

IN THE MATTER OF
HOLLYWOOD CREDIT CLOTHING CO., INC., ET AL.

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

Docket 8796. Complaint, Aug. 5, 1969—Decision, Dec. 31, 1970

Order requiring a Washington, D.C., distributor of clothing, furniture, appliances and other merchandise to cease advertising any merchandise without disclosure of required conditions or obligations, misrepresenting that any article of merchandise is in short supply, that any article is reduced from its former price, that customers are afforded savings, failing to maintain records upon which savings claims are based, failing to furnish customers with copies of executed conditional sales contracts, and failing to comply with certain requirements of Regulation Z of the Truth in Lending Act.

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 Hollywood Credit Clothing Co., Inc., a corporation, and Barry Miller, 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 Hollywood Credit Clothing Co., Inc., 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 703 7th Street, N.W., Washington, D.C.

Respondent Barry Miller is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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 advertising, offering for sale, sale and distribution of clothing, furniture, appliances, linenware and other articles of merchandise to the public.

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 to be sold to purchasers located within 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 purchase of their merchandise, respondents have made numerous statements and representations in advertisements inserted in newspapers, of which the following are typical and illustrative but not all inclusive thereof:

84 PIECES

CANNON MADE IN U.S.A.

COLOR ENSEMBLE
Sheets, Pillowcases, Towels

Deluxe CANNON Sheets and Cases (white or colors)! Deluxe Jumbo size heavier weight Bath Towels! In Every Deluxe piece—at sensational savings—on Easy Terms!

6 42 x 90 Double Bed Size WHITE SHEETS or 81 x 90 Double Bed Size PINK, GOLD, BLUE, GREEN, etc. COLOR SHIRTS

6 42 x 90 Double Bed Size WHITE SHEETS or 81 x 90 Double Bed Size PINK, GOLD, BLUE, GREEN, etc. COLOR SHIRTS

12 FACE TOWELS

12 Jumbo BATH TOWELS

12 WASH CLOTHS

12 POT HOLEYS

12 DISH TOWELS

12 DISH CLOTHS

OUR LOWEST PRICE EVER!
HURRY . . . LIMITED QUANTITIES

Deluxe quality you've always wanted . . . at sensational savings, with NO EXTRA COST to pay on EASY TERMS. Good sheets mean good sleep, and here is the best . . . Not just plain but famous Cannon. You get oversize luscious Cannon quality towels and EVERYTHING else just as shown including sheets and cases.

Colors of White or Rainbow Pastel Colors.

\$29.95

\$1.00 DOWN—\$1.00 A WEEK

OPEN DAILY 8:30 A.M. TO 6:30 P.M.

Guaranteed by Good Housekeeping

ONLY 1 SET TO A CUSTOMER

PHONE TODAY

MAIL COUPON NOW OR SHOP IN PERSON!

HOLLYWOOD 703-7th St., N.W.
I will call for the 81-Pc. Cotton Linen Ensemble at your special sale price of only \$29.85. I will pay for it at \$1.00 down and \$1.00 a week until the full price is paid.

Husband's Name _____ Phone _____
Address _____
Employer _____ Phone _____
Address _____
Wife's Name _____ Phone _____
Address _____
Employer _____ Phone _____
Address _____

Furniture • Clothing • Appliances • Jewelry • Toys
"ON THE EASIEST TERMS IN TOWN"

Hollywood

703-7th ST. N.W., AT G

National
8-3667
8-4992

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

1. Respondents will sell the advertised merchandise without the imposition of any further condition or obligation.

2. The quantity of the advertised merchandise is limited and prospective purchasers should hurry because the merchandise will be sold out and unavailable for purchase.

3. Through the use of the terms "OUR LOWEST PRICE EVER," "special sale price," and "savings," the advertised merchandise is offered at a specially reduced price of \$29.95 and savings are thereby afforded purchasers from respondents' regular selling price.

PAR. 6. In truth and in fact:

1. Respondents will not sell, in every instance, the advertised merchandise without the imposition of any further condition or obligation. In a number of instances, sale has been contingent upon the assumption of obligations by the customer or conditions have been imposed upon the purchase.

