

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

Docket C-2105. Complaint, Nov. 18, 1971—Decision, Nov. 18, 1971

Consent order requiring a real estate builder-developer and its advertising agency of San Diego, Calif., to cease violating the Truth in Lending Act in consumer credit transactions and advertisements by failing to make all disclosures in the manner, form, and amount as required by Regulation Z of the Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation 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 Penasquitos, Inc., a corporation, Irvin J. Kahn, individually and as an officer of said corporation, and Reed, Miller & Associates, a corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Penasquitos, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 3010 Cowley Way, San Diego, California.

Respondent Irvin J. Kahn is president of Penasquitos, Inc. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as Penasquitos, Inc.

Respondent Reed, Miller & Associates is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 3719 Fourth Avenue, San Diego, California.

PAR. 2. Respondents Penasquitos, Inc., and its president, Irvin J. Kahn are now and for some time last past have been engaged in the construction, development, and sale of residential real property to the public.

PAR. 3. In the ordinary course and conduct of their business respondents Penasquitos, Inc. and Irvin J. Kahn, regularly extend, and for some time last past have regularly extended, 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. Respondent Reed, Miller & Associates is and for some time last past has been an advertising agency engaged in the business of creating, producing, preparing and placing advertising for its clients, one of which has been respondent Penasquitos, Inc.

PAR. 5. In order to promote the sale of residential real estate, respondents Penasquitos, Inc. and Irvin J. Kahn have caused advertisements to be placed in various media. Certain of these advertisements to promote, aid, or assist directly or indirectly consumer credit sales were created, prepared, produced and placed for respondents by respondent Reed, Miller & Associates. Certain of said advertisements which were published, broadcast, or delivered subsequent to July 1, 1969:

1. Failed to disclose credit information required by Section 226.10 (d) (2) of Regulation Z clearly and conspicuously as required by Section 226.6(a) of Regulation Z. Specifically, in certain television commercials, the cash price, downpayment, number and amount of monthly payments, and annual percentage rate for the credit transaction described were disclosed by means of lettering superimposed over the television picture for three seconds in small print simultaneously with a distracting audio sales presentation.

2. Stated such specific credit information as the amount of the downpayment required, or that no downpayment was required, the amount of installment payments, and the period of repayment to be made if the credit is extended without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10 of Regulation Z:

- a. the cash price;
- b. the amount of the downpayment, or that no downpayment is required, as applicable;
- c. the number and amount of payments scheduled to repay the indebtedness if the credit is extended; and
- d. the annual percentage rate.

3. Disclosed the interest rate of the credit in extremely large, bold face type while disclosing the higher annual percentage rate in much less conspicuous small print in violation of Section 226.10(d) (1) which permits only the annual percentage rate disclosure and Section 226.6(c) which prohibits additional disclosures that tend to mislead, contradict, obscure, or detract attention from disclosures required by Regulation Z.

4. Disclosed examples of typical extensions of credit, the terms of which provided for payments of three years at a stated annual percentage rate and then payments for the remaining 27 years of the extension of credit at a much higher annual percentage rate, thereby failing to disclose a single annual percentage rate for the transaction accurate to the nearest quarter of one percent computed in accordance with Section 226.5(b) of Regulation Z, as required by Sections 226.10 (d) (1) and 226.10(d) (2) of Regulation Z.

