

GUS KROESEN, INC., ET AL.

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

Docket C-2118. Complaint, Dec. 16, 1971—Decision, Dec. 16, 1971

Consent order requiring a California based jewelry wholesaler and its affiliated firms to cease using deceptive advertising to induce the sale of their jewelry; and to cease violating the Truth in Lending Act by failing, in consumer credit transactions and advertisements, to make all disclosures in the manner, form, and amount required by Regulation Z of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gus Kroesen, Inc., a corporation; National Diamond Sales, Inc., a corporation; Gus Kroesen Naval Tailor, Inc., a corporation; G. Kroesen Jewelers of Augusta, Inc., a corporation; and Joseph B. Kroesen and Edward G. Koch, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Gus Kroesen, Inc., National Diamond

Sales, Inc., Gus Kroesen Naval Tailor, Inc., and G. Kroesen Jewelers of Augusta, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of California.

Respondents Gus Kroesen, Inc., National Diamond Sales, Inc., and Gus Kroesen Naval Tailor, Inc., have their principal offices and places of business located at 401-15th Street, Oakland, California. Respondent G. Kroesen Jewelers of Augusta, Inc., has its principal office and place of business located at 613 Broad Street, Augusta, Georgia. Respondent Joseph B. Kroesen owns, directly or indirectly, majority ownership in each of the corporate respondents.

Respondent National Diamond Sales, Inc., is trading and doing business as National Diamond Sales and Jewelry Sales Company. Respondent Gus Kroesen Naval Tailor, Inc., is trading and doing business as Gus Kroesen Navy Tailor and Military Diamond Sales. Respondent G. Kroesen Jewelers of Augusta, Inc., is trading and doing business as Gus Kroesen Jewelers and G. Kroesen Jewelers Inc.

Respondent Joseph B. Kroesen is an individual and is vice president of respondent Gus Kroesen, Inc. He is also president of respondents National Diamond Sales, Inc., and Gus Kroesen Naval Tailor, Inc. He formulates, directs, and controls the policy, acts, and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is 401-15th Street, in the city of Oakland, State of California.

Respondent Edward G. Koch is an individual and is president of respondent Gus Kroesen, Inc. He is also president of G. Kroesen Jewelers of Augusta, Inc. He also participates in formulating, directing, and controlling the policy, acts, and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is 401-15th Street, in the city of Oakland, State of California.

PAR. 2. Respondent Gus Kroesen, Inc., is engaged in the nationwide distribution of jewelry and watches through the other above named corporate respondents, which are engaged in the offering for sale, sale and distribution of jewelry and watches to the public through catalog, magazine, and comic book advertising and through retail stores located in the States of Georgia, Illinois, Mississippi, and Missouri. Revenues from said sales are remitted by the above-named corporate respondents, so engaged, to respondent Gus Kroesen, Inc. which dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones, approves and accepts the pecuniary and other benefits flowing from the acts, practices, and policies of said corporate respondents hereinafter set forth.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business, respondents Gus Kroesen, Inc., National Diamond Sales, Inc., Gus Kroesen Naval Tailor, Inc., Joseph B. Kroesen, and Edward G. Koch now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other States of the United States and have transmitted and received and caused to be transmitted and received in the course of selling, delivering, and collecting payment for said products among and between the several States of the United States, payment books, checks, letters, payment schedules, and various other kinds of commercial paper and documents; and in addition, respondents advertise in magazines and comic books of general circulation which are distributed across state lines and by mailing catalogs across state lines to prospective customers. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have represented and now represent, in catalog, comic book, and magazine advertising, that:

1. Certain rings contain stones that are "blue star sapphire" or "birthstone."
2. Certain rings contain stones that are "genuine Linde blue star sapphire" or "genuine black star," thereby implying that Linde rings are genuine star sapphires.
3. Certain rings are "10 K solid gold."
4. Cultured pearls are "genuine cultured pearls," thereby implying that cultured pearls are genuine pearls.
5. Certain watches are "waterproof."

PAR. 5. In truth and in fact:

1. None of respondents' rings contain blue star sapphires or birthstones.
2. Linde blue and black star sapphires are not genuine star sapphires.
3. Certain of respondents' rings which are represented as "10 K solid gold" are not composed throughout of gold alloy but contain a concealed hollow center.
4. None of respondents' cultured pearls are genuine pearls.

5. None of respondents' watches are waterproof.

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

PAR. 6. In the further course and conduct of their business, and for the purpose of inducing the purchase of their products, proposed respondents have represented that certain of their watches have a "gold filled case" without designating the karat fineness of the plating. The practice of using the term "gold filled" in describing watch cases without disclosing the karat fineness of the gold alloy plating of such cases in immediate conjunction therewith, is deceptive and confusing to the consuming public.

PAR. 7. In the further course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have:

1. Stated in their advertising that their diamond rings have a "Lifetime Trade-in Guarantee" and are sold with a Guarantee Bond but fail to reveal the limitations and conditions of the guarantee including a disclosure of the manner in which the guarantor will perform.

2. Featured in their advertising depictions of rings, diamonds, and other stones in greater than actual size without a clear and conspicuous disclosure of the fact that the depictions are enlargements.

Therefore, the acts and practices as set forth in Paragraph Seven hereof, were and are unfair and false, misleading and deceptive acts and practices.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondents.

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

PAR. 10. The aforesaid acts and practices of respondents as herein alleged were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. In the ordinary course and conduct of their business, as aforesaid, respondents Gus Kroesen, Inc., National Diamond Sales, Inc., Gus Kroesen Naval Tailor, Inc., G. Kroesen Jewelers of Augusta, Inc., Joseph B. Kroesen, and Edward G. Koch regularly extend, and for some time in the 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. 12. Subsequent to July 1, 1969, respondents Gus Kroesen, Inc., National Diamond Sales, Inc., Gus Kroesen Naval Tailor, Inc., Joseph B. Kroesen, and Edward G. Koch, in the ordinary course and conduct of their business and in connection with credit sales as "credit sales" is defined in Regulation Z, have caused and induced and are causing and inducing, their customers to execute order blanks contained in catalogs, magazines, and comic books in response to which the respondents send the customers by mail a payment schedule on which the respondents provide certain consumer credit cost information. Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the payment schedule respondents:

1. Fail to furnish the customer with a duplicate of a statement on which the creditor is identified and which identifies the transaction as required by Section 226.8(a)(2) of Regulation Z.
2. Fail to use the term "cash price" to describe the price at which respondents offer, in the regular course of business, to sell for cash the property or services which are the subject of the credit sale as required by Section 226.8(c)(1) of Regulation Z.
3. Fail to use the term "trade-in" to describe the downpayment in property made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.
4. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the "trade-in" as required by Section 226.8(c)(3) of Regulation Z.
5. Fail to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8(c)(7) of Regulation Z.
6. Fail to disclose the sum of the payments scheduled to repay the

indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

7. Fail to disclose the sum of the cash price and all charges which are included in the amount financed but which are not part of a finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

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

PAR. 13. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their goods and services, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods and services. By and through the use of the advertisements, respondents:

State that no downpayment is required, the amount of installment payments, and that there is no charge for credit without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

- (a) The cash price;
- (b) The amount of the downpayment required or that no downpayment is required, as applicable;
- (c) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (d) The deferred payment price.

PAR. 14. Subsequent to July 1, 1969, respondents Gus Kroesen, Inc., National Diamond Sales, Inc., Gus Kroesen Naval Tailor, Inc., G. Kroesen Jewelers of Augusta, Inc., Joseph B. Kroesen, and Edward G. Koch, in the ordinary course and conduct of their business and in connection with credit sales as "credit sales" is defined in Regulation Z, have caused and induced and are causing and inducing their retail store customers to execute retail installment contracts, hereinafter referred to as "the contract."

By and through use of the contract, respondents:

1. Fail to use the term "cash price" to describe the price at which respondents offer, in the regular course of business, to sell for cash the property or services which are the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z.
2. Fail to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.
3. Fail to use the term "trade-in" to describe the downpayment in

property made in connection with the credit sale as required by Section 226.8(c) (2) of Regulation Z.

4. Fail to disclose the sum of the "cash downpayment" and the "trade-in," and to describe that sum as the "total downpayment," as required by Section 226.8(c) (2) of Regulation Z.

5. Fail to use 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.

6. Fail to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c) (7) of Regulation Z.

7. Fail to disclose the "finance charge," using that term, in credit transactions where finance charges are imposed as required by Sections 226.4, 226.6(a), and 226.8(c) (8) (i) of Regulation Z.

8. Fail to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b) (3) of Regulation Z.

9. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c) (8) (ii) of Regulation Z.

10. Fail to disclose the "annual percentage rate," using that term, in credit transactions where finance charges are imposed as required by Sections 226.5, 226.6(a), and 226.8(b) (2) of Regulation Z.

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

PAR. 15. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Truth in Lending Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereunder pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order.

1. Respondents Gus Kroesen, Inc., National Diamond Sales, Inc., and Gus Kroesen Naval Tailor, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of California, with their offices and principal places of business located at 401-15th Street, in the city of Oakland, State of California.

Respondent G. Kroesen Jewelers of Augusta, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 613 Broad Street, in the city of Augusta, State of Georgia.

Respondent Joseph B. Kroesen is vice president of Gus Kroesen, Inc., and president of National Diamond Sales, Inc., and Gus Kroesen Naval Tailor, Inc. Respondent Edward G. Koch is president of Gus Kroesen, Inc., and G. Kroesen Jewelers of Augusta, Inc. They formulate, direct and control the policies, acts and practices of said corporations and their address is 401-15th Street, in the city of Oakland, State of 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

I

It is ordered, That respondents Gus Kroesen, Inc., a corporation, and its officers; National Diamond Sales, Inc., a corporation, and its officers; Gus Kroesen Naval Tailor, Inc., a corporation, and its officers; and Joseph B. Kroesen and Edward G. Koch, individually and as officers of any of said corporations, and respondents' representatives, agents, and employees, directly or through any corporate or other

device, in connection with the advertising, offering for sale, sale, and distribution of jewelry and watches, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in describing jewelry containing synthetic imitation, or simulated stones that the said jewelry contains stones that are "blue star sapphire," "birthstone," or any other precious or semiprecious stone, unless such descriptive wording is immediately preceded with equal conspicuity, by the word "synthetic," or by the word "imitation," or "simulated," whichever is applicable or by some other word or phrase of like meaning, so as clearly to disclose the nature of such product and the fact that it is not a natural stone.

2. Using the words "real," "genuine," "natural," or similar terms as descriptive of such stones as the Linde blue and black star sapphires or other stones which are manufactured or produced synthetically or artificially.

3. Using the word "solid," whether in connection with karat fineness or otherwise, to describe jewelry or any part thereof which contains a concealed hollow center or interior, and from failing to clearly disclose the fact that such jewelry contains a hollow center or interior.

4. Using the words "real," "genuine," "natural," or similar terms as descriptive of cultured pearls or any other article or articles which are artificially cultured or cultivated.

5. Representing that their watches are "waterproof."

6. Using the term "gold filled" in describing watchcases unless the term "gold filled" or an abbreviation thereof is immediately preceded by a correct designation of the karat fineness of the gold alloy of which the plating is composed.

7. Representing, directly or by implication, that any of respondents' products are guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; or making any direct or implied representation that any of respondents' products are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations and unless respondent promptly fulfills all of his obligations under the represented terms of such guarantee.

8. Representing, directly or by implication, through the use of

any picture, illustration or other depiction that rings, diamonds, or other stones are greater than actual size unless the said picture, illustration, or depiction is accompanied by a clear and conspicuous disclosure of the fact that the picture, illustration, or depiction is an enlargement.

II

It is further ordered, That respondents Gus Kroesen, Inc., a corporation, and its officers; National Diamond Sales, Inc., a corporation, and its officers; Gus Kroesen Naval Tailor, Inc., a corporation, and its officers; G. Kroesen Jewelers of Augusta, Inc., a corporation, and its officers; and Joseph B. Kroesen and Edward G. Koch, individually and as officers of any of said corporations, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with any extension of consumer credit, or any advertisement to aid, promote, or assist, directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement," are defined in Regulation Z (12 CFR § 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. In connection with the disclosure statements made in conjunction with mail order sales as required by Section 226.8(a) (b) (c) of Regulation Z,

(a) Failing to furnish the customer with a duplicate of a statement on which the creditor is identified and which identifies the transaction as required by Section 226.8(a) (2) of Regulation Z.

(b) Failing to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property or services which are the subject of the credit sale, and to describe that price as the "cash price," as required by Section 226.8(c) (1) of Regulation Z.

(c) Failing to disclose the amount of any downpayment in property and to describe that amount as the "trade-in," as required by Section 226.8(c) (2) of Regulation Z.

(d) Failing to disclose the difference between the "cash price" and the "trade-in," and to describe that difference as the "unpaid balance of cash price," as required by Section 226.8(c) (3) of Regulation Z.

(e) Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed," as required by Section 226.8(c) (7) of Regulation Z.

(f) Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe the sum as the "total of payments" as required by Section 226.8(b)(3) of Regulation Z.

(g) Failing to disclose the sum of the cash price and all charges which are included in the amount financed but which are not part of a finance charge, and the finance charge and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

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

2. Stating, in any advertisement, that no downpayment is required, the amount of installment payments, or that there is no charge for credit, without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

(a) The cash price;

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

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

(d) The deferred payment price.

3. In connection with the disclosure statements made in conjunction with retail store sales as required by Section 226.8(b)(c) of Regulation Z.

(a) Failing to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property or services which are the subject of the credit sale, and to describe that price as the "cash price," as required by Section 226.8(c)(1) of Regulation Z.

(b) Failing to disclose the amount of any downpayment in money and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

(c) Failing to disclose the amount of any downpayment in property and to describe that amount as the "trade-in," as required by Section 226.8(c)(2) of Regulation Z.

(d) Failing to disclose the sum of the "cash downpayment" and the "trade-in" and to describe that sum as the "total downpayment," as required by Section 226.8(c)(2) of Regulation Z.

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(e) Failing to disclose the difference between the "cash price" and the "total downpayment," and to describe that difference as the "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.

(f) Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

(g) Failing to disclose the "finance charge," using that term, in credit transactions where finance charges are imposed as required by Sections 226.4, 226.6(a), and 226.8(c)(8)(i) of Regulation Z.

(h) Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe the sum as the "total of payments" as required by Section 226.8(b)(3) of Regulation Z.

(i) Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

(j) Failing to disclose the "annual percentage rate," using that term, in credit transactions where finance charges are imposed as required by Sections 226.5, 226.6(a), and 226.8(b)(2) of Regulation Z.

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

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

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

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents, such as dissolution, assignment, or sale resultant 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.

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Complaint

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