2. The quantity of the advertised merchandise is not limited and prospective purchasers need not hurry, as a sufficient quantity of such merchandise is available at all times.

3. The advertised merchandise is not offered at a specially reduced price, and savings are not thereby afforded purchasers because of reductions from respondents' regular selling price. The price of \$29.95 is the usual and customary price at which such merchandise is offered by respondents.

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

PAR. 7. In the course and conduct of their business, respondents induce their customers to execute conditional sale contracts. In this connection, respondents fail to furnish certain customers with a copy of such conditional sale contract at the time of the sale.

By and through such failure, respondents' customers are not adequately apprised of the amounts, terms and conditions of the sales transaction and such customers cannot know the extent of their rights and obligations under such contracts.

Therefore, such practice was and is an unfair trade practice.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and

individuals in the sale of clothing, furniture, appliances, linenware and other articles of merchandise of the same general kind and nature as those sold by respondents.

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

Mr. Donald L. Bachman and *Mr. Edward D. Steinman* supporting the complaint.

Mr. Stanley Klavan, Klavan and Mannes, Rockville, Md., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

NOVEMBER 16, 1970

CONTENTS

	Page
Preliminary Statement.....	1598
A. Pleadings.....	1598
B. Prehearing Conferences.....	1599
C. Hearing and Post-Hearing Procedures.....	1599
Findings of Fact.....	1600
A. Respondents—Generally.....	1600
B. Respondent Miller's Participation in Hollywood Credit Business...	1600
C. Advertising.....	1601
D. Conditions of Sale as Related to Advertising.....	1603
E. Advertising of Quantity Limitations.....	1604
F. Price Representations.....	1604
G. Conditional Sales Information.....	1605
H. Competition and Commerce.....	1606
Conclusions.....	1606
Conclusions of Fact.....	1606
Conclusions of Law.....	1606
Inclusion of Individual Respondent Miller.....	1606
Discontinuance of Practices.....	1607
Modification of Proposed Order Accompanying the Complaint.....	1607
Order.....	1608

PRELIMINARY STATEMENT

A. *Pleadings*

The Commission issued its complaint on August 5, 1969. Named as respondents therein are Hollywood Credit Clothing Co., Inc., a corporation, and Barry Miller, individually and as an officer of the

corporate respondent. The complaint alleges that the respondents have violated Section 5 of the Federal Trade Commission Act by engaging in the following acts and practices: advertising merchandise without disclosing conditions and limitations imposed on the sale of such merchandise; advertising that merchandise is in limited supply when sufficient quantity of the advertised merchandise is available to meet anticipated consumer demand; advertising that merchandise is available at a reduced price when such was not the fact; and failing to provide all customers who executed conditional sale contracts with a copy of said contracts.

On September 10, 1969, respondents denied all the substantive allegations of the complaint. Prior to the initiation of evidentiary hearings, respondents moved to dismiss the complaint on three separate occasions. Each motion to dismiss the complaint was denied.

B. Prehearing Conferences

Prehearing conferences were held on November 21, 1969, February 4, 1970, and July 15, 1970, in order to simplify and clarify the issues and to take up such preliminary matters as were appropriate. To further reduce and simplify the issues, complaint counsel requested and received from respondents responses to admission of facts.

C. Hearing and Post-Hearing Procedures

Evidentiary hearings were held in Washington, D.C., on August 26, and 27, 1970. In the presentation of their case-in-chief, complaint counsel elicited the testimony of 10 witnesses and stipulated with respondents that 11 witnesses scheduled to testify would provide testimony substantially the same as the testimony of the witnesses who testified at the hearing. (Tr. 233-235.) In addition, complaint counsel introduced numerous documents into evidence. Respondents presented the testimony of two witnesses and introduced four exhibits into evidence. On rebuttal, complaint counsel presented the testimony of two witnesses. At the close of the hearing, the examiner directed that complaint counsel submit proposed findings of facts, conclusions of law and order on or before October 5, 1970; that respondents submit their proposed findings by October 15, 1970, and that any reply submitted by complaint counsel be tendered by October 25, 1970. Respondents and complaint counsel were allowed one week extensions for filing proposed findings and reply respectively.