PAR. 6. Subsequent to July 1, 1969, in the ordinary course and conduct of their business as aforesaid, respondents Penasquitos, Inc. and Irvin J. Kahn have offered to grant and have granted a \$500 allowance towards the purchase of home furnishings to those customers making at least a 20 percent downpayment on the purchase of respondents' homes. In connection with the "credit sale" of homes where buyers did not make the necessary downpayment to qualify for the special

allowance, respondents have provided those customers with credit cost disclosure statements which:

1. Fail to accurately disclose the "cash price" of the property as defined in Section 226.8(c)(1) and determined as set forth in Section 226.8(o)(7) of Regulation Z, by failing to exclude from the cash price of the property the value of allowance given to those making the specified 20 percent downpayment.
2. Fail to accurately disclose the amount of the "unpaid balance of cash price" as required by Section 226.8(c)(3) of Regulation Z.
3. Fail to accurately disclose the "amount financed" as required by Section 226.8(c)(7) of Regulation Z.
4. Fail to include in the amount of the "finance charge" as required by Sections 226.4, 226.8(o)(7) and 226.8(c)(8)(i) of Regulation Z, the amount of the allowance given to those customers making the specified 20 percent downpayment.
5. Fail to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Sections 226.5 and 226.8(o)(7) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 7. Subsequent to July 1, 1969, in connection with the credit sale of residential real estate, respondents Penasquitos, Inc. and Irvin J. Kahn have caused customers to execute separate notes and deeds of trust to secure the purchase of said property. A note and first deed of trust were taken for the major amount of the cash price, and another note and second trust deed were taken for the balance less any downpayment received. In connection with such transactions respondents furnished customers with a credit cost disclosure statement for each note and trust deed. By virtue of said practice respondents have failed to comply with Section 226.8(a) of Regulation Z which, in such instances, requires that credit disclosures be made on one side of a single document. Furthermore, because each of the credit disclosure statements disclosed only the terms with respect to each of the notes and trust deeds, the disclosures of the downpayment, unpaid balance of cash price, unpaid balance, amount financed, and amount of monthly payments were all rendered inaccurate in violation of Sections 226.8(c)(2), (3), (5), (7) and 226.8(b)(3) of Regulation Z.

PAR. 8. Subsequent to July 1, 1969, in connection with the credit sale of residential real property, respondents Penasquitos, Inc., and Irvin J. Kahn have caused customers to enter into binding contracts for the purchase of such property prior to receiving the credit cost disclosures required by Regulation Z. By virtue of said practice respondents failed to comply with Section 226.8(a) of Regulation Z

which requires disclosures to be made to the credit purchaser before the transaction is consummated.

PAR. 9. Subsequent to July 1, 1969, respondents Penasquitos, Inc., and Irvin J. Kahn, in connection with the extension of consumer credit have also provided customers with credit cost disclosure statements which:

1. Fail to make all disclosures required by Regulation Z clearly, conspicuously and in meaningful sequence, as required by Section 226.6(a) of Regulation Z.

2. Fail to print the terms "finance charge" and "annual percentage rate," where required to be used, more conspicuously than the other terminology required to be used by Regulation Z, as required by Section 226.6(a) thereof.

3. Fail to disclose the date on which the finance charge begins to accrue if different from the date of the transaction as required by Section 226.8(b) (1) of Regulation Z.

4. Fail to disclose the number of payments scheduled to repay the indebtedness as required by Section 226.8(b) (3) of Regulation Z.

5. Fail to disclose the amount of any payment more than twice the amount of any regularly scheduled equal payment as a "balloon payment" as required by Section 226.8(b) (3) of Regulation Z.

6. Disclose additional information in conjunction with the disclosures required to be made by Regulation Z, which information misleads, contradicts, obscures or detracts attention from disclosure of information required to be disclosed by Regulation Z.

PAR. 10. By and through the acts and practices set forth above, respondents failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents have violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Penasquitos, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 3010 Cowley Way, San Diego, California.

Respondent Irvin J. Kahn is president of Penasquitos, Inc. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as Penasquitos, Inc.

Respondent Reed, Miller & Associates is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 3719 Fourth Avenue, San Diego, California.

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

ORDER

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

1. Failing to make all disclosures required by Regulation Z clearly, conspicuously, and in meaningful sequence, as required by Section 226.6(a) of Regulation Z.

