

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1972, TO JUNE 30, 1972

IN THE MATTER OF SPIEGEL, INC.

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

Docket C-2123.

Complaint, Jan. 2, 1972—Decision, Jan. 3, 1972

Consent order requiring a Chicago, Ill., catalog retailer to cease violating the Truth in Lending Act by failing to disclose in its credit life and disability insurance its annual percentage rate, the method of computing its finance charges, and failing to comply with other provisions of Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Spiegel, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, 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 Spiegel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2511 West 23rd Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is a catalog retailer and is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of clothing, household appliances, kitchenware, bedding, furniture, radios, luggage, tools, tires and various other articles of merchandise.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends, and for some time in the past has

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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. Subsequent to July 1, 1969, in the ordinary course of its business as aforesaid, and in connection with its credit sales, as "credit sale" is defined in Regulation Z, respondent has caused to be delivered and is delivering to its customers periodic statements, as required by Section 226.7(b) of Regulation Z. By and through the use of these periodic statements, respondent:

1. For a period of time after July 1, 1969, sold credit life insurance to be written in connection with its credit sales:

(a) without obtaining a specific dated and separately signed affirmative written indication of the customer's desire for such insurance, and

(b) without disclosing the cost of such insurance to the customer in the insurance authorization signed by such customer.

Failing to provide for such authorization and disclosure pursuant to Section 226.4(a)(5) of Regulation Z, respondent was required to include the cost of such insurance in the amount of the finance charge, and by failing to do this, respondent failed to state the amount of the finance charge accurately, as required by Section 226.7(b)(4) of Regulation Z, and thereby also failed to state the annual percentage rate accurately, as required by Section 226.7(b)(6) of Regulation Z.

2. In some instances failed and is failing, to disclose the date by which or the period, if any, within which payment of the "New Balance" may be made to avoid additional finance charges, as required by Section 226.7(b)(9) of Regulation Z.

3. Failed to disclose the lower balance to which the periodic rate applied, when application of the periodic rate did not yield an amount equal to the minimum finance charge, as required by Sections 226.7(b)(5) of Regulation Z.

4. Arranges the sequence of certain disclosures on the face of the aforesaid periodic statements in the following manner:

By and through the use of this language and sequence of disclosures, respondent:

a. Represents, directly or by implication, that it computes the finance charge by applying a periodic rate to the previous balance after deducting payments and other credits made during the previous billing cycle. In fact, respondent computes the finance charge on the previous balance before deducting payments or credits. Therefore,

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respondent confuses or misleads the customer and obscures or detracts attention from a certain required disclosure (the method of computing finance charges which appears on the reverse side of the periodic statement), contrary to Section 226.7(c)(4) of Regulation Z.

b. Fails to make the disclosures required by Section 226.7(b) of Regulation Z in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

PAR. 5. In the ordinary course of its business as aforesaid, for a period of time subsequent to July 1, 1969, respondent caused advertisements to be published, as "advertisement" is defined in Regulation Z. These advertisements aided, promoted or assisted directly or indirectly extensions of consumer credit in connection with the sale of respondent's goods. By and through the use of the advertisements, respondent:

1. In its advertising supplement to the "Cincinnati Enquirer" and in other direct mail advertisements, by using the phrase "Send no money," stated directly or by implication that no downpayment was required, without also clearly and conspicuously setting forth, in terminology prescribed in Section 226.7(b) of Regulation Z, all items required by Section 226.10(c) of Regulation Z.

2. In a schedule of credit terms contained in all of its catalogs, failed and is failing to disclose the lower balance to which the periodic rate applies, when application of the periodic rate does not yield an amount equal to the minimum finance charge, as required by Section 226.10(c)(4) of Regulation Z.

PAR. 6. Pursuant to Section 103(k) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Truth in Lending Act, and the respondent having been served with notice of such determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agree-

ment is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said 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, now in further conformity with the procedure 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 Spiegel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2511 West 23rd Street in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondent, Spiegel, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or in connection with any advertisement to aid, promote, or assist directly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. 1601 *et seq.*), shall cease and desist from:

1. Failing, in any credit transaction, to include and to itemize the amount of premiums for credit life and disability insurance as part of the finance charge, unless the amount of such premiums is excluded from the finance charge because of appropriate exercise of the option available pursuant to Section 226.4(a) (5) of Regulation Z.

2. Failing, on any periodic statement (except in the case of an account which it deems to be uncollectible or with respect to which delinquency collection procedures have been instituted),

(a) to clearly and conspicuously disclose the correct amount of the finance charge determined in accordance with Section 226.4 of Regulation Z, and to itemize and identify such finance charge as required by Section 226.7(b)(4) of Regulation Z;

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(b) to disclose the "annual percentage rate" computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.7(b)(6) of Regulation Z;

(c) to disclose the date by which or the period, if any, within which payment of the "new balance" may be made to avoid additional finance charges, as required by Section 226.7(b)(9) of Regulation Z; and

(d) to disclose the lower balance to which the periodic rate applies, when application of the periodic rate does not yield an amount equal to the minimum finance charge, as required by Section 226.7(b)(5) of Regulation Z.

3. Separating the disclosures so as to confuse or mislead the customer or obscure or detract attention from the required disclosure of the method of computing finance charges, pursuant to Section 226.7(c)(4) of Regulation Z, by representing that it computes the finance charge in any manner other than that actually used by respondent.

4. Representing in any advertisement, catalog, or brochure, directly or by implication, that no downpayment is required without clearly and conspicuously setting forth, in the terminology prescribed in Section 226.7(b) of Regulation Z, each item required by Section 226.10(c) of Regulation Z, or, as an alternative to the foregoing,

Failing to refer to a schedule or statement of credit terms containing the disclosures required by Section 226.10(c) of Regulation Z by incorporating in immediate conjunction with the representation that no downpayment is required, pursuant to Section 226.10(b) of Regulation Z, a statement similar to the following:

If you elect credit, see credit terms on page —.

5. Failing, in a schedule of credit terms in any of its catalogs or other multiple page advertisements, to disclose the lower balance to which the periodic rate applies, when application of the periodic rate does not yield an amount equal to the minimum finance charge, as required by Section 226.10(c)(4) of Regulation Z.

6. Failing, in any consumer credit transaction or advertisement, to make the 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, 226.7, 226.8 and 226.10 of Regulation Z.

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It is further ordered, That respondent, in connection with each sale of credit life insurance written in connection with its credit sales on or after July 1, 1969, in which respondent failed to obtain a specific dated and separately signed affirmative written indication of the customer's desire for such insurance and thereafter failed to include the charges for such insurance in the amount of finance charge debited to the customer's account monthly, shall mail to each customer to whom such sale of credit life insurance was made and whose account is in open or current status, the following notice, and accompanying letter:

We hereby supply you with the following information concerning your credit life insurance policy:

1. The cost of credit life insurance which has been charged to you since you opened this account with Spiegel, Inc. is 13¢ per hundred dollars of the unpaid balance.

2. Such insurance was not and is not required as a condition to Spiegel's extending credit to you.

3. You have a right to request cancellation of this policy. You may exercise your right to cancel by signing (on line 1) that portion of the enclosed notice cancelling your credit life insurance policy and returning it to Spiegel, Inc., in the accompanying self-addressed envelope. Such cancellation is effective when received by Spiegel, Inc. You understand that once having cancelled you will have no rights under the policy even though the policy may have been in effect up to the time of cancellation.

4. If you desire to continue your credit life insurance policy, you should sign that portion of the enclosed notice (on line 2) which indicates your desire for insurance coverage and return it to Spiegel, Inc. in the accompanying self-addressed envelope.

Credit Life Insurance Notice

I hereby request cancellation of my credit life insurance covering the above account. I understand that upon receipt of this cancellation I will have no benefits under any insurance policy with respect to the above account.

(1) _____ Date _____
(Signature of customer in whose name account is recorded)

I desire to continue my credit life insurance policy.

(2) _____ Date _____
(Signature of customer in whose name account is recorded)

It is important that you return this notice before _____

Respondent's obligations under this provision shall not be fulfilled until each customer affected by it has returned the notice specified herein, provided that as long as respondent can demonstrate that any such customer cannot be contacted or that any such customer failed to reply after respondent expended reasonable efforts, in writing or orally, to effect such reply monthly for a period of four months after

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mailing the notice to such customer, respondent shall have complied with this provision.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent at its general offices in Chicago who are engaged as head of the particular department, in the extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said copy of this order from each such person.

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

It is further ordered, That the respondent shall, within sixty (60) days after the 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.

IN THE MATTER OF

STEWART BROTHERS & ALWARD COMPANY, ET AL.

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

Docket C-2124. Complaint, Jan. 3, 1972—Decision, Jan. 3, 1972

Consent order requiring a Newark, Ohio, dealer in furniture and appliances to cease violating the Truth in Lending Act by failing to properly use on its installment contracts the terms "finance charge," "cash down payment," "unpaid balance of cash price," "deferred payment price" and other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Stewart Brothers & Alward Company, a corporation, and Walter T. Brown, Floyd F. Layman, Helen (NMI) Reitter, and Howard W. Kraner,