The hearing examiner has carefully considered the proposed findings of fact and conclusions submitted by complaint counsel and counsel for respondents and such proposed findings and conclusions

if not herein adopted, either in the form proposed or in substance are rejected as not supported by the record or as involving immaterial matters.

FINDINGS OF FACT

A. Respondents—Generally

1. Respondent Hollywood Credit Clothing Co., Inc., 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 formerly located at 703 7th Street, N.W., Washington, D.C. Admitted in respondents' answer to the complaint filed on September 10, 1969 (see also answer to request for admission of fact number 2). Respondents admitted in an affidavit submitted on February 2, 1970, in support of a motion to dismiss the complaint or in the alternative to withdraw the matter from adjudication that the corporate respondent vacated its location at 703 7th Street, N.W., Washington, D.C. Although not actively in business, the corporate respondent is still a viable legal entity. (Tr. 119.)

2. Respondent Barry Miller is an officer of the corporate respondent. Prior to the corporate respondent's cessation of active business, Barry Miller formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Mr. Miller's business address was the same as the address of the corporate respondent.

B. Respondent Miller's Participation in Hollywood Credit Business

3. Respondent Miller began his association with the corporate respondent in 1945. From that date until the corporate respondent ceased active business in 1970, Mr. Miller was active in the day to day operations of the corporate respondent (answer to request for admission of fact numbered 9). He initially became involved in the operation of Hollywood Credit Clothing, Inc., after his marriage to the daughter of Herbert Kapiloff, then president of said corporation. (Tr. 121, 236.) All of the stock in the corporate respondent was owned by Mr. Kapiloff, and Mr. & Mrs. Miller. (Tr. 120.)

4. Prior to Mr. Kapiloff's death in 1967, Mr. Miller actively participated in the formulation of sales policies as well as their implementation on a daily basis. Mr. Miller was secretary of the corporation, one of three stockholders and a member of the corporation's board of directors. (Tr. 120-121, 237.) Mr. Miller participated in monthly board meetings where sales and advertising policies were discussed and formulated. (Tr. 121, 238.) Mr. Miller cast votes at such meetings on the selection of such policies. (Tr. 121.)

5. For several years before his death, Mr. Kapiloff's poor health caused his frequent absence from the corporate respondent. (Tr. 122-123.) During this period, respondent Miller functioned as general manager of the corporate respondent. (Tr. 123.) He occupied the office of Mr. Kapiloff and his duties as general manager included the purchase of merchandise and establishing the prices at which such merchandise was sold to the public. (Tr. 123.)

6. Upon Mr. Kapiloff's death in September 1967, Mr. Miller became president and treasurer of the corporate respondent. (Tr. 119; answers to request for admission of facts numbered 2 and 4.) Mr. Miller's elevation to president and treasurer of the corporate respondent formalized his role as the individual responsible for the daily operations of the corporate respondent. (Tr. 122; answers to request for admission of facts numbered 7 through 10 and 12.) Complaint counsel and respondents' counsel stipulated that Mrs. Miller's testimony if she were called as a witness would be substantially the same as the testimony of Mr. Miller. (Tr. 163-164.)

C. Advertising

7. Respondents for some time last past have been engaged in the advertising, offering for sale, sale and distribution of clothing, furniture, appliances, linenware and other articles of merchandise to the public. Admitted in answer to complaint counsel's request for admission of fact numbered 14. (See also CX 154, 155A, 160A, 370A, 392A, 405A.) Commission exhibits 131 through 142; 144 through 145 and 851-A through 875-C reflect the advertisings of the respondents during the calendar years of 1965, 1966, 1967 and 1968.

