

## Complaint

## IN THE MATTER OF

## CLAYTON MOBILE HOMES, 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-2191. Complaint, Apr. 12, 1972—Decision, Apr. 12, 1972*

Consent order requiring six firms headquartered in Knoxville, Tenn., which sell and distribute new and used mobile homes and automobiles to cease violating the Truth in Lending Act by failing to disclose in extending consumer credit the finance charge, the annual percentage rate, the deferred payment price, and other disclosures required by said Act; respondents are also required to cease misrepresenting the price of their products or services as being any dollar amount or percentage over respondents' wholesale cost.

## 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 invested in it by said Acts, the Federal Trade Commission, having reason to believe that Clayton Mobile Homes, Inc., Clayton Motors, Inc., Western Mobile Homes, Inc., Factory Housing Associates, Inc., Clayton Lincoln/Mercury, Inc., and Clayton Mobile Homes of Middlesboro, Inc., corporations, and James L. Clayton, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and 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. Respondents Clayton Mobile Homes, Inc., Clayton Motors, Inc., Western Mobile Homes, Inc., and Factory Housing Associates, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with their principal place of business and office located at 4600 Clinton Highway, Knoxville, Tennessee.

Respondent Clayton Lincoln/Mercury, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business and office located at 4600 Clinton Highway, Knoxville, Tennessee.

Respondent Clayton Mobile Homes of Middlesboro, Inc., is a corporation organized, existing and doing business under and by

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virtue of the laws of the State of Tennessee, with its principal place of business located at North 12th Street, Middlesboro, Kentucky and its office located at 4600 Clinton Highway, Knoxville, Tennessee.

Respondent James L. Clayton is the principal officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of new and used mobile homes and automobiles to the public.

## COUNT I

Alleging violations 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 as aforesaid, respondents now cause, and for sometime last past have caused, their said products, when sold, to be shipped from their places of business located as aforesaid in the States of Tennessee and Kentucky to purchasers thereof located in various other states, and 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 as aforesaid, and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations with respect thereto in advertisements inserted in newspapers of general circulation, and through other advertising media, of which the following are typical and illustrative but not all inclusive:

Full price just 5% over our cost  
#5061 DelRay 64x12 with tip-out front den and free stereo unit cost \$5730  
5%—over our cost  
5%—downpayment  
5%—financing

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set forth herein, respondents have represented directly and by implication that:

1. Respondents' selling prices for mobile homes and automobiles represent a 5 percent mark-up over wholesale cost.

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2. Amounts shown in advertisements for certain mobile homes and automobiles represent respondents' wholesale cost.

3. Respondents usually and customarily accept downpayments equal to 5 percent of their selling prices and that 5 percent add-on interest is usually and customarily arranged in financing credit sales.

PAR. 6. In truth and in fact:

1. Respondents' mobile homes and automobiles are not customarily sold at prices representing a 5 percent mark-up over wholesale cost. In fact, respondents' mark-up over wholesale cost is substantially more than 5 percent.

2. Amounts advertised as wholesale cost for certain mobile homes and automobiles substantially exceed respondents' actual wholesale cost for such products.

3. Respondents do not usually and customarily accept downpayments amounting to 5 percent of their selling prices and 5 percent add-on interest is not usually and customarily arranged for in financing credit sales. In most instances, downpayments and interest are substantially more than 5 percent.

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

PAR. 7. 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 in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 8. 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 numbers of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as alleged herein, 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

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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. 10. In the ordinary course of their business as aforesaid, respondents regularly extend, and for sometime 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. 11. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing their customers to enter into contracts for the sale of respondents' goods and services. On these contracts, hereinafter referred to as "the contract," 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 contract, respondents, in certain instances:

1. Fail to disclose the amount of the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.
2. Fail to disclose the "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z.
3. Fail to disclose accurately the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
4. Fail to describe payments which are more than twice the amount of an otherwise scheduled equal payment by the term "balloon payment," as required by Section 226.8(b)(3) of Regulation Z.
5. Fail to provide customers with any of the disclosures required by Section 226.8 of Regulation Z.

PAR. 12. 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 the sale of these goods and services. By and through the use of the advertisements, respondents:

1. State the rate of the finance charge without describing that rate as the "annual percentage rate," in violation of Section 226.10(d)(1) of Regulation Z.
2. State the amount of monthly installment payments which can be arranged in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed

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under Section 226.8 of Regulation Z, as required by Section 226.10 (d) (2) thereof:

- (i) The cash price;
- (ii) The amount of the downpayment required or that no downpayment is required, as applicable;
- (iii) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (iv) The amount of the finance charge expressed as an annual percentage rate; and
- (v) The deferred payment price.

PAR. 13. 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 have thereby 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 Atlanta 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 implementing 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 jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said 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 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:

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1. Respondents Clayton Mobile Homes, Inc., Clayton Motors, Inc., Western Mobile Homes, Inc. and Factory Housing Associates, Inc. are corporations organized, existing and doing business under and by virtue of laws of the State of Tennessee, with their principal place of business and office located at 4600 Clinton Highway, Knoxville, Tennessee.

Respondent Clayton Lincoln/Mercury, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business and office located at 4600 Clinton Highway, Knoxville, Tennessee.

Respondent Clayton Mobile Homes of Middlesboro, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at North 12th Street, Middlesboro, Kentucky and its office located at 4600 Clinton Highway, Knoxville, Tennessee.

Respondent James L. