

Order requiring a Dallas, Texas, seller and distributor of jewelry and other merchandise through numerous retail stores to cease violating the Truth in Lending Act by failing to use on its installment contracts the terms "dollars finance charge per \$100 of unpaid balance," "annual percentage rate," "finance charge," "cash downpayment," "unpaid balance of cash price," failing to use the terms "payments" and "new balance" where required, and failing to make other disclosures required by Regulation Z of said Act.

¹ Reported as amended by hearing examiner's order of May 28, 1970, by amending Paragraph Two and Paragraph Three.

Complaint

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COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulations promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said acts, the Federal Trade Commission having reason to believe that Zale Corporation and Corrigan-Republic, Inc., corporations, hereinafter referred to as respondents, having violated the provisions of said Acts and regulations, 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 Zale Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 512 South Akard Street, Dallas, Texas.

Respondent Corrigan-Republic, Inc., a wholly owned subsidiary corporation of Zale Corporation, is organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Republic National Bank Building, Dallas, Texas.

PAR. 2. Respondent Zale Corporation is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of jewelry and other merchandise to the public through its numerous retail stores located throughout the United States.

Respondent Zale Corporation also controls numerous wholly-owned subsidiaries, one of which is respondent Corrigan-Republic, Inc., and respondent Zale Corporation formulates, directs and controls the acts and practices of respondent Corrigan-Republic, Inc., including the acts and practices hereinafter set forth.

Respondent Corrigan-Republic, Inc., is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of jewelry and other merchandise to the public.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondents regularly extend and advertise for the extension, and for some time last past have regularly extended and advertise for the extension, 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, respondent Zale Corporation, in

the ordinary course and conduct of its business and in connection with its credit sales as "credit sale" is defined in the aforesaid Regulation Z, has caused and is causing customers to execute retail installment contracts, hereinafter referred to as the contract. The following is an illustration of the face and reverse side of the contract.²

PAR. 5. By and through the use of the contract set forth in Paragraph Four hereof, respondent Zale Corporation:

1. Fails to disclose the term "dollars finance charge per \$100 of unpaid balance" (permitted by Section 226.6(j) of Regulation Z to be substituted for the term "Annual Percentage Rate" until January 1, 1971) more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

2. Fails to disclose the term "finance charge" more conspicuously than other required terminology as required by Section 226.6(a) of Regulation Z.

3. Includes the amount of the finance charge in the computation of the amount financed contrary to the requirements of Section 226.2(d) of Regulation Z.

4. In placing the term "finance charge" above (before) the term "amount financed," fails to make this disclosure in meaningful sequence, as required by Section 226.6(a) of Regulation Z. The finance charge must not be included in the computation of the amount financed and the amount financed should include all the amounts immediately preceding it.

5. In making the charge for credit life insurance optional to the customer, fails to include such charge in the amount financed, as required by Sections 226.4(a)(5) and 226.8(c)(7) of Regulation Z.

6. Fails to disclose the amount of the dollars finance charge per year per \$100 of unpaid balance with an accuracy to the nearest quarter of one percent, as required by Section 226.5(b)(1) of Regulation Z.

7. Fails to use the term "cash downpayment" when the downpayment is in money, as required by Section 226.8(c)(2) of Regulation Z.

8. Fails to use the term "unpaid balance of cash price" to describe the difference between the cash price and the cash downpayment, as required by Section 226.8(c)(3) of Regulation Z.

9. Fails to treat an existing obligation as a new transaction subject to the disclosure requirements of Regulation Z, as required by Section 226.8(j) of Regulation Z.

² For illustration of the face and reverse side of the retail installment contract, see Appendices A and B of the initial decision, pp. 1228-29 herein.

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10. Since a security interest is retained, fails to clearly identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

11. Fails to employ an adequate identification of the method of computing the unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

12. Having elected to combine disclosures with the contract in a single document and having attempted to make required disclosures on both sides of the document, fails to place thereon on both sides of the document the following statement: "NOTICE: See other side for important information," as required by Section 226.801 of Regulation Z.

13. Fails to make the required disclosures that are on the reverse side of the contract in clear, conspicuous and meaningful sequence as required by Section 226.6(a) of Regulation Z. The language on the reverse side of the contract appears in light print on yellow paper producing a low contrast, there are no paragraphs, and all language is printed with the same size letters without larger letters separating sentences.

PAR. 6. Subsequent to July 1, 1969, respondent Corrigan-Republic, Inc., in the ordinary course and conduct of its business and in connection with its credit sales, as "credit sale" is defined in Regulation Z, has caused to be delivered and is delivering to customers periodic statements, as "periodic statements" are described in Section 226.7(b) and (c) of Regulation Z. By and through the use of the periodic statements respondent Corrigan-Republic, Inc.:

1. Fails to disclose the term "finance charge" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

2. Fails to disclose the term "annual percentage rate" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

3. Fails to employ the term "payments" to describe the amounts credited to the account during the billing cycle for payments, as required by Section 226.7(b)(3) of Regulation Z.

4. Fails to disclose each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance charge (whether or not applied during the billing cycle), as required by Section 226.7(b)(5) of Regulation Z.

5. Fails to disclose the term "new balance" to describe the outstanding balance in the account on the closing date of the billing cycle, as required by Section 226.7(b)(9) of Regulation Z.

6. Fails to employ a statement accompanying the term "new balance" indicating the date by which or the period, if any, within which payment must be made to avoid additional finance charges, as required by Section 226.7(b)(9) of Regulation Z.

PAR. 7. By the aforesaid failure to make the disclosures in the contract and periodic billing statement in the manner and form required by Regulation Z, as set forth in Paragraph Five and Paragraph Six hereof, respondents failed to comply with the requirements of Regulation Z of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 105 of that Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

Mr. Herbert M. Hellman, Mr. Lewis Franke and Mr. Jessica L. Mayne supporting the complaint.

Mr. Sam G. Winstead, Mr. T. William Porter, Jackson, Walker, Winstead, Cantwell & Miller, Dallas, Tex., and Mr. Thomas S. Markey, Mr. Peter J. Gallagher and Mr. Harry D. Kempler, Dow Lohnes & Albertson, Wash., D.C., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

JULY 28, 1970

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PRELIMINARY STATEMENT

This proceeding is brought under the Truth in Lending Act Title of the Consumer Credit Protection Act,¹ the regulations promulgated thereunder and the Federal Trade Commission Act.² The Federal Trade Commission issued its complaint March 20, 1970.

The respondents are a combination holding and operating company, Zale Corporation, and one of its operating subsidiaries, Corrigan-Republic, Inc., which also has subsidiaries.

THE PLEADINGS

The complaint charges that respondents extend credit and make credit sales in connection with the business of selling jewelry and other merchandise. By reason of the use of a particular form of contract, respondent Zale is charged with some 13 separate violations of the regulations issued under the Truth in Lending Act by the Federal Reserve Board and known as Regulation Z.³

Respondent Corrigan-Republic is charged with 6 specific violations of the regulations in connection with its use of form periodic statements.

Respondents' answer admits the description of the respondents with some qualifications, places in issue the adoption of Regulation Z and admits that Zale Corporation has utilized the contract incorporated in the complaint for a limited time. With respect to the 13 alleged violations ascribed to Zale some 4 are denied and qualified admissions were given with respect to the balance. With respect to the 6 violations ascribed to Corrigan-Republic, Inc., each of the charges is denied.

As affirmative defense respondents allege that they had conferred with representatives of the Federal Trade Commission to get the required forms and that the contracts and periodic statements now used are in conformity with the statute and regulations.

PREHEARING

A prehearing conference was held at the request of complaint counsel with the consent of counsel for the respondent on May 13, 1970.⁴ It was contemplated that a stipulation would be agreed upon

¹ 15 U.S.C. § 1601 *et seq.*

² 15 U.S.C. 41, 45.

³ 12 CFR 226.

⁴ The conference was ordered by Hon. Edward Creel, by order dated April 8, 1970, who later assigned this matter to the undersigned by order dated April 27, 1970.

prior to the prehearing conference and that hearings would commence during the week of May 18. At the prehearing conference it was ascertained that agreement had not yet been reached on a stipulation. The hearing examiner took official notice of the adoption of Federal Reserve Regulation Z and the issues agreed upon by counsel which were specifically listed in the pretrial order dated May 25, 1970. This order set June 8, 1970, for commencement of formal hearings in Dallas, Texas.

After the first prehearing conference counsel supporting the complaint made a motion for an amendment to the complaint to enlarge the description of the business of respondents to specifically include the allegations that they were engaged in advertising for the extension of credit.

The hearing examiner under the impression that there would be no objection to the amendment because of the positions taken at the prehearing (prehearing Tr. 6, 44),⁵ issued an order dated May 28, 1970, granting the motion and amending the complaint. On the same date, respondents filed a motion requesting certification of the proposed amendment to the Commission and requesting a stay of proceedings and a suspension of subpoenas. When informed of this, the hearing examiner vacated the order amending the complaint by order dated June 2, 1970. This order required an accelerated answer by complaint counsel to respondents' proposal. After considering respondents' motion and complaint counsel's answer thereto, filed June 2, 1970, the hearing examiner issued an order, dated June 3, 1970: denying respondents' motions to certify to the Commission complaint counsel's proposal; refusing to set aside subpoenas, and to grant a stay; and granting complaint counsel's motion to amend the complaint.

Respondents thereupon sought permission for an interlocutory appeal and for a stay.

At the request of both parties an informal unrecorded prehearing

⁵ The following abbreviations will sometimes be used :

Tr. — Transcript

C. — Complaint

A. — Answer

ZX — Respondents' Exhibit

CX — Complaint Counsels' Exhibit

CRB—Complaint Counsels' Reply Brief

RRB—Respondents' Reply Brief

CPF—Complaint Counsels' Proposed Findings

RPF—Respondents' Proposed Findings

In reference to proposed findings the reasons and following conclusions are also referred to, including the references therein.

conference was held June 4, 1970. During such conference the hearing set for Dallas, Texas was cancelled and a prehearing conference was scheduled for June 9, 1970, in Washington, D.C. This arrangement was made without prejudice to respondents' application for permission to appeal and for a stay and was confirmed by order dated June 5, 1970.

A stenographically reported prehearing conference was held at 10 a.m., June 9, 1970, and counsel announced that they had two stipulations covering disputed issues of fact and that such stipulations would be offered in lieu of the taking of any testimony on behalf of either side. Complaint counsel withdrew a subpoena, a request for admission of facts, and a request for the admission of genuineness of documents. Both parties then agreed to an immediate trial. The prehearing conference was thereupon concluded and a pretrial order dictated on the record. (Tr. 9, line 14-19.)

THE HEARING

The hearing examiner then convened a formal hearing. (Tr. 11.) At the hearing two stipulations were offered.

The first stipulation reciting that 138 exhibits by complaint counsel and 24 exhibits by respondents were annexed was incorporated as a part of the record. (Tr. 13-20.) A description of the exhibits was also incorporated as a part of the record (Tr. 27-31), and each of the exhibits annexed to the stipulation were separately received in evidence. (Tr. 33.)

The exhibits were physically separated so that they might be placed in Exhibit files by the Record Section of the Commission. (Tr. 32.)

The second stipulation dealt solely with advertising. It was received without prejudice to respondents' request to the Commission for permission to appeal from the order amending the complaint and the hearing examiner expressly stated that if the appeal were granted and an order issued refusing to amend the complaint he would disregard the facts recited in the second stipulation. (Tr. 34-35.) This stipulation was also incorporated in the record. (Tr. 35-37.)