8. In the course and conduct of their business as aforesaid, respondents have caused their said merchandise to be sold to purchasers located within the District of Columbia, and have maintained a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. Prior to the cessation of active business, respondents regularly advertised in the *Washington Daily News*. (Tr. 124; CX 131-142, 144-145, 851-A-875-C. This newspaper has circulation throughout the metropolitan Washington, D.C., area. Such advertising was utilized by respondents to attract recipients of said newspaper to the premises of the corporate respondent. (Tr. 124; answers to request for admission of facts numbered 21 and 22.) Individuals who went to respondents' place of business came from their residences located in the State of Maryland, Commonwealth of Virginia and the District of

Columbia. (Tr. 166, 194, 200, 211, 218, 221, 227; see also stipulations as to witnesses not testifying Tr. 233-234.)

9. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents have made numerous statements and representations in advertisements inserted in newspapers, of which the following are typical and illustrative but not all inclusive thereof:

- (1) OUR LOWEST PRICE EVER!
- (2) HURRY . . . LIMITED QUANTITIES
- (3) . . . special sale price. . . .

For the above and similar representations, see Commission exhibits 131 through 142; 144-145 and 851-A through 869-C which are newspaper advertisements of items sold by the respondents. These advertisements cover the period of the calendar years 1965, 1966, 1967 and 1968. Such advertisements appeared frequently in the *Washington Daily News* which was the only paper in which respondents advertised. (Tr. 124.)

10. Respondents offered evidence to show that they changed the content and form of their advertisings through the testimony of Mr. Heller who testified that "around four years ago or longer," as an advertising agent, he changed the form and content of respondents' advertisements after he had discussed the changes with a representative from the Commission. (Tr. 295.)

Mr. Heller gave testimony to establish respondents' exhibit two as being the advertisement before the changes were made and respondents' exhibit one as being the advertisement after the changes were made. Respondents' exhibit two bears the date of September 1968 which is a considerable length of time subsequent to when the changes were allegedly made. A review of all of respondents' advertising involving linenware from the calendar years 1965 through 1968 (CX 131-142, 144-145, 851-A-875-C), reveals that the first changes made of respondents' advertisements as they appeared in 1965, were made in August 1966. (CX 858-A.) The only change that was made was the deletion of the term "REGULAR \$39.95 VALUE." Otherwise, all other statements in the advertisement remained unchanged including the term "Special sale price." (Compare CX 858-A-C with CX 859-A-C.) The advertisements of respondents as reflected in respondents' exhibit one did not appear until in June 1968. (CX 870-A-C.) All of respondents' advertisements prior to that date bore representations as reflected in the above proposed finding. It is observed that these changes were in fact made a con-

siderable time after investigators of the Commission had visited respondents' business premises as late as 1967. (Tr. 181.)

D. Conditions of Sale as Related to Advertising

11. By and through the use of the statements and representations in the ninth finding, and other statements and representations of similar import and meaning, the respondents have represented directly or by implication, that respondents will sell the advertised merchandise without the imposition of any further condition or obligation than stated in the advertisements. The only conditions or obligations set forth in respondents' advertisements (CX 131-142, 144-145 and 851-A-869-C) are the purchase price and the statement "none sold for cash." Other than these two conditions or limitations no others appear. From a reading of respondents' advertisements, it is obvious that they represent that the purchase of the advertised items is not based upon any conditions or obligations other than these expressed in the said advertisements.

12. Respondents did not sell, in every instance, the advertised merchandise without the imposition of any further condition or obligation. In a number of instances, sales were contingent upon the assumption of obligations by customers or conditions imposed upon the purchase of the advertised merchandise. Several witnesses gave testimony that in responding to respondents' advertisements by going to the corporate respondent to purchase the advertised merchandise, they were advised by respondents that additional purchases were required in order to purchase the advertised merchandise. (Lykens, Tr. 168, Neal, Tr. 196, Wilson, Tr. 202, Anderson, Tr. 213, Butler, Tr. 223, Coleman, Tr. 229.) In addition to the testimony of witnesses given on this fact, respondents stipulated with complaint counsel that if the additional witnesses complaint counsel had subpoenaed to give testimony would testify, those witnesses would have testified substantially the same as the witnesses who did testify as to the conditions imposed upon the purchase of the respondents' advertised merchandise in question. (Tr. 234-235.)

