

Decision and Order

IN THE MATTER OF

COLUMBIA BROADCASTING SYSTEM, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8512. Complaint, June 25, 1962—Decision, Mar. 22, 1971*

Consent order entered into after remand of the case by the United States Court of Appeals, Seventh Circuit, 414 F.2d 974 (8 S. & D. 981), requiring a major distributor of phonograph records and audio tapes to cease entering into or continuing exclusive licensing agreements with other manufacturers of records and pre-recorded tapes which prevent other club operators from obtaining the same terms and conditions.

DECISION AND ORDER

The Commission having on April 3, 1970 [77 F.T.C. 1620], rendered its order reopening and remanding this matter to a hearing examiner after the United States Court of Appeals for the Seventh Circuit remanded the matter to the Federal Trade Commission for further proceedings in accordance with that Court's opinion, and the United States Supreme Court having on February 24, 1970, denied a petition filed by the Federal Trade Commission for a writ of certiorari to review the judgment of the court of appeals; and

The respondent having made a request, concurred in by complaint counsel, that this matter be withdrawn from adjudication under Section 2.34(b) of the Commission's Rules of Practice, and the respondent and complaint counsel having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having thereafter given careful consideration to the executed consent agreement and having determined that the relief provided by the order contained therein is adequate and appropriate in all respects to dispose of this matter, and having thereupon provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having received and duly considered a comment from an interested member of the public, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission

hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Columbia Broadcasting Systems, Inc., 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 located at 51 West 52nd Street, 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

It is ordered, That respondent Columbia Broadcasting System, Inc., its officers, representatives, agents and employees, and successors, assigns, directly or indirectly, or through any corporate or other device, in connection with the manufacture, promotion, offering for sale, sale and distribution of phonograph records and/or pre-recorded audio tapes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Entering into, maintaining, or continuing any contract, licensing agreement, or understanding with any other manufacturer or producer of phonograph records and/or prerecorded audio tapes to prevent other club operators, including potential club operators, from acquiring the phonograph records and/or pre-recorded audio tapes of any other manufacturer or producer on the same terms and conditions as respondent acquires such records, and/or pre-recorded audio tapes including but not limited to agreements which have effect of:

(a) Giving respondent the sole or exclusive right, privilege, or license to manufacture, distribute, or sell through clubs phonograph records and/or pre-recorded audio tapes manufactured from master recordings or master tapes owned or controlled by any other manufacturer or producer of phonograph records and/or pre-recorded audio tapes;

(b) Restricting or preventing any other manufacturer or producer of phonograph records and/or pre-recorded audio tapes from licensing, authorizing, or consenting to the making of phonograph records and/or pre-recorded audio tapes from its master recordings or master tapes by any other person for the purpose of resale by the subscription or club method of direct mail selling;

(c) Restricting or preventing any other manufacturer or

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producer of phonograph records and/or pre-recorded audio tapes from selling its own records and/or pre-recorded audio tapes by subscription or club method of direct mail selling;

(d) Restricting or preventing any other manufacturer or producer of phonograph records and/or pre-recorded audio tapes from selling its records and/or pre-recorded audio tapes directly to any person for resale by the subscription or club method of direct mail selling.

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

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

It is further ordered, That 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 the order set forth herein.

By the Commission. Chairman Kirkpatrick did not participate in this matter.

IN THE MATTER OF

BUY-RIGHT, INC., ET AL.

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

Docket C-1884. Complaint, Mar. 23, 1971—Decision, Mar. 23, 1971

Consent order requiring Newburg, West Virginia, sellers of food, hardware and other retail commodities to cease violating the Truth in Lending Act by failing to make all required disclosures to customers to whom open end credit is extended, failing to state in advertising any required items without also stating the time period within which credit may be extended without additional charge, the method of determining the balance on which a charge may be made, the method of fixing the amount of the finance charge, where one or more rates may be applicable the range of balances involved, the method by which any other charge is determined, and failing to make all other disclosures required by Regulation Z of said Act.

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COMPLAINT

Pursuant to the provisions of the Truth In Lending Act and the implementing Regulation thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Buy-Right, Inc., a corporation, and William L. Baylor, individually and as an officer of said corporation, hereinafter referred to as Respondents, have violated the provisions of said Acts and implementing Regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Buy-Right, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at Newburg, West Virginia.

Respondent, William L. Baylor, 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 address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, and sale of food, hardware, and other commodities to the public at retail.

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, and in connection with their credit sales, as the term "credit sale" is defined in Regulation Z, are now engaged, and for some time last past have been engaged, in the extension of open end credit, as the term "open end credit" is defined in Regulation Z.

Respondents do not make and have never made consumer credit cost disclosures to any of its open end credit customers. Respondents, through use of cash register receipts, and painted signs, located throughout the business premises of the corporate respondent, inform their customers that all accounts must be paid in full every thirty (30) days, and that a two percent (2%) charge will be added

to the unpaid monthly balance of any amount not paid within thirty (30) days of purchase.

Respondents permit customers to maintain unpaid balances for several months past the stated thirty-day (30-day) limit without any attempt by respondents to collect the amount of such balances promptly and in full when they become past due, and permit customers to continue to make purchases during the period when they have balances unpaid more than thirty (30) days after purchase. In doing so, respondents reserve the right to impose a two percent (2%) monthly charge on balances not paid within thirty (30) days of purchase, which charge would and does constitute a finance charge within the meaning of § 226.4(a) of Regulation Z.

PAR. 5. By and through the use of the practice set forth in Paragraph Four, respondents:

1. Fail to make the disclosures required by § 226.7(a) of Regulation Z to be made before the time of the first transaction on an open end account, and failed to make those disclosures by July 31, 1969, to each customer having an open end account on July 1, 1969, in which there was an unpaid balance which was deemed collectible and not subject to delinquency collection procedures, as required by § 226.7(f) of Regulation Z.

2. Fail to provide each customer who has an open end account with a periodic billing statement for each billing cycle, which statement contains the credit cost disclosures required to be made by § 226.7(b) of Regulation Z, as required by that section.

3. State in advertising the periodic rate which may be used to compute the finance charge and the time period within which the credit extended may be paid without incurring a finance charge, without also setting forth all of the following items in terminology prescribed under § 226.7(b) of Regulation Z, as required by § 226.10(c) of Regulation Z:

- a. The method of determining the balance upon which the finance charge may be imposed;

- b. The method of determining the amount of the finance charge;

- c. The term "periodic rate" to describe the two percent (2%) monthly charge imposed by respondents on amounts not paid within thirty (30) days of purchase, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;

- d. The conditions under which other charges may be imposed and the method by which they will be determined; and

- e. The minimum periodic payment required.

PAR. 6. By the aforesaid failure to make disclosures, respondents have failed to comply with the requirements of Regulation Z, the implementing Regulation of the Truth In Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to § 103(k) of the Truth In Lending Act, Respondents aforesaid failure to comply with Regulation Z constitutes violations of that Act and, pursuant to § 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

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

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

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

1. Respondent Buy-Right, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at Newburg, West Virginia. Respondent William L. Baylor is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices hereinafter set forth. His address is the same as the corporate respondent.

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

ORDER

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

1. Failing to make all disclosures required by § 226.7(a) of Regulation Z to each customer to whom respondents extend open end credit within the meaning of Regulation Z:

a. Within sixty (60) days of the date this order to cease and desist becomes final, if the customer has an account in which a balance remains unpaid on the date the order becomes final, which balance is deemed to be collectible and not subject to delinquency collection procedures; and

b. Before the first transaction in any account where the customer is not entitled to disclosures under provision "a" next above.

2. Failing to make all disclosures required by § 226.7(b) of Regulation Z, in the manner, form, and amount prescribed therein.

3. Stating in advertising any of the items described in § 226.7 (a) of Regulation Z, or any of the items set forth in § 226.10(c) (1) through § 226.10(c) (6) of Regulation Z, without also setting forth all the following items in terminology prescribed under § 226.7 of Regulation Z, as required by § 226.10(c) of Regulation Z:

(1) An explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge may be imposed.

(3) The method of determining the amount of the finance charge, including the determination of any minimum,

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fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding annual percentage rate determined by multiplying the periods in a year.

(5) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(6) The minimum periodic payment required.

4. Failing, in any consumer credit transaction, or advertisement, to make all disclosures, determined in accordance with § 226.4 and § 226.5 of Regulation Z, in the manner, form, and amount required by § 226.6, § 226.7, § 226.8, § 226.9, and § 226.10 of Regulation Z.

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

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

It is further ordered, That respondents 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 nature and form of their compliance with this order.

IN THE MATTER OF

J. H. GOLDBERG FURNITURE CO., INC., ET AL.

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

Docket C-1885. Complaint, Mar. 23, 1971—Decision, Mar. 23, 1971

Consent order requiring a Rochester, N.Y., retail furniture store to cease violating the Truth in Lending Act, by failing to disclose the annual