Complaint counsel then offered Commission Exhibits 139-152H for identification. (Tr. 39-44.) These consisted of advertisements by respondents and advertising mats prepared by an independent advertising agency for the Zale Corporation. No claim was made that these advertisements were in violation of the Truth in Lending Act

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or the regulations thereunder. They were offered merely as examples of the type of advertisement utilized. (Tr. 48.) The hearing examiner rejected these exhibits as unnecessarily repetitious and already covered by the description embodied in the second stipulation. These exhibits have been ordered placed in the rejected exhibit file. (Tr. 49.)

THE ISSUES

There are two principal issues arising from the pleadings in the case. First whether or not Zale Corporation and Corrigan-Republic, Inc., exercise such control over their more than 1,000 wholly-owned subsidiaries, that an order should issue binding them to require their subsidiaries to comply with the Truth in Lending Act title to the Consumer Credit Protection Act. The second principal issue is whether or not the documents admittedly used in connection with credit transactions conform to or violate said Act and the regulations issued thereunder.

There are subsidiary issues with respect to each of the charged violations and also with respect to whether or not the case has become moot by reason of compliance by respondents to the Act prior to the issuance of the complaint.

COMMISSION ACTION ON PROPOSED AMENDMENTS

On the 17th day of June the Federal Trade Commission issued its order denying a stay and remanding the matter of amending the complaint to the hearing examiner for further consideration. The order was served the 24th day of June and on the 29th the hearing examiner after full consideration adhered to his original order amending the complaint by order reciting the intervening events and dated that day.

BASIS FOR DECISION

Proposed findings of fact and conclusions of law were submitted on July 6 and 7, and responses thereto were filed on July 17, 1970. Complaint counsel filed its brief at the commencement of the trial and served a copy on counsel for respondents. Respondents filed their brief with the proposed findings. A reply brief was filed by complaint counsel on July 17, 1970, and respondents filed their reply brief the same date.

The hearing examiner has considered the proposed findings, conclusions, briefs and proposed order. In light of the stipulations, there is no contested factual issue but merely conclusions to be

drawn from the stipulated facts. The hearing examiner accordingly makes the following findings of fact, conclusions of law and order. All proposed findings of fact not incorporated in terms or in substance are denied as irrelevant, immaterial, repetitious or erroneous. Findings of Fact, Conclusions of Law and an Order will be made under ensuing headings:

FINDINGS OF FACT

1. Respondent Zale Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business at the time of filing the complaint located at 512 South Akard Street, Dallas, Texas. (C, A; CPF 1; RPF 1.)

2. Respondent Corrigan-Republic, Inc., a wholly-owned subsidiary corporation of Zale Corporation, is organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Republic National Bank Building, Dallas, Texas. (C, A; RPF 2; CPF 1; RRB 1.)

3. Respondent Zale Corporation is now, and for some time last past has been engaged in the offering for sale, sale and distribution of jewelry and other merchandise to the public through retail stores located in a number of states throughout the United States. (C, A; CPF 1; RPF 3; RRB 1.)

4. Respondent Zale Corporation owns all of the corporate stock of a number of corporate subsidiaries including respondent Corrigan-Republic, Inc. There are certain common directors and officers of Zale Corporation and respondent Corrigan-Republic, Inc., and of Zale Corporation and its other subsidiaries. Accordingly Zale Corporation by reason of its stock ownership and of the common directors and officers is in a position to control the policies and practices of its subsidiaries and certain of its policies and practices are in fact formulated by said subsidiaries in connection with the officers of Zale Corporation. (C, A.) The parties have stipulated that:

Respondent Zale Corporation also controls numerous wholly owned subsidiaries, one of which is respondent Corrigan-Republic, Inc., and respondent Zale Corporation formulates, directs and controls the acts and practices of respondent Corrigan-Republic, Inc., including the acts and practices hereinafter set forth. (C; Tr. 20; CPF 3; RRB 1.)

5. Following is a list of the directors and officers, at March 20, 1970, of Zale Corporation. (Tr. 13.)

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DIRECTORS

James W. Aston, Sam R. Bloom, Leo Fields, Al Gartner, Dean P. Guerin, George Heald, William Levine, Ben A. Lipshy, Jacob Feldman, I. D. Shapiro, Sidney A. Trundle, Donald Zale, Lew D. Zale, Morris B. Zale, William Zale.

OFFICERS

Morris B. Zale, Chairman of the Board
 Ben A. Lipshy, President
 Donald Zale, Executive Vice President
 Leo Fields, Group Vice President
 Lew D. Zale, Group Vice President
 Marvin Zale, Group Vice President
 Albert S. Greenfield, Senior Vice President
 Marvin Rubin, Senior Vice President
 Charles Sugerman, Senior Vice President
 John P. Dickens, Vice President and General Counsel
 Leslie Faulkner, Vice President
 Clarence Feuer, Vice President
 Sidney Flanzbaum, Vice President
 Donald G. Fitch, Vice President
 George Heald, Vice President
 Harry Lipshy, Vice President
 Sidney Lipshy, Vice President
 Gerald Ray, Vice President
 T. Pat Smith, Vice President
 I. D. Shapiro, Vice President
 Robert Williams, Vice President
 James L. Wilson, Vice President
 William Zale, Vice President
 S. Shearn Rovinsky, Treasurer
 Esir Wyll, Secretary

(CPF 4; RRB 1; ZX 1.)

6. Exhibit ZX 2 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which, together with thirteen retail stores operated by Zale Corporation, are commonly referred to collectively as the Zale Store Division. (Tr. 13.)

Among the 468 corporations listed there are corporations some of which were incorporated as early as 1919, and some whose place of incorporation includes the following States and territory:

Alabama, Alaska, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, New Mexico, Nevada, North Carolina, North Dakota, Ohio, Okla-

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homa, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, West Virginia,⁶ Puerto Rico.

(CPF 5; ZX 2.)

Ben A. Lipshy and Donald Zale are directors of each of the corporations listed, and Leo Fields is a director in all except two in which Peter Artzt is a director. In each case, Ben A. Lipshy is president; Leo Fields, Marvin Rubin and John P. Dickens, vice presidents; Esir Wyll, secretary; Shearn Rovinsky, treasurer; and John P. Dickens, assistant secretary. Each of the foregoing, except Peter Artzt, is an officer or director of Zale Corporation. (CPF 6-10; ZX 1, ZX 2.)

7. Exhibit ZX 3 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which, together with 87 retail stores operated by Zale Corporation, are commonly referred to collectively as the Levine Store Division. (Tr. 13.)

Among the 62 corporations listed there are corporations some of which were incorporated as early as 1919, and some whose place of incorporation includes the following States: Alabama, Arkansas, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee and Texas. (CPF 21.)

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case, Ben A. Lipshy is president; Lew Zale, Bert Bernstein and John P. Dickens, vice presidents; Esir Wyll, secretary, John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing except Bert Bernstein is an officer or director of Zale Corporation. (CPF 22-25; ZX 1, ZX 3.)

8. Exhibit ZX 4 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail outlets which are commonly referred to collectively as the Leased Jewelry Division. (Tr. 14.)

Among the 108 corporations listed there are corporations one of which was incorporated as early as 1952 and some whose place of incorporation includes the following States and territory:

Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New Jersey, New York, Nevada, North Carolina,

⁶ See p. 41. ZX 2.

Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah,⁷ Virginia, Washington, Puerto Rico.

(CPF 15; ZX 4.)

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case, Ben A. Lipshy is president; Leo Fields, Jack Tassi and John Dickens, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing, except Jack Tassi, is an officer or director of Zale Corporation. (CPF 16-19; ZX 1, ZX 4.)

9. Exhibit ZX 5 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of wholly-owned subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Fine Jewelers Guild Division. (Tr. 14.)

Among the 133 corporations listed, there are corporations some of which were incorporated as early as 1900 and some whose state of incorporation includes the following States:

Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, New Jersey, New York, New Mexico, Nevada, North Carolina, Ohio, Pennsylvania, Rhode Island,⁸ Tennessee, Texas, Virginia, Missouri.

(CPF 10; ZX 5.)

Ben A. Lipshy and Donald Zale are members of the board of directors of each of the corporations listed and Leo Fields is a director of all except one. In each case, Ben A. Lipshy is president; Leo Fields, John P. Dickens and Willis Cowlshaw, vice presidents; Esir Wyll, secretary; Shearn Rovinsky, treasurer and John P. Dickens assistant secretary. Each of the foregoing except Willis Cowlshaw is an officer or director of Zale Corporation. (CPF 11-14; ZX 1, ZX 5.)

10. Exhibit ZX 6 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of wholly-owned subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Skillern Drug Division. (Tr. 14.)

Among the 23 corporations listed, are corporations one of which was incorporated as early as 1961, and all of whose place of incorporation is the State of Texas. (ZX 6.)

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case Ben. A. Lipshy is president;

⁷ZX 4 p. 1.

⁸ZX 5 p. 10.

Lew Zale, Sol Hirsch and John P. Dickens, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing, except Sol Hirsch, is an officer or director of Zale Corporation. (CPF 27-31; ZX 1, 6.)

11. Exhibit ZX 7 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Regency Division. (Tr. 14, 15.)

Among the 3 corporations listed, are corporations one of which was incorporated as early as 1906, and whose place of incorporation include the following States: Texas and Mississippi. (CPF 31.)

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case Ben. A. Lipshy is president; Lew Zale, Sid Weiss and John P. Dickens, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing, except Sid Weiss, is an officer or director of Zale Corporation. (CPF 32-35; ZX 1, 7.)

12. Exhibit ZX 8 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Sporting Goods Division. (Tr. 15.)

Among the 6 corporations listed are corporations one of which was incorporated as early as 1965, and whose place of incorporation include the following States: Texas and New Mexico.

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case, Ben A. Lipshy is president, Lew Zale, Harold Gardenswartz and John P. Dickens, vice presidents; Esir Wyll, secretary; and Shearn Rovinsky, treasurer. Each of the foregoing except Harold Gardenswartz is an officer or director of Zale Corporation. (CPF 36-40; ZX 1, 8.)

13. Exhibit ZX 9 is a list containing information regarding the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Butler's Shoe Division. (Tr. 15.)

Among the 248 corporations listed are corporations one of which was incorporated as early as 1932, and some whose place of incorporation includes the following States:

Delaware, Florida, Georgia, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia.

(CPF 47; ZX 9.)

In the case of Butler Shoe Corporation of Texas, incorporated August 27, 1969, one of the listed corporations, the following officers or directors of Zale Corporation are directors:

Donald Zale, Ben A. Lipshy and Leo Field.

The following are officers: Ben. A. Lipshy, president; Lew Zale, vice president; John P. Dickens, I. D. Shapiro, George Heald, Lawrence Gottfried, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; Shearn Rovinsky, treasurer.

Each of the foregoing officers, except Lawrence Gottfried, is an officer or director of Zale Corporation.

In the case of 54 corporations of the Butler's Shoe Division, the following officers of Zale Corporation are directors:

I. D. Shapiro, Albert S. Greenfield, and George Heald.

The following are officers:

Sidney Flanzbaum, president; I. D. Shapiro and Albert S. Greenfield, vice presidents; George Heald, secretary-treasurer; Lawrence Gottfried, assistant secretary-treasurer.

Each of the foregoing officers is an officer of Zale Corporation, except Sidney Flanzbaum and Lawrence Gottfried.

In the case of the remaining 202 corporations of the Butler's Shoe Division the following officers of Zale Corporation are directors:

I. D. Shapiro, Albert S. Greenfield, George Heald.

The following are officers:

I. D. Shapiro, president; Albert S. Greenfield and Clarence Feuer, vice presidents; George Heald, secretary-treasurer; Lawrence Gottfried, assistant secretary.

Each of the foregoing officers, except Clarence Feuer and Lawrence Gottfried, are officers of Zale Corporation. (ZX 1, 9.)

14. Exhibit 10 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Home Furnishings Division. (Tr. 15.)

Among the 5 corporations all of which are incorporated in Texas, there are two that were formed as early as 1959.

Ben A. Lipshy, Donald Zale and Leo Fields are directors of the corporations listed. In each case Ben A. Lipshy is president; Lew Zale, Stanley Karotkin and John P. Dickens, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing except Stanley Karotkin is an officer or director of Zale Corporation. (CPF 41-45; ZX 1, 10.)

15. In addition to the 87 junior department stores and 13 retail jewelry stores owned and operated by respondent, Zale Corporation, such respondent also has certain non-retail operations which are sometimes referred to as the Zale International Diamond Division and the Jewelry Manufacturing Division. (Tr. 15-16.)

16. In the Zale Corporation and its subsidiaries (1) the Zale Store Division, the Fine Jewelers Guild Division and the Lease Department Division are sometimes referred to as the jewelry divisions; and (2) the Levine Department Store Division, the Skillern Drug Store Division, the Regency Division, the Home Furnishings Division and the Sporting Goods Division are sometimes referred to as the retail marketing divisions. (Tr. 16.)

17. The directors of each of the aforementioned wholly-owned subsidiaries of Zale Corporation were elected by Zale Corporation, the sole shareholder of each of them, and the directors of each of the wholly-owned subsidiaries of Zale were elected by such wholly-owned subsidiary of Zale Corporation. (Tr. 16.)

18. The officers of each of the aforementioned wholly-owned subsidiaries were elected by the directors of such subsidiary; and, the officers of each of the aforementioned wholly-owned subsidiaries of wholly-owned subsidiaries were elected by the directors of such subsidiaries of subsidiaries. (Tr. 16.)

19. Upon the incorporation of many of the foregoing wholly-owned subsidiaries, Zale Corporation subscribed for all of the capital stock issued. The remainder of the foregoing subsidiaries, subsequent to their incorporation, were acquired through the purchase of the capital stock, thereof, or through other types of acquisition such as the assets of an operating company by a subsidiary of Zale Corporation. (Tr. 16-17.)

20. Respondent Zale Corporation regularly advertises for the extension of consumer credit; and, respondent Corrigan-Republic, Inc., since October 3, 1969, has advertised for the extension of consumer credit. (Tr. 36.)

21. The financial statements of respondent Zale Corporation and its wholly-owned subsidiaries and wholly-owned subsidiaries of subsidiaries for the fiscal year ended March 31, 1969, reflect that an aggregate of \$10,240,000 was expended to advertise merchandise offered for retail sale. This amount, however, does not include those amounts expended in connection with the advertising of shoes and related items since Butler's Shoe Corporation and its subsidiaries were not acquired by Zale Corporation until September 11, 1969.

Similarly, this amount does not reflect any advertising expenditures relating to the sale of sporting goods and furniture since neither Zale Corporation nor any of its subsidiaries or subsidiaries of subsidiaries was engaged in either of such businesses during the fiscal year ended March 31, 1969. (Tr. 36.)

22. Approximately 70 percent of the amount expended for advertising by respondent Zale Corporation and its wholly owned subsidiaries and wholly-owned subsidiaries of subsidiaries during fiscal 1969 was for newspaper advertising. (Tr. 36.)

23. During the fiscal year ended March 31, 1969, the following wholly owned subsidiaries of respondent Zale expended the amounts set opposite their respective names for advertising:

Zale-Grand Junction, Inc.....	\$12, 506. 74
Frank Mindlin Jewelers, Inc.....	18, 621. 03
Jewelry Service Pueblo, Inc.....	4, 448, 37
Levine-Pampa, Inc.....	16, 616. 52
Levines, Inc.....	15, 179. 46

(Tr. 37.)

24. Respondent Corrigan-Republic, Inc., is now, and for sometime last past has been, engaged in the offering for sale, sale and distribution of jewelry and other merchandise to the public. (C, A; RPF 4.)

25. In the ordinary course and conduct of their business respondents regularly extend, and for sometime last past have regularly extended, consumer credit as defined in the Federal Reserve Regulation Z. (C, A; RPF 5, 6.)

26. Federal Reserve Board duly adopted Regulation Z effective July 1, 1969, and amendments and interpretations thereto all of which were duly published in the Federal Register and incorporated in Title 12, Chapter II, Part 226 of the Code of Federal Regulations.⁹

27. The financial statements of Zale Corporation, and its wholly-owned subsidiaries and the wholly owned subsidiaries of subsidiaries, for the fiscal year ended March 31, 1970, reflect aggregate net sales of \$384,172,196. Approximately 33% of such sales was accounted for by retail transactions involving the extension of consumer credit. (Tr. 20.)

28. Prior to July 1, 1969, respondent Zale Corporation and its subsidiaries, with some exceptions (as illustrated by CX 129-138), revised their credit agreements in an effort to comply with the Truth In Lending Act effective July 1, 1969. (Tr. 17.)

⁹ 12 CFR 226.

INSTALLMENT CONTRACT

29. Exhibit ZX 11 is a form of retail installment contract used between July 1, 1969, and December 31, 1969, by the thirteen retail jewelry stores, owned and operated by Zale Corporation. This retail installment contract was used in connection with its extension of consumer credit and its other than open-end credit sales of jewelry and other merchandise. This retail installment contract also serves as the security agreement and as evidence of the transaction. Such contract is identical in all material respects to that believed by Zale to have been used between July 1, 1969, and December 31, 1969, by each subsidiary and subsidiary of a subsidiary which operates a retail store commonly referred to as a Zale Store Division store. (Tr. 17; CPF 69, 70; RPF 8.)

30. Exhibit ZX 11, the installment contract form used, consists of four sheets and three carbons attached at the top, with a perforation permitting rapid separation. The four sheets are substantially identical on the front and are respectively marked at the bottom General Office Copy, New York Copy, Customer Copy and Store Copy. The customer copy has an additional notation: "(see Reverse Side)." Attached as Appendix A is a facsimile of the front of ZX 11(A). The store copy and the customer copy contain on the reverse side the contract of sale and security agreement. A copy of the reverse side is attached as Appendix B.

31. Additional examples of retail installment contracts executed in July 1969 by the companies and with the exhibit numbers listed below were received in evidence:

Zale Crenshaw Imperial, Inc., doing business as "Zales Jewelers" (CX 1-91; Tr. 17; CPF 71; RRB 2).

Zale Corporation doing business as "Mission Jewelers" (CX 92-101; CPF 72; RRB 2).

Zale Jewelers (CX 102-104; see CPF 73; Tr. 18; RRB 2).

Zale Corporation doing business as "Zales Jewelers" (ZX 12-21; Tr. 18; CPF 74; RRB 2).

We consider now the specific violations charged in the complaint as resulting from the use of respondents said form of contract.

32. In ensuing subparagraphs, we set forth the complaint allegation in Paragraph 5, regarding the deficiencies in the contract used by Zale Corporation followed by the answer reference, and where controverted by answer, the facts found with regard thereto.

(1) The complaint charges that the contract:

Fails to disclose the term "dollars finance charge per \$100 of unpaid balance" * * * more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

This allegation is denied by answer Paragraph 5(1) (see also RPF 9).

An examination of the contract form (Appendix A) demonstrates that so far as the size type is concerned there is no emphasis on the phrase. After the contract is filled in, the printing and placement of the phrase does not make it conspicuous. (CX 1-91.)

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 72; RRB 2.)

(2) The complaint charges that the contract:

Fails to disclose the term "finance charge" more conspicuously than other required terminology as required by Section 226.6(a) of Regulation Z.

This allegation is denied by answer Paragraph 5(2) (see also RPF 10).

An examination of the contract form (Appendix A) demonstrates that so far as the size of type is concerned there is no emphasis on the phrase. The finance charge is one of 9 other disclosures only one of which "down payment" is emphasized by being printed in red. The word "charge" is underlined as are the words "down payment." However, such underlining does not make the words "finance charge" more conspicuous. Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 76; RRB 2.)

(3) The complaint charges that the contract:

Includes the amount of the finance charge in the computation of the amount financed contrary to the requirements of Section 226.2(d) of Regulation Z.

The answer admits that the contract included the amount of the finance charge in the computation of the amount financed (A5 (3)) but denies as a conclusion, that such action is contrary to the requirements of Section 226.2(d) of Regulation Z (see also RPF 11). Section 226.2(d) of the regulation defines the term "amount financed" as meaning the amount of credit of which the customer will have the actual use. Clearly a finance charge cannot be included.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 76; RRB 2.)

(4) The complaint charges that the contract:

In placing the term "finance charge" above (before) the term "amount financed", fails to make this disclosure in meaningful sequence, as required by Section 226.6(a) of Regulation Z. The finance charge must not be included in the computation of the amount financed and the amount financed should include all the amounts immediately preceding it.

The answer admits that the term "finance charge" is placed before the term "amount financed" but denies that this constitutes a failure

to make disclosure in a meaningful sequence and denies the last sentence as a conclusion of law. (A5 (4), 6; see also RPF 12.)

Placing the figures denoting the finance charge in the column above the figures denoting amount financed would indicate that the former is and should be included in the latter. This is not so. The proper sequence is listed in Regulation Z on Exhibit C p. 22 (2nd series) the form of retail installment contract and security agreement suggested.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (See CPF 78.)

(5) The complaint charges that the contract:

In making the charge for credit life insurance optional to the customer, fails to include such charge in the amount financed, as required by Sections 226.4(a) (5) and 226.8(c) (7) of Regulation Z.

The answer admits that the charge for credit life insurance is not included in the amount financed but denies the remaining allegations because they are conclusions of law and because no finance charge is made. (A5 (5); see also RPF 13.)

The charge for credit life insurance should be included in the finance charge unless the provisions of i or ii of Paragraph (a) (5) of Section 224.4 of Regulation Z are complied with. Here there is compliance with Section 226.4. Thus the charge for credit life, voluntarily undertaken by the client is financed on his behalf and it should be included in the amount financed, Sec. 226.8(c) (4).

Accordingly, we find that this allegation of the complaint is sustained. (CPF 81, 82; RRB 2.)

(6) The complaint charges that the contract:

Fails to disclose the amount of the dollars finance charge per year per \$100 of unpaid balance with an accuracy to the nearest quarter of one percent, as required by Section 226.5(b) (1) of Regulation Z.

The answer admits that the contract fails to disclose the amount of the dollar finance charge with an accuracy to the nearest quarter of one percent but denies the balance of subparagraph 6 for the reason that such allegations constitute conclusions of law. (A5(6).)

Regulation Z (226.5(b)) expressly requires that the annual percentage rate applicable shall be the nominal annual percentage rate determined in accordance with the actuarial method of computation so that it might be disclosed with an accuracy at least to the nearest quarter of one percent or by application of the United States Rule so that it may be disclosed with an accuracy at least to the nearest 1/4%.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 83, 84; RPF 14; RRB 2.)