13. The individual respondent Barry Miller testified that the advertised merchandise were "door openers" and "loss leaders" used for the purpose of attracting customers to the store. (Tr. 124-126.) This suggests that the respondents contemplated the need to effect sales in addition to those of the advertised merchandise from purchasers responding to the advertisements and that therefore they were aware of the deception at the time of advertising. In any event lack of awareness is not a defense.

E. Advertising of Quantity Limitations

14. By and through the use of the statements and representations set forth herein the respondents have represented, directly or by implication, that the quantity of the advertised merchandise is limited and prospective purchasers should hurry because the merchandise will be sold out and unavailable for purchase.

15. Respondents have repeatedly represented in their advertisements that prospective purchasers of linen ensembles must respond quickly to said advertisements or be unable to purchase such merchandise due to the merchandise being available only in limited quantities. (CX 131-142, 144-145, 851-A-869-C.) Such an interpretation arises from respondents' use of the following language to describe the availability of the advertised merchandise: "Hurry . . . Limited Quantities."

16. The advertised merchandise was not limited and prospective purchasers did not need to hurry since a sufficient quantity of such merchandise was available at all times.

17. Respondent Miller testified that based on his past experience selling the linen ensembles that approximately 50 sales were generated with each advertisement. (Tr. 156.) Based on the average number of sales, he would order that amount prior to insertion of the advertisement in the newspaper. (Tr. 156.) In those instances where respondents would sell more than the units on hand, respondents would still transact the sales and advise the customers when the merchandise would be available. (Tr. 158.) It would appear that such instances would occur infrequently since Mr. Miller testified that his supplier would place the merchandise "in his car and bring them to us so we would not have to tell customers to come back and get them" (Tr. 156) or Mr. Miller would "drive over to Baltimore . . . and pick them up." (Tr. 157.) In response to questions of the examiner (Tr. 157-158) and in answer to request for admission of fact numbered 28, respondents admitted having sufficient quantities of the linen ensembles in stock or having easy access to such merchandise to meet consumer demand for such merchandise.

F. Price Representations

18. By and through the use of the statements and representations set forth herein the respondents have represented directly or by implication through the use of the terms "OUR LOWEST PRICE EVER," "special sale price," and "savings," that the advertised merchandise is offered at a specially reduced price of \$29.95 and savings are

thereby afforded purchasers from respondents' regular selling price. The terms used above convey the impression that the price at which the advertised merchandise, as reflected in CX 131-142, 144-145 and 851-A-869-C, was being offered is a reduced price and purchasers of the merchandise would obtain savings from respondents' regular selling price.

19. The advertised merchandise reflected in CX 131-142, 144-145 and 851-A-869-C was not offered at a specially reduced price, and savings were not thereby afforded purchasers because of reductions from respondents' regular selling price. The price of \$29.95 was the usual and customary price at which such merchandise was offered by respondents. The individual respondent Miller, who has full knowledge of the operations of the corporate respondent, gave substantial testimony revealing; that the advertised ensembles were never sold at a price other than the price reflected in the advertisement (Tr. 148-149); that the advertised ensembles were only sold at the advertised price (Tr. 153); and that customers only bought the ensembles at the sale price. (Tr. 149.) In addition, the individual respondent testified that if the advertised ensembles were sold for the regular price, the price would have been double the sale price. (Tr. 154.) The evidence therefore suggests the items were never offered as regularly priced items but as an inducement to draw customers to purchase other items.

G. Conditional Sales Information

20. In the course and conduct of their business, respondents have induced their customers to execute conditional sale contracts. In such instances, respondents have failed to furnish certain customers with copies of the conditional sale contracts at the time of the sales. By and through such failure, respondents' customers were not adequately apprised of the amounts, terms and conditions of the sale transactions and such customers did not know the extent of their rights and obligations under such contracts.

