, any information to a consumer which misleads or confuses the consumer, or which contradicts, obscures or detracts from the information required to be given to a consumer pursuant to Section II of this order.

III

It is further ordered, That whenever a credit transaction is principally conducted in a language other than English, e.g., Spanish, that any disclosures required by paragraphs 1 or 2 of Sections I and II of this order be given in the form and manner prescribed therein but in the same language as that principally used in the credit transaction with the consumer.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of the corporate respondent at its general offices in San Antonio and in each of its subsidiary offices engaged in any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said copy of this order from each such person and retain said statement for a period of not less than two (2) years from the date of execution.

It is further ordered, That the corporate respondent notify the Commission within thirty (30) days of any change in the corporate respondent which may affect compliance obligations with regard to

the extension of consumer credit arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his employment with Kelcor Corporation or its subsidiaries, and of his affiliation with another business or employment. In addition, the individual respondent named herein shall promptly notify the Commission of his affiliation with another business or employment whose principal activities include the granting of consumer loans or any extension of consumer credit or advertising to aid, promote or assist directly or indirectly any extension of consumer credit or his affiliation with another business or employment in which his own duties and responsibilities involve the granting of consumer loans or any extension of consumer credit or advertising to aid, promote or assist directly or indirectly any extension of consumer credit. 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.

ATTACHMENT A

PERSONAL CREDIT INSURANCE AUTHORIZATION

YOUR LOAN [OTHER EXTENSION OF CREDIT] HAS BEEN APPROVED IN THE AMOUNT OF _____.

CREDIT LIFE OR CREDIT ACCIDENT & HEALTH INSURANCE IS NOT REQUIRED IN CONNECTION WITH THIS EXTENSION OF CREDIT TO YOU AND YOUR DECISION WITH REGARD TO THE PERSONAL INSURANCE WILL NOT AFFECT THE TOTAL AMOUNT OF CREDIT WHICH HAS ALREADY BEEN APPROVED FOR YOU.

IF YOU ELECT CREDIT INSURANCE THESE PREMIUMS WILL BE DEDUCTED FROM THE PROCEEDS OF YOUR LOAN AND ADDED TO THE AMOUNT FINANCED.

Credit Life	\$_____ (For term of transaction)
NET PROCEEDS	\$_____
Credit Accident & Health (A&H)	\$_____ (For term of transaction)
NET PROCEEDS	\$_____

The above disclosure of personal insurance has been read to me and I have received

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a fully completed and executed copy of this form. I have reviewed the monthly repayment options set forth below and understand that if I choose a repayment option that includes any of the insurance coverages I am authorizing the lender to pay the insurance premiums on my behalf. I have voluntarily chosen the following repayment option:

Option 1 Monthly Payment Without Personal Credit Insurance	Option 2 Monthly Payment With Credit Life Only	Option 3 Monthly Payment With Credit A & H Only	Option 4 Monthly Payment With Credit Life and A & H
\$ _____	\$ _____	\$ _____	\$ _____
No. of months _____	No. of months _____	No. of months _____	No. of months _____
(Borrower)	(Insured Borrower)	(Insured Borrower)	(Insured Borrower)
(Borrower)	(Borrower)	(Borrower)	(Borrower)
(Date)	(Date)	(Date)	(Date)

ATTACHMENT B

PROPERTY INSURANCE AUTHORIZATION

YOUR LOAN [OTHER EXTENSION OF CREDIT] HAS BEEN APPROVED.

PROPERTY INSURANCE IS REQUIRED TO KEEP THE COLLATERAL OF THE LENDER INSURED AGAINST LOSS OR DAMAGE. YOU MAY ELECT TO PURCHASE THE REQUIRED PROPERTY INSURANCE THROUGH LENDER OR FURNISH LENDER WITH A COPY OF ANOTHER POLICY WHICH YOU MAY HAVE CURRENTLY OR WHICH YOU CAN PURCHASE ELSEWHERE THROUGH ANOTHER PERSON, TOGETHER WITH A LOSS PAYABLE CLAUSE OR ENDORSEMENT NAMING LENDER AS LOSS PAYEE WITHIN TEN (10) DAYS.

IF YOU ELECT PROPERTY INSURANCE FROM THE LENDER, THESE PREMIUMS WILL BE DEDUCTED FROM THE PROCEEDS OF YOUR LOAN AND ADDED TO THE AMOUNT FINANCED.

Auto Insurance Premium \$ _____ (For One Year)
 Fire Insurance Premium \$ _____ (For Term of
 Transaction) [As applicable]
 NET PROCEEDS \$ _____

THE ABOVE DISCLOSURE OF PROPERTY INSURANCE HAS BEEN READ BY ME AND I HAVE RECEIVED A FULLY COMPLETED AND EXECUTED COPY OF THIS FORM.

 LENDER

 BORROWER

 DATE

IN THE MATTER OF

NEW JERSEY PEST CONTROL ASSOCIATION, INC.

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

Docket C-2950. Complaint, Jan. 8, 1979 — Decision, Jan. 8, 1979

This consent order, among other things, requires a West Orange, N.J. trade association, representing a number of dealers and suppliers of pest control goods and services, to cease denying membership to bona fide dealers and suppliers; establishing or maintaining prices or conditions of sale for goods and services; interfering with advertising media; or attempting by any other means to fix prices and eliminate competition in relevant markets. The association is further required to eliminate timely from its charter and by-laws any provision which is contrary to the terms of the order, and to maintain specified records for a three-year period.

Appearances

For the Commission: *Herbert S. Forsmith.*

For the respondent: *John F. Doly*, West Orange, N.J., *Edward J. Hobbie*, Chamberlin & Hobbie, Hillside, N.J. and *Arthur L. Herold*, Webster & Chamberlain, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (15 U.S.C. 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the party listed in the caption hereof, New Jersey Pest Control Association, Inc., a corporation, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent New Jersey Pest Control Association, Inc. is a non-profit incorporated trade association whose members are engaged in business for profit. It was organized in 1943, and exists and does business under and by virtue of the laws of the State of New Jersey. Respondent maintains its office and principal place of business at 475 Prospect Ave., West Orange, New Jersey.

The respondent is composed of approximately one hundred pest control applicators located within and without the State of New Jersey serving the New Jersey residential and commercial markets

for pest control goods and services designed to eliminate insects and rodents, and approximately twenty suppliers to the trade located in New Jersey and various other States of the United States.

Its members, comprising at least one fourth of pest control companies engaged in the business of pest control application in New Jersey, realized at least 50 percent of the state's approximately fifteen million dollars of trade in the pest control industry during the year 1975.

PAR. 2. The affairs of respondent association are managed by a Board of Directors and an Executive Board of Officers which are elected by a senior class of respondent's membership designated as the Active Membership. Admission to the Active Membership is restricted to pest control operators who have served a prolonged probationary period in respondent association, and who have satisfied the Active Membership that they are responsible full-service pest control operators.

Only those belonging to such Active Membership are permitted to vote upon respondent's business, to serve as respondent's officers or committee chairmen, or to advertise and disclose to those outside of the association the fact of their membership in respondent.

PAR. 3. Respondent is a well-known and well-advertised association as a result of its active and varied programs designed to provide technical training and information to its membership, and to promote such membership's reputation and financial interests.

By virtue of a number of circumstances, including action on the part of respondent association to that end, there exists a preference on the part of purchasers and prospective purchasers for members of the respondent as pest control dealers and applicators, and on the part of private and governmental persons and organizations frequently called upon to recommend pest control dealers and applicators, or to establish or approve particular pest control methods or procedures.

It therefore confers special benefits and is of substantial competitive importance to a dealer in pest control goods or services to belong to respondent association, and to be able to advertise and disclose such membership.