(7) The complaint charges that the contract:

Fails to use the term "cash downpayment" when the downpayment is in money, as required by Section 226.8(c) (2) of Regulation Z.

The answer admits that the contract does not use the term "cash downpayment" when the downpayment is in money and denies the remaining allegations of the complaint as constituting conclusions of law. (A5 (7).)

Regulation Z in Section 226.8(c) requires disclosure of "the amount of downpayment itemized, as applicable, as downpayment in money, using the term 'cash downpayment.'" Downpayment in property, using the term "trade-in" and the sum, using the term "total downpayment."

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 85, 86; RPF 15; RRB 2.)

(8) The complaint charges that the contract:

Fails to use the term "unpaid balance of cash price" to describe the difference between the cash price and the cash downpayment, as required by Section 226.8(c) (3)

The answer admits that the contract does not use the term "unpaid balance of cash price" to describe the difference between the cash price and the cash downpayment but denies the remaining allegations as conclusions of law. (A5(8).)

Section 226.8(c) (3) of Regulation Z expressly requires the use of the term "unpaid balance of cash price" in the required disclosures.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 88; RPF 16.)

(9) The complaint charges that the contract:

Fails to treat an existing obligation as a new transaction subject to the disclosure requirements of Regulation Z, as required by Section 226.8(j) of Regulation Z.

The answer admits that the contract fails to treat an existing obligation as a new transaction but denies the remaining allegations as conclusions of law. (A5(9).)

Section 226.8(j) of Regulation Z expressly requires among other things that if an existing obligation is increased, such transaction "shall be considered a new transaction subject to the disclosure requirements of this Part."

In a number of contracts in evidence it appears from the reverse side that an existing obligation was increased (old balance filled in)

while the front demonstrates that the total owed was not included in the amount financed or reflected in the finance charge (see CX 92, 93, 98 and 100).

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 89, 90; RPF 17; RRB 2.)

(10) The complaint charges that the contract:

Since a security interest is retained, fails to clearly identify the property to which the security interest relates, as required by Section 226.8(b) (5) of Regulation Z.

The answer denies the allegations in this subparagraph for the reason that such allegations constitute conclusions of law rather than allegations of fact. (A5 (10); see also RPF 18.)

It appears from the sample contract (Appendix A, B) and the executed contracts (CX 1-104; ZX 12-21) that the property is described on the front of the contract and the security interest on the reverse side. Moreover, the statement relating to the retention of a security interest is contained in the middle of the contract of sale in such a location that it might well be overlooked by the purchaser. In addition, the contract in this regard fails to conform to the suggested form Exhibit C of the pamphlet incorporated in Regulation Z. In such form, the description of the security interest immediately precedes the description of the property secured.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 91, 92, 93.)

(11) The complaint alleges that the contract:

Fails to employ an adequate identification of the method of computing the unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b) (7) of Regulation Z.

The answer denies the allegations of this subparagraph for the reason that such allegations constitute conclusions of law rather than allegations of fact. (A5 (11); see also RPF 20.)

On the reverse side of the contract (Appendix B) the following statement appears:

Under law you have a right to pay in advance the full amount due and under certain conditions obtain a partial refund on the finance charge based on Zale Refund Chart.

Regulation 226.8(b) of Regulation Z requires both an identification of the method of computing and a statement of the amount of method of computation of any charge "that may be deducted from the amount of any rebate of such unearned finance charge.* * *"

Initial Decision

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 94, 95, 96; RRB 2.)

(12) The complaint alleges that the contract:

Having elected to combine disclosures with the contract in a single document and having attempted to make required disclosures on both sides of the document, fails to place thereon on both sides of the document the following statement: "NOTICE: See other side for important information," as required by Section 226.801 of Regulation Z.

The answer admits the allegation that the prescribed notice is not used but instead the language "see reverse side" and denies the remaining allegations as conclusions of law (A5(11); see also RPF 20.)

Section 226.801, an interpretation issued by the Federal Reserve Board on April 22, 1969, requires that when some required disclosures are made on two sides of a contract "both sides shall contain the statement:

"NOTICE: See other side for important information." Required disclosures are on both sides of the contract (Appendix A, B).

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 97, 98, 99.)

(13) The complaint alleges that the contract:

Fails to make the required disclosures that are on the reverse side of the contract in clear, conspicuous and meaningful sequence as required by Section 226.6(a) of Regulation Z. The language on the reverse side of the contract appears in light print on yellow paper producing a low contrast, there are no paragraphs, and all language is printed with the same size letters without larger letters separating sentences.

The answer denies the allegation in the first sentence of this subparagraph as a conclusion of law but admits that the language on the reverse side appears in print on yellow paper and that there are no paragraphs, and that all language is printed with same size letters without larger letters separating sentences. (A5(13); see also RPF 21.)

An examination of CX 11¹⁰ demonstrates that the print is light and produces a low contrast.

Accordingly, we find that the allegations of this subparagraph are supported by the proof. (CPF 100; RRB 2.)

33. Exhibit ZX 22 is a form of retail installment contract used subsequent to January 31, 1970, by the thirteen retail jewelry stores owned and operated by Zale Corporation. Such contract is identical

¹⁰ The xerox copy of Appendix B is much clearer than the original because of the difference between the sensitivity of the machine and that of the human eye.

in all material respects to that believed by Zale to be used subsequent to January 31, 1970, by each subsidiary and subsidiary of a subsidiary which operates a retail store commonly referred to as a Zale Store Division store. It is agreed that, except in some instances (evidenced by Exhibits CX 102-104) Exhibit ZX 22 is the form of retail installment contract also used between December 31, 1969, and January 31, 1970, by the thirteen retail jewelry stores owned and operated by Zale Corporation, and believed by Zale to have been used between December 31, 1969, and January 31, 1970, by each subsidiary and subsidiary of a subsidiary¹¹ which operates a retail store commonly referred to as a Zale Store Division store. (Tr. 18.) A copy of the front and back of such revised contract are annexed as Appendices C & D respectively.

Accordingly, the allegations of Paragraph VIII of respondents' answer have been established to the effect that, through conferences with representatives of the Federal Trade Commission, prior to the issuance of the complaint, the respondents' retail installment contract forms have been brought into conformity with the Truth in Lending Act with the exception of the failure to supply the prescribed notice on the first page (Appendix C.) (RPF 29.)

OPEN END CONSUMER CREDIT PERIODIC STATEMENTS

34. Exhibit ZX 23 is a form of periodic statement used between October 3, 1969, and January 31, 1970, by Corrigan-Republic, Inc., in connection with its regular extension of open-end consumer credit. Such periodic statement is identical in all material respects to that believed by Zale to have been used between July 1, 1969, and January 31, 1970, by each subsidiary and subsidiary of a subsidiary which operates a retail jewelry store commonly referred to as a Fine Jewelers Guild Division store. During the period October 3, 1969, through January 31, 1970, in connection with the open-end credit accounts of respondent Corrigan-Republic, Inc., customers who had paid their new balance within 30 days from the closing date of the billing cycle were not assessed additional finance charges. Exhibits CX 105-128 are copies of periodic billing statements typical of those mailed or delivered to customers in January 1970 by Corrigan-Republic, Inc., doing business as "Corrigan's Jewelers." (Tr. 19; CPF 101, 102; RPF 22; RRB 2.)

35. A copy of the front and back of ZX 23 are annexed hereto

¹¹ Correction to record made by order on stipulation of parties of July 1, 1970, and mailed July 9, 1970.

and marked Appendices E & F, respectively. We consider now the specific violations charged in the complaint as resulting from the use of respondents' said form of periodic statement.

36. In ensuing subparagraphs we set forth the complaint allegation in Paragraph 6 regarding the deficiencies in the periodic statement all of which were denied by the answer, followed by the facts found with regard thereto.

(1) The complaint charges that the periodic statement:

Fails to disclose the term "finance charge" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

An examination of ZX 23 (Appendices E & F) and CX 105-128 discloses that the finance charge is placed under the column headed "charge" and is designated with a symbol "cc" which is explained on the reverse side of the form.

Accordingly, we find that the allegation in the complaint is sustained by the proof and that the form does not comply with Section 226.6(a) of Regulation Z. (CPR 104; RPF 23; RRB 3.)

(2) The complaint charges that the periodic statement:

Fails to disclose the term "annual percentage rate" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

An examination of ZX 23 (Appendices E & F) discloses that the term "annual percentage rate" is described in the text on the reverse side of the form in the alternative depending on the amount of the balance.

Accordingly, we find that this allegation in the complaint is sustained by the proof and that the form does not comply with Section 226.6(a) of Regulation Z. (CP 104; RPF 23; RRB 3.)

(3) The complaint charges that the periodic statement:

Fails to employ the term "payments" to describe the amounts credited to the account during the billing cycle for payments, as required by Section 226.7(b) (3) of Regulation Z.

An examination of ZX 23 (Appendices E & F) discloses that the word "payments" does not appear. There is a column headed "credits" and a space for the obligator to insert the payment he makes on the part of the statement to be returned to the obligee.

Accordingly, we find that this allegation in the complaint is sustained by the proof, and the form fails to comply with Section 226.7(b) (3) of Regulation Z. (CPF 106; RPF 25; RRB 3.)

(4) The complaint charges that the periodic statement:

Fails to disclose each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance charge (whether or not

applied during the billing cycle), as required by Section 226.7(b) (5) of Regulation Z.

An examination of ZX 23 (Appendices E & F) discloses that, in describing the finance charges and the alternate basis on which they are computed on the reverse side of the form, the term "periodic rate" is not used and that term is also not used on the front of the form.

Accordingly, we find that this allegation in the complaint is sustained by the proof and that the form does not comply with Section 226.7(b) (5) of Regulation Z. (CPF 107; RPF 26; RRB 3.)

(5) The complaint charges that the periodic statement:

Fails to disclose the term "new balance" to describe the outstanding balance in the account on the closing date of the billing cycle, as required by Section 226.7(b) (9) of Regulation Z.

An examination of ZX 23 (Appendices E & F) and CX 105-128 discloses that the term "new balance" is not used but an asterisk is used as a symbol to designate the "final balance."

Accordingly, we find that the term "new balance" is not used as required by Section 226.7(b) (9) of Regulation Z. (CPF 108; RPF 27; RRB 3.)

(6) The complaint charges that the periodic statement:

Fails to employ a statement accompanying the term "new balance" indicating the date by which or the period, if any, within which payment must be made to avoid additional finance charges, as required by Section 226.7(b) (9) of Regulation Z.

An examination of ZX 23 (Appendices E & F) and CX 105-128 discloses no statement accompanying the term "new balance" indicating the date by which, or the period, if any, within which, payment must be made to avoid additional finance charges.

Accordingly, we find that this allegation in the complaint is sustained by the proof and that the form does not comply with Section 226.7(b) (9) of Regulation Z. (CPF 109, 110; RPF 28; RRB 3.)

37. Exhibit ZX 24 is a form of periodic statement used subsequent to January 31, 1970, by Corrigan-Republic, Inc. Such periodic statement is identical in all material respects to that believed by Zale to have been used subsequent to January 31, 1970, by each subsidiary and subsidiary of a subsidiary which operates a retail jewelry store commonly referred to as a Fine Jewelers Guild Division store. (Tr. 19.)

A copy of such revised periodic statement is hereto annexed and marked Appendix G (the reverse side is blank).