Respondents regularly utilized conditional sale contracts when customers desired to finance their purchases over a period of time (answer to request for admission of fact numbered 26). In fact, respondents would utilize conditional sale contracts to consummate all sales. (Tr. 182.) After the sale was completed, respondents would only provide customers with copies of the contracts if said customers made a specific request for such documents. (Tr. 182, 246.) The majority of customers did not receive copies of their executed contracts. (Tr. 246.) Testimony from witnesses also demonstrates respondents'

obscured sales conditions in failing to provide all customers with copies of their conditional sale contracts (Tr. 171, 219; see also stipulation as to testimony of other witnesses, Tr. 233-234) so they could be knowledgeable as to their obligations.

H. Competition and Commerce

21. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of clothing, furniture, appliances, linenware and other articles of merchandise of the same general kind and nature as those sold by respondents. The corporate respondent has been in existence since 1937 and has been engaged in selling to the public, furniture, clothing, appliances, linenware and other articles of merchandise (respondents' answer to request for admission of facts numbers one and fourteen). In addition, respondents have advertised various merchandise for the purpose of "creating traffic in the store" in order to effect sales that would have otherwise been effected by other stores. (Tr. 124-126.)

CONCLUSIONS

Conclusions of Fact

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

Conclusions of Law

The aforesaid acts and practices of respondents, as herein found, 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.

Inclusion of Individual Respondent Miller

There exists ample support for the inclusion of Mr. Miller in the order as an officer of the corporate respondent and as an individual. His participation in the formulation, direction and control of the policies, acts and practices of the corporate respondent is sufficient

basis for him to be bound as an individual and as an officer of the corporate respondent. *Guziak v. Federal Trade Commission*, 361 F.2d 700 (8th Cir. 1966), *cert. denied*, 335 U.S. 1007 (1967); *Fred Meyer, Inc. v. Federal Trade Commission*, 359 F.2d 351 (9th Cir. 1966), *cert. denied*, 386 U.S. 908 (1967), *rehearing denied*, 386 U.S. 978 (1967); *Walter Dultz v. Federal Trade Commission*, 406 F.2d 227 (3rd Cir. 1969), *cert. denied*, 395 U.S. 936 (1969), *rehearing denied*, 396 U.S. 869 (1969). In view of evidence indicating the cessation of business of the corporate respondent and considering the admission by Mr. Miller that he is a manager of a retail furniture company of which he has ownership, the threat of evasion of any cease and desist order emanating from this proceeding is clearly present. *Federal Trade Commission v. Standard Education Society*, 302 U.S. 112 (1937). This further demonstrates the necessity of the order being applicable to Mr. Miller as an individual to protect the public interest from his engaging in the acts and practices shown by the record in the operation of the aforesaid business enterprise.

Discontinuance of Practices

During their defense, respondents attempted to demonstrate that certain of the challenged practices were discontinued prior to issuance of the complaint. The fact that respondents abandoned certain of the practices set forth in the complaint does not render the matter moot nor provide a basis for not issuing an appropriate cease and desist order. *Merck & Co., Inc. v. Federal Trade Commission*, 392 F.2d 921 (6th Cir. 1968); *Carter Products Inc., et al. v. Federal Trade Commission*, 323 F.2d 523 (5th Cir. 1963).

Modification of Proposed Order Accompanying the Complaint

Complaint counsel have recommended modifications of the cease and desist order proposed by the Commission when the complaint was issued on August 5, 1969. (See the appended order.) The Commission has adopted a policy of framing an order encompassing the varied forms of price comparisons when the record demonstrates the existence of fictitious pricing, *e.g.*, the complaint and proposed order in *Diener's Inc., et al.*, Docket No. 8804, issued November 25, 1969. The modified pricing provisions of the order are apparently necessary to prohibit respondents from easily converting to trade area price comparisons which convey the same effect on consumers as former price comparisons. Such an order covering the utilization of various types of price comparisons is well within the Commission's discretion to fashion an order to prohibit repetition in any related

form of the practices established in the record. *Jacob Siegel Co. v. F.T.C.*, 327 U.S. 608 (1946).