PAR. 4. Most of the members of the respondent purchase equipment and supplies for resale or use directly from manufacturers and distributors thereof located in various other states, and said manufacturers and distributors ship said products, when so purchased, from their respective places of business to said members in states other than the state of manufacture or storage. Further, many of the members of the respondent maintain their principal places of

business in states other than the State of New Jersey, and many of such members are engaged in the business of selling and supplying pest control materials to customers located in states other than the state in which such members are located, or without the State of New Jersey. As a result of the aforesaid transactions, and by virtue of respondent association's representation of its members, and promotion of their business, respondent association and its membership have been and are now engaged in a pattern, course of dealing, and substantial volume of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, in pest control products and services between the said members of the respondent trade association, and the purchasers of pest control goods and services located throughout several States of the United States.

PAR. 5. The pest control dealers and applicators holding membership in the respondent are in substantial competition with one another and with other members of the industry in the sale of pest control goods and services, in or affecting commerce, except insofar as that competition has been hindered, lessened, restricted and eliminated by the unfair methods of competition and unfair practices hereinafter set forth.

PAR. 6. For many years last past, and continuing in the present time, respondent has planned, adopted, placed in effect, and carried out, policies having the purpose, tendency and effect of hindering, frustrating, restraining, suppressing and eliminating competition in the offering for sale and sale of pest control goods and services in or affecting commerce.

Pursuant to and in furtherance of the above policies respondent has, alone and by means of agreements, understandings, and combinations and conspiracies with certain of its members, and with others, engaged in the following acts and practices:

(a) Denied, and restricted membership in respondent association by means of certain arbitrary rules and standards, and thereby refused substantial competitive advantages of such membership to bona fide dealers in pest control goods and services with which members of respondent association were not willing to compete upon an equal basis. Included among the reasons for such denials and restrictions are the following:

- (1) a dealer cuts prices, or offers, advertises or charges low prices or underbids its competition;
- (2) a bona fide dealer is in the pest control business on a part-time basis;

(3) a bona fide dealer is in the pest control business on less than a year-round basis;

(4) a bona fide dealer is engaged in another business or occupation as well as being in the pest control business;

(5) a bona fide dealer does not perform services designed to control both insects and rodents;

(6) a bona fide dealer has not been engaged in the pest control business, or has not served as a limited member of respondent for a requisite length of time;

(7) a bona fide dealer offers terms or conditions of sale, such as warranties, not approved by respondent association.

(b) Conspired and combined to maintain price floors, minimum charges and higher prices for pest control goods and services; to prevent through intimidation and other means, price cutting and discounting in connection with the offering and sale of pest control goods or services; and to cause the reporting to respondent association of dealers in pest control goods or services believed to be offering discounts or lower prices than those approved by respondent association or certain of its members.

(c) Denied and attempted to deny full access to advertising media to non-members and certain members of the respondent by prevailing upon such media to refuse, condition, qualify or change advertising placed or sought to be placed for reasons, among others, that such advertising contains prices, terms or conditions of sale not approved by respondent association or its members.

PAR. 7. The acts, practices and methods of competition engaged in, followed, pursued or adopted, by respondent, as hereinabove alleged, are unfair, and to the prejudice of the public because they have the purpose or tend to have the effect of hindering, lessening and restraining competition in the sale of pest control goods and services between and among pest control dealers; restrain competition between and among non-members and members of respondent trade association; raise barriers to entry of new competition in the sale of pest control goods and services; and limit and restrict channels of distribution of pest control goods and services.

Said acts, practices and methods of competition constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent New Jersey Pest Control Association, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 475 Prospect Ave., West Orange, New Jersey.

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 New Jersey Pest Control Association, Inc., a non-profit corporation, and its officers, directors, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporation, subsidiary, division, committee or other device, in connection with respondent association's business, or with the offering for sale, sale, distribution or promotion of pest control goods or services, in or affecting commerce, as commerce is