Accordingly, the allegations of Paragraph VIII of respondents' answer have been established to the effect that, through conferences with representatives of the Federal Trade Commission, prior to the issuance of the complaint, the respondents' periodic statement has been brought into conformity with the Truth in Lending Act.

REASONS FOR DECISION

There were a large number of issues raised by the pleadings which persisted through pretrial. However, after the parties entered into their stipulations and prepared their proposed findings, the real matters in controversy turned out to be relatively few and primarily directed to what kind of an order, if any, should be issued.

Respondents admitted by their proposed findings and reply brief that each of the contracts or periodic statements used from July to December 1969 violated some of the regulations promulgated by the Federal Reserve Board in Regulation Z. But they claimed, first, that no order should issue because they are now in compliance and second that, if any order should issue, it should be confined to prohibiting only the violations admitted that are specific and require no "subjective judgments." Moreover they contend that any order should apply only to acts of the named respondents and not to what they could accomplish through their thousand odd subsidiaries and sub-subsidiaries.¹²

On the first point, it is very clear from the vigor of respondents claim that certain of the provisions of Regulation Z require subjective judgments and that they should not be bound by the interpretations urged on them, (Respondents Brief pp. 2 & 3) that some order must be issued to clarify what interpretations are proper ones and to see to it that there is future compliance.¹³ Moreover, one new form fails to contain the prescribed notice and it has not been shown that the forms are being properly completed. (CRB 14, *et seq.*)

Having determined that some order should be issued we come to a determination of the breadth of the order. It has long been established that the Commission in drafting an order is not to be confined

¹² In light of the Commission's opinion accompanying its order of June 17, 1970, to the effect that evidence on advertising was to be received and the explanation provided by the undersigned in his order of June 29, 1970, with regard to his amendments to the complaint (constituting merely a particularization deemed desirable under Rule 3.15) further discussion of the amendments seems unnecessary although respondents preserved their position throughout that no amendment should have been made.

¹³ *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965); *Libby-Owens-Ford Glass Company v. FTC*, 352 F. 2d 415 (6th Cir. 1965); *Carter Products v. FTC*, 323 F. 2d 523 (5th Cir. 1963); CRB 14-17.

to the specific practice proved but it must be allowed effectively to close all roads to the prohibited goal so that its order may not be by-passed with impunity.¹⁴

Since admittedly respondents' practices with respect to their contracts and periodic statements violated the act and regulations, respondents should properly be prohibited from using other means, such as advertising, to accomplish a similar forbidden result. Moreover, having shown that respondents have the means of controlling more than a thousand subsidiary and sub-subsidiary corporations thru their stock ownership and their common directors and officers the order should provide against the utilization of this control in a manner that would admit of continued violations by the companies owned. This is especially true, where, as here, the stipulation indicates, because of widespread use of identical forms, that wide control was exercised in the formulation and adoption of the old contracts (Appendices A, B, E, & F) as well as the new ones (Appendices C, D & G).

In connection with the so-called subjective judgments which must be made to determine whether or not the contested charges were violations of valid regulations, we must look to the nature of the statute, its purpose, the extent of legislative delegation, and the specificity of the regulation adopted.

The nature of the statute and its purpose are so clear from its terms that no search of Congressional intent is necessary or appropriate.

In the initial section of the Act, Congress expressly stated in part:

It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.¹⁵

Similarly, in defining the adjective "consumer" as it relates to a credit transaction¹⁶ the statute makes it clear that natural persons seeking credit for personal, family, household, or agricultural purposes are those to be protected.

Hence, in construing the statute, and the regulations adopted, we must do so from the point of view of protecting the run of the mill natural person, not from the point of view of protecting the sophis-

¹⁴ *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965); *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952); see also *Siegel Co. v. FTC*, 327 U.S. 608, 611 (1946); *P. F. Collier & Son, Corp. v. FTC*, 427 F. 2d 261 (1970); CRB 17-22.

¹⁵ 15 U.S.C. § 1601.

¹⁶ 15 U.S.C. § 1603 h.

ticated businessman. We turn now to the extent of legislative delegation to the Federal Reserve Board.

In providing for the Federal Reserve Board to issue regulations the broadest discretion is given to this expert body in the following language:

The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter to prevent circumvention or evasion thereof, or to facilitate compliance therewith.¹⁷

Having in mind that the purpose of the legislation is to permit the ordinary consumer, of whatever degree of sophistication, to obtain a meaningful disclosure so that he or she can compare credit terms available; any regulation that would make comparison easier would seem to be expressly authorized.

Respondents seem to have little difficulty with those regulations that prescribe the use of specific terms or the inclusion of items or percentage of accuracy of computations. (RPF 9-10.) Clearly such specificity is authorized under the broad statutory authority granted.¹⁸

Respondents do have some difficulty, however, with the requirement that a particular form of wording is prescribed when another phraseology would, in their opinion, accomplish the same purpose. Thus, they regard the use of their notation, ("see reverse side") as the equivalent of the required statement: "NOTICE See other side for important information."¹⁹ The difference is of course in emphasis. Clearly when there is information on each side of the form that the Federal Reserve Board, in the exercise of its expert discretion, regards as important, it may very properly require appropriate emphasis. And, since the words are reasonably adapted to the enforcement of the act and their use does not contravene some other requirement of law, the regulation must be followed.²⁰

¹⁷ 15 U.S.C. § 1604.

¹⁸ *Udall v. Tallman*, 380 U.S. 1 (1965); *Brewster v. Gage*, 280 U.S. 327, 336 (1930); *Maryland Casualty Co. v. United States*, 251 U.S. 342 (1920); *Tyler v. United States*, 397 F. 2d 565 (5th Cir. 1968); *McCarthy v. FCC*, 390 F. 2d 471, 474 fn. 5 (D.C. Cir. 1966).

¹⁹ Required by Interpretation Section 226.801.

²⁰ *Allstate Insurance Company v. United States*, 329 F. 2d 346 (7th Cir. 1964); *Tyler v. United States*, 397 F. 2d 565 (5th Cir. 1968); *Brewster v. Gage*, 280 U.S. 327 (1929); *A.T.&T. Co. v. United States*, 299 U.S. 232 (1936); *Udall v. Tallman*, 380 U.S. 1 (1965); *Gardner v. Alabama*, 385 F. 2d 804, 817 (5th Cir. 1967); Compare *FTC v. Guignon*, 390 F. 2d 323, see 336 dissenting opinion of Judge Heaney.

Respondents also have difficulty with the regulations that set a standard to be followed rather than prescribing, in detail, the precise form to be followed. For example, they object to the complaint's challenge to their failure to make the words "Finance Charge" more conspicuous than other terminology; to the requirement that the property subject to a security interest be clearly defined; and, that required disclosures be made in clear, conspicuous and meaningful sequence, because they claim these matters are subject to interpretation. The short answer is that the Supreme Court has had no difficulty with enforcing such regulations so long as there is a sufficient guide supplied.²¹ The forms supplied with the regulations, though not prescribed, form an excellent guide. Moreover, the administrative enforcement of the law and regulations, except in the case of creditors subject to other administrative supervision was left to the Federal Trade Commission.²² Undoubtedly this was done because of the recognized expertise of the Federal Trade Commission in assessing the probable effect on consumers of advertising and other types of documents used for inducing purchase.²³

Viewing the documents challenged (Appendix A & B for example) it is apparent to the hearing examiner that the printing on the reverse side (Appendix B) by reason of the colors used, the choice of type, and the failure to break up the various separate concepts is not clear. It is also apparent that the words and phrases required to be emphasized are not properly emphasized in light of the other printing on the documents, the type of print used and the effect of filling in the spaces. In addition, again viewing the documents as a whole and observing the confusion engendered by the order in which the items are listed (see CX 1-91) it appears that the terms required are not in meaningful sequence.

For the foregoing reasons in addition to those expressed in finding the facts, we have determined that the following conclusions and order are appropriate.

CONCLUSIONS

1. Respondent Zale Corporation, through its ownership of respondent Corrigan-Republic Inc., and over a thousand subsidiaries or subsidiaries of subsidiaries is a large interstate chain of stores selling jewelry and other commodities at retail. In connection there-

²¹ *A.T. & T. Co. v. United States*, 299 U.S. 232 (1936); *Maryland Casualty Co. v. United States*, 251 U.S. 342 (1920); *Udall v. Tallman*, 380 U.S. 1 (1965).

²² 15 U.S.C. § 1607(c).

²³ *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965); *FTC v. Mary Carter Paint Co.*, 382 U.S. 46 (1965); See *Cinderella Career and Finishing Schools, Inc. et al. v. Federal Trade Commission*, 425 F. 2d 583 (D.C. Cir. 1970); *Stauffer Laboratories Inc. v. FTC*, 343 F. 2d 75, 79 (9th Cir. 1965); *Bakers Franchise Corp. v. FTC*, 302 F. 2d 258, 261 (3rd Cir. 1962); *Exposition Press Inc. v. FTC*, 295 F. 2d 872 (2d Cir. 1961), cert. denied, 370, U.S. 917 (1962).

with it extends credit and advertises for the extension of credit. Through ownership, common directors and officers it maintains control over its widespread operations and in the changes developed in its installment contracts and periodic statements actually exercised wide control.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondents.

3. For approximately 6 months following the effective date of the Truth in Lending Act, and the regulations thereunder, respondent itself and through its wholly-owned subsidiaries, and their subsidiaries, has been party to the use of form contracts and form periodic statements in connection with the extension of credit that failed to conform to the requirements of the Truth in Lending Act, and the regulations propounded by the Federal Reserve Board in connection therewith.

4. It is very clear from the preamble to the Truth in Lending Act, 15 U.S.C. 1601, that it was the purpose of Congress to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him, and to avoid the uninformed use of credit. The regulations prescribed by the Federal Reserve Board have, in meticulous detail, described what shall be contained in credit instruments and how the information shall be set up so that the purpose of the Act will be fulfilled.

5. The documents in use by respondent and by a number of its subsidiaries, for a number of months following the effective date of the Act and Regulations have failed to follow with precision, the regulations prescribed by the Board pursuant to statutory authority. Because of such failure, under the provisions of Section 105 and 108 of the Truth in Lending Act, respondents have violated the Federal Trade Commission Act.

6. Respondents contend that no order should be issued because they conferred with Federal Trade Commission representatives, and some 6 months following the effective date of the Act, but before issuance of the complaint, changed their documentation. Because among other reasons of the size and complexity of respondents' operation, we conclude that the issuance of an order is essential to insure compliance with the Truth in Lending Act by all the stores operated directly or indirectly by respondents and to prevent maintenance of instrumentalities capable of causing violations of the Act. For similar reasons, we conclude that the order should prevent advertising forbidden by the Act though no instances of that were shown.

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7. The facts having been found to be as alleged in the complaint, the order in the form attached to the complaint should be issued.