2. Causing to be disseminated to the public in any manner whatsoever any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, which advertisement states:

(a) the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless it states all of the following items in terminology prescribed under Section 226.8 of Regulation Z:

(1) the cash price;

(2) the amount of the downpayment required or that no downpayment is required, as applicable;

(3) the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(4) the amount of the finance charge expressed as an annual percentage rate.

(b) the rate of any finance charge other than the annual percentage rate.

3. Failing to print the terms "finance charge" and "annual percentage rate," where required to be used, more prominently than the other terminology required to be used by Regulation Z, as required by Section 226.6(a) thereof.

4. Failing in any consumer credit transaction in which the evidence of the transaction comprises more than one document to make all the disclosures required by Regulation Z together on one side of a separate statement which identifies the transaction as required by Section 226.8(a) of Regulation Z.

5. Failing in any consumer credit transaction to make the disclosures required by Regulation Z before the transaction is consummated as required by Section 226.8(a) of Regulation Z.

6. Failing in any credit sale to accurately disclose the amount of the "cash price," using that term, as required by Sections 226.8(c)(1) and 226.8(o)(7) of Regulation Z.

7. Failing in any credit sale to accurately disclose the amount of the downpayment as required by Section 226.8(c)(2) of Regulation Z.

8. Failing in any credit sale to accurately disclose the amount

of the "unpaid balance of cash price" as required by Section 226.8(c)(3) of Regulation Z.

9. Failing in any credit sale to accurately disclose the amount of the "unpaid balance" as required by Section 226.8(c)(5) of Regulation Z.

10. Failing in any consumer credit transaction to accurately disclose the "amount financed" as required by Section 226.8(c)(7) of Regulation Z.

11. Failing to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Sections 226.5 and 226.8(o)(7) of Regulation Z, as required by Sections 226.8(b)(2), and 226.10 of Regulation Z.

12. Failing to disclose the date on which the finance charge begins to accrue if different from the date of the transaction as required by Section 226.8(b)(1) of Regulation Z.

13. Failing to disclose the number of payments scheduled to repay the indebtedness as required by Section 226.8(b)(3) of Regulation Z.

14. Failing to accurately disclose the amount of monthly payments scheduled to repay the indebtedness as required by Section 226.8(b)(3) of Regulation Z.

15. Failing to disclose the amount of any payment more than twice the amount of any regularly scheduled equal payment as a "balloon payment" as required by Section 226.8(b)(3) of Regulation Z.

16. Stating, utilizing or placing any additional information in conjunction with the disclosures required to be made by Regulation Z, which information misleads, contradicts, obscures or detracts attention from disclosure of information required to be disclosed by Regulation Z.

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

18. Failing to deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of credit or in any aspect of preparation, creation, and placement of advertising, all persons engaged in reviewing the legal sufficiency of advertising, and all present and future agencies engaged in preparation, creation and placement of advertising on behalf of respondents, and failing

to secure from each such person or agency a signed statement acknowledging receipt of said order.

It is further ordered, That respondent Reed, Miller & Associates, and its officers, agents, representatives and employees, directly or through any corporate device, in connection with any advertisement to aid, promote, or assist, directly or indirectly any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR § 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. Creating or causing to be published, broadcast, or delivered any consumer credit advertisement which fails to make all the disclosures required by Section 226.10 in the manner, form and amount required by Sections 226.4, 226.5, 226.6, 226.7, 226.8, and 226.10 of Regulation Z.

2. Failing to deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in reviewing the legal sufficiency of advertising prepared, created or placed on behalf of any advertiser, and failing to secure from each such person a signed statement acknowledging receipt of said order.

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

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

IN THE MATTER OF

EZ PAINTR CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF
THE CLAYTON ACT

Docket C-2106. Complaint, Nov. 19, 1971—Decision, Nov. 19, 1971

Consent order requiring the Nation's largest manufacturer of paint and varnish brushes, rollers and other accessories of Milwaukee, Wis., to divest within one year the corporate name and certain trade accounts of American Brush