Modifications have also been made to include a provision relating to credit disclosures required by the Consumer Credit Protection Act (Truth in Lending Act). Incorporation of such provision is necessary to enable persons utilizing credit offered by respondents to receive the full disclosure of the terms and conditions of financial arrangements arising from credit transactions with respondents. By failing to provide all customers with copies of their contracts, respondents have already evidenced a failure to provide adequate credit information to their customers. To ensure that respondents will provide the credit information required by the aforesaid statute and otherwise it appears necessary to have the cease and desist order contain those provisions of the statute relating to proper disclosure of credit information. Although the Truth in Lending Act is not applicable to this case application of the foregoing remedial concept is within the jurisdiction of the Commission. Accordingly,

ORDER

It is ordered, That respondents Hollywood Credit Clothing Co., Inc., a corporation, and its officers, and Barry Miller, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of clothing, furniture, appliances, linenware or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising any merchandise when there are any conditions or obligations imposed or attempted to be imposed, without clearly and conspicuously disclosing such conditions or obligations in the advertisement.
2. Representing, directly or by implication, that any merchandise is available in limited quantity, or that customers should hurry because the merchandise will be sold out or will be unavailable for purchase when an adequate supply is available to respondents to meet reasonably anticipated demands; or misrepresenting in any other manner the quantity or availability of merchandise.
3. Representing, directly or by implication, through the use of terms such as "OUR LOWEST PRICE EVER," "special sale price," "savings" or in any other manner, that any price is reduced

from respondents' former price; unless, respondents' business records establish and show that such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith by respondents for a reasonably substantial period of time, in the recent, regular course of their business.

4. (a) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

5. Representing, directly or by implication, that savings are available to purchasers or prospective purchasers of respondents' merchandise unless such is the fact; or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise.

6. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims and similar representations of the type described in paragraphs 3-5 of this order are based, and (b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and

Initial Decision

77 F.T.C.

similar representations of the type described in Paragraphs 3-5 of this order can be determined.

7. Failing or refusing to furnish purchasers of respondents' merchandise with a completed copy of the executed conditional sale contract or any other agreement at the time of execution by the purchaser.

8. Engaging in any consumer credit transaction or disseminating any advertisement within the meaning of Regulation Z of the Truth in Lending Act without making all disclosures that are required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z in the amount, manner and form specified therein, and

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

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

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1970), the initial decision should be adopted and issued as the decision of the Commission.

It is ordered, That the initial decision of the hearing examiner shall, on the 31st day of December, 1970, become the decision of the Commission.

It is further ordered, That Hollywood Credit Clothing Co., Inc., a corporation, and Barry Miller, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by the respondents named in this order, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Final Order

IN THE MATTER OF

HUMPHREYS MEDICINE COMPANY, INCORPORATED

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

Docket 8640. Complaint, Aug. 28, 1964—Decision, Dec. 15, 1970

Order modifying cease and desist order of December 16, 1966, 70 F.T.C. 1502, in accordance with the final order entered *In the Matter of American Home Products Corporation*, Docket No. 8641, 70 F.T.C. 1524, modified, 76 F.T.C. 81, and further modified, p. 726 herein, by prohibiting claims that the product "Humphreys Ointment" afforded any relief from pain or itching in excess of temporary relief, and restricting the order to nonprescription drug preparations.

FINAL ORDER

The Commission having issued its original order to cease and desist in this matter on December 16, 1966 [70 F.T.C. 1502], and the respondent having appealed from the Commission's decision; and

The United States Court of Appeals for the Second Circuit having approved a stipulation providing that the cease-and-desist order herein should be modified in accordance with the final order entered in *American Home Products Corporation*, Docket No. 8641 [70 F.T.C. 1524]; and

The Commission having on July 15, 1969, issued its modified order in Docket 8641 [76 F.T.C. 81], and that order having been further modified [p. 726 herein], by order of the United States Court of Appeals for the Sixth Circuit and the order having become final by operation of law;

It is ordered, That the previously issued cease-and-desist order of the Commission be, and it hereby is, modified to read as follows:

ORDER

It is ordered, That respondent Humphreys Medicine Company, Incorporated, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, in connection with the offering for sale, sale or distribution of Humphreys Ointment, or any other non-prescription drug