ORDER

It is ordered, That respondents Zale Corporation, a corporation, and Corrigan-Republic, Inc., a corporation, and their officers, and respondents' agents, representatives and employees, directly or through any corporate, subsidiary, division or other device, in connection with any consumer credit sale of jewelry or any other merchandise or service, as "credit sale" is 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 print the terms "dollars finance charge per \$100 of unpaid balance," "annual percentage rate" and "finance charge," where required by Regulation Z to be used, more conspicuously than other terminology required by Regulation Z of the Truth in Lending Act.
2. Including the amount of the finance charge in the computation of the amount financed.
3. Failing to include the charge for credit life insurance, when not required to be placed within the finance charge, within the amount financed.
4. Determining the annual percentage rate or the dollars finance charge per year per \$100 of unpaid balance in any manner other than that provided in Section 226.5 of Regulation Z of the Truth in Lending Act.
5. Failing to employ the term "cash downpayment" to describe the downpayment in money, as required by Section 226.8(c)(2) of Regulation Z of the Truth in Lending Act.
6. Failing to employ the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z of the Truth in Lending Act.
7. Failing to treat an increase of an existing obligation as a new transaction subject to the disclosure requirements of Regulation Z, as required by Section 226.8(j) of Regulation Z of the Truth in Lending Act.
8. Failing to make a clear identification of the property to which a security interest relates, as required by Section 226.8(b)(5) of Regulation Z of the Truth in Lending Act.
9. Failing to make an adequate identification of the method of computing the unearned portion of the finance charge in the

event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z of the Truth in Lending Act.

10. Failing to disclose the required notice on both sides of the document in language conforming to that contained in Section 226.801 of Regulation Z of the Truth in Lending Act.

11. Failing to print installment contracts and any other consumer credit instruments both on the face and reverse side clearly, conspicuously, and in meaningful sequence both as to form and substance.

12. Failing to employ the term "payments" to describe the amounts credited to the customer's account during the billing cycle for payments, as required by Section 226.7(b)(3) of Regulation Z.

13. Failing to disclose each periodic rate that may be used to compute the finance charge (whether or not applied during the billing cycle), using the term "periodic rate" (or "rates"), as required by Section 226.7(b)(5) of Regulation Z of the Truth in Lending Act.

14. Failing to disclose the term "new balance" to describe the outstanding balance in the account on the closing date of the billing cycle, as required by Section 226.7(b)(9) of Regulation Z of the Truth in Lending Act.

15. Failing to employ a statement, accompanying the term "new balance," indicating the date by which, or period, if any, within which payment must be made to avoid additional finance charges, as required by Section 226.7(b)(9) of Regulation Z of the Truth in Lending Act.

16. 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.

It is further ordered, That the respondents herein shall forthwith deliver a copy of this order to cease and desist to all present and future store managers or other persons engaged in the completion of credit agreements growing out of the sale of respondents' products or services, and shall secure from each such manager or other person a signed statement acknowledging receipt of said order.

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

It is further ordered, That each respondent notify the Commission at least 30 days prior to any proposed change in the corporate re-

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

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

[illegible]

FRONT OLD CONTRACT

APPENDIX A.

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APPENDIX B

TOTAL BALANCE
 OLD BALANCE
 COMBINED BAL.
 INSTALLMENT SCHEDULE
 Number Amount First

Secured party (seller) sells and debtor (buyer) purchases goods and/or services described herein and buyer acknowledges delivery of goods and/or performance of services. Buyer will pay the balance due in substantially equal consecutive monthly installments as set out above until all goods and/or services have been paid. Buyer agrees not to sell, remove or encumber the goods. Buyer is to be responsible for all loss or damage to goods. Buyer agrees that seller retains a security interest in said goods and in case of default then seller shall be entitled to possession of goods and entire balance of this contract shall become due and payable. In event of repossession, seller may lawfully enter any premises where said goods are located and remove them. If sent to attorney for collection, buyer agrees to pay reasonable attorney's fees and court costs. The front and back of this instrument constitutes the entire contract. Notice to buyer—do not sign this before you read it or if it contains blank spaces. You are entitled to a copy of this contract. Under law you have the right to pay in advance the full amount due and under certain conditions obtain a partial refund on the finance charge based on Zale refund chart. Keep this contract to protect your legal right. Buyer acknowledges receipt of his copy of this contract and that this contract was completed before buyer signed.
 Credit insurance is voluntary and costs \$_____ and buyer desires the coverage.

 Buyer

 Zale by:

 (See reverse side)

 Buyer

BACK OLD CONTRACT

APPENDIX C

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT

Write your numerals like this 1234567890 G. O. COPY 683348

Seller retains a security interest in the below described merchandise.

Description	Quantity	Dept.	Item number	Amount
-------------	----------	-------	-------------	--------

 ITEM 1

 ITEM 2

 ITEM 3

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(ENTER IN REPLACE CODE COLUMN)

0—DO NOT REPLACE

1—REPLACE

REPLACE CODE N. Y. DEPT. N. Y. TYPE WH. YEL

ITEM 1

ITEM 2

ITEM 3

Buyer hereby agrees to pay the "total of payments" shown on the right hand column of this page in

_____ WEEKLY _____ SEMI-MONTHLY _____ MONTHLY

SOLD BY STORE NO. _____

INSTALLMENTS OF \$ _____

CASH CHG. RETURN _____

(FINAL PAYMENT TO BE \$ _____)

THE FIRST INSTALLMENT BEING PAYABLE _____
19____, AND ALL SUBSEQUENT INSTALLMENTS ON THE SAME DAY OF
EACH CONSECUTIVE

_____ WEEK _____ SEMI-MONTH _____ MONTH UNTIL PAID IN FULL.

IS A OLD BALANCE _____ B REFUND _____

C* NET OLD BALANCE _____

1. CASH PRICE 2. SALES TAX 3. TOTAL CASH PRICE

4. CASH DOWN PAYMENT 5. TRADE-IN

6. LESS: TOTAL DOWN PAYMENT

7. UNPAID BALANCE OF CASH PRICE

8. OTHER CHARGES: _____

9.* NET OLD BALANCE

10. CREDIT LIFE INSURANCE

11. AMOUNT FINANCED

12. FINANCE CHARGE

13. TOTAL OF PAYMENTS

14. DEFERRED PAYMENT PRICE

Annual percentage rate is _____%

Name _____

Street address _____

City _____

State _____

ZIP Code _____

ZALE'S JEWELERS

Date _____

O.K. By _____

CASH 1 CHARGE 2 STU. 3 REP. 4 LAYAWAY 5 ADD BY 6

FRONT REVISED CONTRACT

APPENDIX D

The Secured party (Seller) sells and Debtor (Buyer) purchases the merchandise and/or services described herein. Buyer acknowledges delivery of merchandise and/or performance of services.

SELLER'S SECURITY INTEREST. Seller retains a security interest in the described merchandise and/or services.

PAYMENT TERMS. Buyer will pay the total of payments due as shown on the installment schedule on reverse side until all merchandise and/or services have been paid in full.

DELINQUENCY CHARGE. Seller may assess Buyer a delinquency charge of 5%, but not more than \$2.50, once on each installment payment in default of 30 days or more.

BUYER'S DEFAULT. In case of default, Seller shall be entitled to possession of the merchandise and/or the balance of the payments shall become due and payable.

COLLECTION COSTS. If this account is sent to an attorney for collection, Buyer shall pay court costs and reasonable attorney fees.

BUYER'S OBLIGATIONS. Buyer is responsible for all loss or damage to merchandise and agrees not to sell, remove, or encumber the merchandise.

BUYER'S AUTHORIZATION. Seller is authorized to investigate Buyer's credit record and to report to responsible persons Buyer's performance of this contract.

CREDIT CARD. Buyer authorizes Seller to send Buyer a credit card.

NOTICE TO BUYER.

DO NOT SIGN IF THIS CONTRACT CONTAINS BLANK SPACES. SIGN ONLY AFTER READING. YOU ARE ENTITLED TO A COPY OF THIS CONTRACT. UNDER LAW YOU HAVE THE RIGHT TO PAY IN ADVANCE THE FULL AMOUNT DUE AND ANY UNEARNED FINANCE CHARGE WILL BE REBATED UNDER THE RULE OF 78 AFTER DEDUCTING A CHARGE OF \$5.00. KEEP YOUR COPY TO PROTECT YOUR LEGAL RIGHTS.

THE FRONT AND BACK OF THIS INSTRUMENT CONSTITUTES THE ENTIRE CONTRACT.

Credit Life Insurance is voluntary and costs \$_____ for the term of credit.

Buyer does not desire coverage_____ (Buyer) (Date)

Buyer does not desire coverage_____ (Buyer) (Date)

(Buyer's Signature)

(Seller's Signature)

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION

BACK REVISED CONTRACT

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APPENDIX E

CORRIGAN JEWELERS

Statement

See reverse side for symbols

Billing Date _____

	Date	Symbols	Charge	Credit	Balance
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

Terms as arranged at time of purchase

Corrigan's

Jewelers Since 1914

Republic National Bank Tower • Dallas, Texas 75201 • PH: 747-8284

Also 610 Northpark Mall • Fairmont Hotel

Amount paid \$ _____

Please tear off this stub and return with remittance your cancelled check is your receipt

FRONT OLD PERIODIC STATEMENT

APPENDIX F

S—Previous Balance

CC—Finance Charge

*Final Balance

Charges, payments, returns received after your billing date will appear on your next statement. Your finance charge is $1\frac{1}{2}\%$ per month on so much of the unpaid balance as does not exceed \$500 and this is 18% on an annual percentage rate. Your finance charge is 1% per month on so much of the unpaid balance as does exceed \$500 and this is 12% on an annual percentage rate. The finance charge is applied to the previous balance without deducting current credits received during the billing cycle.

BACK OLD PERIODIC STATEMENT

APPENDIX G

Billing date

Statement

	Date	Symbols	Purchases	Payments/ credits	Previous balance
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

Finance charge

Last amount is "New Balance". To avoid additional finance charges pay "New Balance" in full within 25 days of the billing date.

FINANCE CHARGE is computed at a periodic rate of $1\frac{1}{2}\%$ per month (ANNUAL PERCENTAGE RATE 18%) on the first \$500.00 and a periodic rate of 1% per month (ANNUAL PERCENTAGE RATE 12%) on the excess over \$500.00. These rates will be applied to the "Previous Balance" before adding purchases and without deducting payments or credits shown hereon.

EXPLANATION OF SYMBOLS

PP—Payment C—Credit FC—FINANCE CHARGE
CORRIGAN JEWELERS

Notice: See accompanying statement(s) for important information.
No. G7169-1

CORRIGAN'S

Jewelers Since 1914

Amount paid \$ _____

NEW PERIODIC STATEMENT

OPINION OF THE COMMISSION

JUNE 10, 1971

By JONES, *Commissioner*:

I

On March 30, 1970, the Commission issued a complaint against the respondent Zale Corporation and one of its wholly-owned subsidiar-

ies, Corrigan-Republic, charging the respondents with violations of the Truth in Lending Act Title of the Consumer Credit Protection Act (15 U.S.C. §§ 1601-1665 (Supp. V 1965-1970) (herein called the Truth in Lending Act), Regulation Z promulgated thereunder (12 CFR §§ 226.1-226.1002 (1970)) (herein called Regulation Z) and Section 5 of the Federal Trade Commission Act (15 U.S.C. §§ 41, 45 (1964)).

The complaint charges respondent Zale Corporation with 13 violations of the Truth in Lending Act and Regulation Z arising from its failure to disclose in the retail installment contracts used in its business various facts about the terms of credit being offered as required by the statute and the implementing regulation (C, Para. 4-5).¹ Respondent Corrigan-Republic is charged with six violations of the Act and Regulation occasioned by its use of a periodic statement in connection with the extension of open end credit which also contained several enumerated deficiencies in disclosing the credit terms of the transactions as required by the statute and implementing regulation (C, Para. 6). In addition, both respondents are charged with violation of Section 5 of the Federal Trade Commission Act by reason of their alleged failure to comply with the Truth in Lending Act (C, Para. 7).²

Both respondents filed answers denying these allegations. At the trial, however, the parties stipulated substantially all of the facts in issue, admitting the use of the contract and forms forming the basis for the alleged violations and the authenticity of the various documents and made various admissions of other allegations of the complaint (Tr. 11-12).

Accordingly, the principal issues during the hearing before the hearing examiner centered on these two questions:

¹ The following abbreviations will sometimes be used:

Tr. — Transcript
C — Complaint
A — Answer
ID — Examiner's initial decision
ZX — Respondents' exhibit
CX — Complaint counsel's exhibit
CRB — Complaint counsel's reply brief
RRB — Respondents' reply brief
CPF — Complaint counsel's proposed findings
RPF — Respondents' proposed findings

² Section 108(c) of the Truth in Lending Act provides that:

"... For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement of that Act."
(Emphasis supplied.)

1. Did the documents admittedly used by the respondents violate the Truth in Lending Act; and

2. If an order is entered, can it be properly applied to the more than 1,000 wholly-owned subsidiaries through which respondents transacted their business in the United States?³

The examiner found against respondents on all issues. He sustained the allegations in the complaint and determined that an order can and must be issued covering the entire scope of the respondents' business whether transacted directly or through subsidiaries.

Respondents have appealed. Their appeal centers primarily on the questions of the necessity and scope of an order and on the propriety of the extension of an order issued in the case to their wholly-owned subsidiaries (RRB 3-4).⁴

II

The Background Facts Respecting Respondents' Business Operations

Respondent Zale Corporation is a combination holding company and operating company, organized in the State of Texas and doing business throughout the United States (C 1; A 1; ZX 1-10). Zale Corporation is engaged in the retail sale of jewelry and other merchandise, both directly through its ownership of 13 jewelry stores and 87 junior department stores (Tr. 13, 14), and indirectly through a network of 1056 wholly-owned subsidiaries and sub-subsidiaries (ZX 1-10). Respondent Corrigan-Republic is one of Zale Corporation's wholly-owned subsidiaries engaged in the retail sale of jewelry (C 1; A 1; ZX 5). The aggregate sales for Zale Corporation and its subsidiaries for the fiscal year ending May 1970, were \$384,172,196; approximately 33% of this amount resulted from retail transactions involving the extension of consumer credit (Tr. 20).

Zale's retail business is administered by three operating divisions: the Jewelry Store Division (Tr. 16), The Retail Marketing Division (Tr. 16), and the Butler Shoe Division (Tr. 15).⁵ Each of these divi-

³ Respondents raised several other defenses challenging various individually alleged violations for the interpretations of the statutory and regulatory language contained therein. Respondents also raised the question of whether or not the case had become moot by reason of changes in respondents' practices prior to the issuance of the complaint (ID 1203).

⁴ Respondents' brief on appeal to the Commission admitted the violations charged in Paragraphs V and VI of the complaint. The errors assigned to the initial decision are directed at the examiner's conclusions on the necessity and scope of an order drawn from the findings and not from the findings themselves (RRB 4).

⁵ Zale Corporation also has two non-retailing operations or divisions, the Zale International Diamond Division and the Jewelry Manufacturing Division. Neither of these is directly involved in the present action (Tr. 16).

sions is responsible for the operation of Zale Corporation's retail outlets throughout the United States. Some of these retail outlets are incorporated as wholly-owned subsidiaries and others are run directly by the Zale organization or by other wholly-owned subsidiaries. For example, the Jewelry Store Division has three subdivisions, the largest of which is the Zale Store Division. That subdivision is responsible for some 468 corporate subsidiaries and sub-subsidiaries engaged in the sale of jewelry at retail, and 13 retail jewelry stores operated directly by Zale Corporation (ZX 2; Tr. 13; ID 1205-06). All but 45 stores operated by this Zale Store Division bear the name "Zale" (ZX 2).

Respondent Corrigan-Republic is a part of another subdivision of Zale Corporation's Jewelry Store Division known as the Fine Jeweler's Guild. Like its counterpart, Zale Store Division, the Fine Jeweler's Guild subdivision is responsible for some 133 corporate subsidiaries and sub-subsidiaries engaged in the sale of jewelry at retail (ZX 5; Tr. 14; ID 1207). The majority of the retail outlets in this division do not bear the name "Zale" (ZX 5).

The third subdivision of Zale Corporation's Jewelry Store Division, known as the Leased Jewelry Division, is, again, responsible for the retail operations of some 108 wholly-owned subsidiaries and sub-subsidiaries (ZX 4; Tr. 14; ID 1206).

Zale Corporation's second principal operating division, the Retail Marketing Division, is organized along comparable lines. It comprises within its retailing operations both jewelry and non-jewelry merchandising. Its jewelry outlets are clustered principally within the Levine Store subdivision, which conducts its retail operations through various directly-owned outlets as well as wholly-owned subsidiaries and sub-subsidiaries (Tr. 16). The Levine Store subdivision is responsible for 87 junior department stores owned and operated directly by Zale Corporation, as well as some 67 corporate subsidiaries and sub-subsidiaries which are wholly-owned by Zale Corporation (Tr. 15; ZX 3; ID 1206).

Zale Corporation is the sole stockholder in each of the subsidiaries or sub-subsidiaries within its corporate network, either through original subscription to all the capital stock when issued, or through purchases of capital stock, or other form of acquisition (Tr. 16-17; ID 1210). All directors of these Zale Corporation subsidiaries are elected by Zale Corporation, the sole stockholder. The directors elect the officers. The directors of sub-subsidiaries are elected by the wholly-owned subsidiary of Zale Corporation which owns the sub-subsidiary. Directors, again, elect officers (Tr. 16; ID 1210).

The overlap of officers and directors throughout the subsidiaries within Zale Corporation's three marketing divisions is extensive. The officers and directors for each subsidiary and sub-subsidiary in its two operating divisions (the Jewelry Division and Retail Marketing Division) are identical. Each of these officers and directors holds the same office in the parent, Zale Corporation (with the exception of one vice president who is a vice president of the subsidiary grouping only) (ZX 1-10).

This organizational pattern differs in some respects for Zale Corporation's Butler Shoe Division, its third principal operating division and most recent acquisition.⁶ All of the officers and directors of this division also serve as officers and directors of Zale Corporation but in different capacities (ZX 1, 9). One of the corporate subsidiaries in this division, Butler Shoe of Texas, shares the same president, vice president and other officers of the parent Zale Corporation, just as all the other subdivisions of the Jewelry Store Division and the Retail Marketing Division do. However, for the balance of the 247 Butler Shoe subsidiaries and sub-subsidiaries, the officers and directors are not the same as the officers and directors of the parent Zale Corporation.

The violations alleged and ultimately admitted by the respondents were based essentially on a retail installment contract form and a periodic statement form which the record affirmatively shows were used by several Zale Corporation retail outlets from July 1, 1969, to December 31, 1969 (ZX 11, 23; Tr. 71, 19; ID 1212, 1218). The Truth in Lending Act became effective on July 1, 1969 (§ 504, Title V).

The retail installment contract was used by retail outlets of the Zale Corporation whether incorporated or unincorporated. This contract was used throughout the Zale Store Division stores, some of which, as noted above, were directly owned by Zale Corporation, and others of which were operated by wholly-owned corporate subsidiaries and sub-subsidiaries. Although there is no systematic and statistical showing of the exact number and identity of the stores using the form, respondent Zale Corporation stipulated that the form was identical in all material respects to the retail installment contract form "believed by Zale to have been used" by all stores in the Zale Store Division after July 1, 1969 (Tr. 17). Copies of this contract executed by three different Zale Corporation retail outlets, i.e., respectively: Zale Crenshaw-Imperial, a wholly-owned subsidi-

⁶ The Butler Shoe Corporation and its subsidiaries were acquired by the Zale Corporation September 11, 1969 (Tr. 36; ID 1210).

ary (CX 1-91); Zale Corporation d/b/a Mission Jewelers (CX 92-101); and Zale Corporation d/b/a Zale Jewelers (CX 12-21), directly operated retail stores, were received as evidence of its undifferentiated use (Tr. 17-18).

The periodic statement used by respondent Corrigan-Republic and admitted to violate the requirements of the Truth in Lending Act as alleged in the complaint were apparently also used by the approximately 133 retail outlets administered by Zale Corporation's second major marketing division, the Fine Jeweler's Guild (Tr. 18-19).

In its stipulation, Zale asserted that:

Prior to July 1, 1969, respondent Zale Corporation and its subsidiaries, with some exceptions (as illustrated by CX 129-138), revised their credit agreements in an effort to comply with the Truth in Lending Act effective July 1, 1969. (Tr. 17.)

Respondents allege, and the hearing examiner found, that some time after the initiation of the Commission's investigation of Zale Corporation, Zale again changed the form of its retail installment contract and periodic billing statement. Zale Corporation offered into evidence new revised forms of a retail installment contract which it claimed had gone into use throughout its Zale Store Division on January 31, 1970 (ZX 22; Tr. 18). It also offered into evidence a revised periodic statement form which it also claimed had gone into use throughout Zale's Fine Jeweler's Guild after January 31, 1970 (ZX 24, Tr. 19).

Zale Corporation admitted in its stipulation the complaint's allegation that it "controls numerous wholly-owned subsidiaries, one of which is respondent Corrigan-Republic, and respondent Zale Corporation formulates, directs and controls the acts and practices of respondent Corrigan-Republic, including the acts and practices hereinafter set forth" (C 2; Tr. 20).

Zale Corporation also stipulated that both Zale and Corrigan-Republic regularly advertised for the extension of consumer credit (Tr. 36). The total Zale network expenditures for advertising Zale's merchandise offered for retail sale in fiscal 1969 (ending March 31) amounted to \$10,240,000, 70% of which was for newspaper ads (Tr. 36).⁷

⁷ This figure does not include advertising for the Butler Shoe Division since Butler Shoe and its subsidiaries were not acquired until September 11, 1969. Sporting goods and furniture are similarly excluded (Tr. 36).

Figures submitted for the advertising budgets of five individual Zale retail outlets ranged from \$5,000 to \$15,000 (Tr. 37-38). The stores involved were wholly owned subsidiaries of respondent Zale in Zale's Jewelry Store and Retail Marketing Divisions (Tr. 37-38).

III

The Necessity for and Scope of Remedial Action

It is against the background of this corporate organization that respondents' arguments with respect to the proper reach of the order must be evaluated. Respondents urge three arguments as to why an order should not issue here. First, Zale Corporation argues that the need for an order is moot and lacks public interest; second, if an order is deemed necessary, Zale argues that the notice order entered by the hearing examiner is improper as reaching too broadly into respondents' corporate hierarchy and applying to practices beyond those challenged in the complaint. We will deal with each of these arguments *seriatim*.

A. The Issues of Abandonment and Mootness

Respondents argue that the alleged violations had already been abandoned by them before the complaint in this matter issued. Moreover, they contend that an order is unnecessary here since respondents' violations were essentially due to their unfamiliarity with the Act's requirements which had only gone into effect a short time before the Commission's investigation (RRB 4).

The hearing examiner considered these two arguments and rejected them as both factually and legally unwarranted (ID 1221-22). Our reading of the record and the applicable case law convinces us that the hearing examiner was correct in his rejection of these arguments.

The Truth in Lending Act was passed on May 29, 1968, to become effective thirteen months later, on July 1, 1969. Regulation Z, the implementing regulation, was issued in final text on February 10, 1969, after all members of the public had had an opportunity to consider it and propose revisions or make other comments. In addition to the publication of the text of Regulation Z, the Federal Reserve Board also published a pamphlet entitled, "What You Should Know About Regulation Z" which contained sample contracts and statements to further guide the industry as to the interpretation of the Act. The record does not reflect the date of the Commission's initiation of the investigation of respondents. The Commission's complaint, however, was first sent to respondents in October 1969, three months after the date the Act went into effect, nine months after Regulation Z was promulgated and seventeen months after the Act was passed. The complaint was formally served on respondents in March 1970. It was in this intervening period between October 1969,

and March 1970, when the claimed revisions to respondents' credit papers were effected.

We do not believe that respondents can seriously contend that they had not been given sufficient time within which to bring their credit forms and practices into conformity. Indeed, respondents admit that they were aware of the Act's provisions and had made revisions in some of their contract forms and credit statements prior to July 1969, the effective date of the Act. They made further revisions "after [they] were advised by the staff of the Federal Trade Commission" (RRB 3).

It is well established that the mere fact that the offending practices have been discontinued prior to the issuance of a complaint does not provide, by itself, the requisite assurance that an order is unnecessary and not in the public interest. As the courts have noted, it is the timing and circumstances of the claimed abandonment which is of importance to the issue of the necessity for an order. Where, as here, the abandonment took place only after the Commission's hand was on the respondent's shoulder, the courts are clear that abandonment of the practices under such circumstances will not support a conclusion that the practices will not be resumed.⁸

Moreover, in the instant case, the examiner found that, contrary to respondents' assertions of abandonment, in fact, some parts of respondents' newly revised forms issued in January 1970, three months after the Commission's complaint was first sent to respondents, were still in violation since they failed to provide the prescribed notice on the first page (ZX 22; ID 1217-18, 1221).

The violations charged did not involve isolated and minor departures from the disclosure requirements of the statute. Rather, they embraced 13 different instances in which respondents' installment contracts failed to make the disclosures required by the statute and six instances in which respondents' open-end statement contained similar deficiencies. Respondents' retail sales of jewelry are national in scope. Their contract forms found to have been in violation of the Act were used extensively throughout the Zale Corporation organization.

We conclude, therefore, that an order is necessary in this case in order to ensure that the offending practices will not be resumed.

⁸ See, e.g., *Eugene Dietzgen Co. v. F.T.C.*, 142 F. 2d 321, 330 (7th Cir. 1944); *F.T.C. v. Goodyear Tire & Rubber Co.*, 304 U.S. 257, 260 (1938); *Art National Mfg. Dist. Co.*, 58 F.T.C. 719, 724 (1958).

B. The Scope of the Order

We turn next to respondents' contentions that the examiner's order is improper and its scope too broad.

Respondents' first contention is that the order's prohibitions go beyond the precise practices found to have violated the statute and are, therefore, improper (RRB 6).

The order proposed by the examiner is not, as respondents suggest, a broad undifferentiated order simply prohibiting respondents from violating the statute or the regulation irrespective of whether the particular provision applies to the type of business in which respondents are engaged. Rather, the examiner's order is carefully limited to those full sections of the implementing regulation that regulate the specific kinds of practices in which respondents have been shown to be engaged. The order prohibitions are carefully tailored to exclude any section of this regulation which bears no relationship to the practices of Zale Corporation and its network of subsidiaries.⁹

It is clear that the Act and the Regulation establish a comprehensive regulatory scheme designed to ensure that creditors make full disclosure of all of the various terms involved in credit transactions which they enter into or offer to prospective customers.

Respondents' violations of the Act were extensive and went to the heart of the statute. For example, in the use of the periodic statement, respondents failed to disclose the terms "payments," "periodic rates" and "new balance," which were mandated by the Regulation. It is not unreasonable, therefore, in order to ensure future compliance with the statute, to extend the order prohibitions to other disclosure terms mandated by the Act and Regulation, such as the "annual percentage rate," "finance charge" or "previous balance" (§ 226.7). Where the respondents have admitted, as here, to failing to disclose the terms and conditions of credit in their proper place, i.e., clearly and conspicuously and in meaningful sequence, under

⁹ The examiner's order includes within its prohibitions three full sections of Regulation Z. These sections embrace the practices in which respondents admittedly engaged and in which there were admitted violations. These sections also cover the types of practices in which respondents' activities are concentrated. For example, Section 226.7 governs the specific disclosure requirements for credit other than open end. The retail installment contract of the Zale Store Division owned by the Zale Corporation falls directly under this section. Section 226.8 governs the specific disclosure requirements for open end credit. The periodic statement of Corrigan-Republic which was used throughout the Fine Jewelers Guild Division, owned by the Zale Corporation, falls under this section. Section 226.6 sets out the general disclosure requirements of type, size, and placement that ties into the other two sections (ID 1227).

§ 226.6(a), it likewise seems not unreasonable to include in the order § 226.7(a), which mandates the specific time in credit transactions when disclosures should be made.

The same point comparison can be made for § 226.8 (credit other than open end) and respondents' retail installment contract. A respondent who has failed to disclose "cash down payment" and "unpaid balance of cash price" is just as likely to fail to disclose "annual percentage rate" or "total down payment." A respondent who has failed to disclose the method of computing the unearned portion of the finance charge after prepayment, may be just as likely to fail to disclose the method of computing the charge for delinquency. It is unnecessary for the Commission to pick through these sections that regulate the point-of-sale credit disclosures and the monthly statement credit disclosures and discuss which subsections are related to respondents' practices and which are not.

In addition, the order includes in the general prohibitory provision § 226.10, which deals with advertising of credit terms. While there are no allegations or proof of violations of this section in the record, the parties have stipulated that there is extensive corporate activity throughout the Zale network in the field of advertising (Tr. 36-37).

Respondents' advertising is just as important to their business as their extension of credit. The respondents have advertised extensively throughout the period covered by the complaint (Tr. 36-37). The advertising provision of the Truth in Lending Act and Regulation Z are directly parallel to the other substantive sections which require disclosures. Wherever applicable, the same terminology mandated in the contract forms is mandated in the advertising. Given the purpose of the statute, to enhance competition among financial institutions and other firms extending consumer credit and to increase the informed use of credit by consumers (§ 102, Title I), and the structure of the regulation, the advertising provisions of the Act are clearly part and parcel of the general disclosure scheme.

The advertising is the first contact with the consumer. The accuracy of such advertising in the specific terminology of the statute is imperative if the statute is to foster competition. These respondents have failed to make the necessary disclosures mandated by the Act and regulation on the contracts and statements, when they already had the consumer in the store and ready to buy. In these circumstances, we believe simply to require the disclosures under the Act on the written contracts and not to include the mandated disclosures in their advertising of credit terms within the order prohibition

would be to leave open to the respondents an opportunity to entice customers into their stores without the previous benefit of the Truth in Lending disclosures to aid the consumer in evaluating the credit terms and price.

We agree with the examiner that the order to be entered here must extend beyond the precise dimensions of the practices here found to have violated the law. Respondents are engaged in a nationwide business of selling jewelry and other merchandise through more than 1,000 retail outlets. Their aggregate sales totaled \$384 million, one third of which involved the extension of credit. Their advertising budget for fiscal 1969 amounted to \$10 million, 70 percent of which was placed in newspapers.

It is well settled that in framing the remedy which the Commission believes is essential in a matter, the Commission is in no way limited to a prohibition of the illegal practice in the precise form in which it was found in the past. As the Supreme Court held in *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952) :

If the Commission is to attain the objectives which Congress envisioned, it cannot be required to confine the road block to the narrow lane the transgressor has traveled, it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.

We conclude that the substantive scope of the order proposed by the examiner is reasonable. Nor do we believe that the need for the type of order entered here is in any way minimized because of the alleged complexities of the provisions of the law and the regulation. As respondents have pointed out, the Federal Reserve Board is constantly issuing interpretations to ease whatever burdens may arise for industry members in complying with the Act. Moreover, the respondents, in addition, have available to them the Commission's advisory opinion procedures should any particularly complex question of interpretation arise.

Respondents, however, also argue that the examiner's proposed order is improper because it reaches beyond respondents and extends also to respondents' subsidiaries (RRB 4). We agree with the examiner that this argument too is wholly without factual basis and legal justification and must be rejected.

Zale Corporation admits that it formulates the acts and practices of its subsidiary, respondent Corrigan-Republic (RRB 8). It admits its stock ownership of the vast network of its subsidiaries and sub-subsidiaries (RRB 2). It admits its administration of these subsidiaries and sub-subsidiaries through its three operating divisions, each of which is presided over by one of its group vice presidents. It also

admits the propriety of the binding effect of the order on the three operating divisions, as well as on those of its retail outlets within these divisions which are part of its organization and not separately incorporated.¹⁰ Zale has also admitted that after the enactment of the Truth in Lending Act, it and its subsidiaries revised and reissued their credit agreement forms (RRB 3).¹¹ Indeed, one of its arguments during this proceeding, and reiterated on its appeal before the Commission, was that it needed time in order to complete these revisions in view of the size of its marketing organization (RRB 7). The record is clear that the form of retail installment contract found here to have been in violation of the Act was in use throughout at least the respondent Zale Store Division which was responsible for the retail operation of 468 corporate subsidiaries and 13 directly operated retail outlets.

We find nothing in the record which demonstrates or even suggests that respondent Zale Corporation was not entirely in control of the marketing operations of all of its retail outlets, irrespective of whether they were incorporated or unincorporated. Indeed, respondent Zale agrees that the order is properly binding on its unincorporated retail outlets which are organizationally operated by two of its marketing divisions, along with other retail outlets in these divisions which are incorporated as wholly-owned subsidiaries or sub-subsidiaries. Yet, respondent cites nothing in the record to indicate that the control of its three marketing divisions over the retail outlets for which each is responsible, differs in any way in terms of whether these outlets are incorporated or unincorporated. Nothing in the record suggests that Zale made any distinction in its treatment or organizational structure between those of its outlets which were incorporated and those which were not. Indeed, the record makes *clear* that Zale totally intermixed—apparently quite indiscriminately—its incorporated and unincorporated retail outlets within its three operating divisions. Thus, it admits controlling the acts and practices of respondent Corrigan-Republic which was simply one of 133 corporate subsidiaries operated by its Fine Jeweler's Guild Division (Tr. 20). Executed copies of the same credit forms on which the violations were based were introduced into evidence as having been used both by Zale Corporation's directly operated retail outlets as well as by its incorporated retail outlets (Tr. 17-18). Moreover, the record indicates that the same personnel in charge of

¹⁰ These directly operated non-incorporated retail outlets include some 87 department stores and 13 jewelry stores.

¹¹ See page 1238, *supra*.

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the incorporated retail outlets are also in charge of the operating division to which each reports, thus providing further evidence of the identity which exists between all parts of the Zale network irrespective of the interposition of corporate structures in some of these network members.

The hearing examiner carefully considered respondents' argument that the order should not properly apply to respondent Zale Corporation's subsidiaries. He rejected the argument as not borne out by the evidence (ID 1204, 1222). We agree with the examiner's conclusion.

We conclude, therefore, that the decision and order proposed by the hearing examiner is fully supported by the evidence and should be sustained.

FINAL ORDER

This matter being before the Commission on respondents' appeal upon briefs from the hearing examiner's initial decision; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the aforesaid appeal should be denied;

It is ordered, That the initial decision of the hearing examiner, modified to the extent necessary to conform to the views expressed in the accompanying opinion, be, and hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

GAMBLE-SKOGMO, INC.

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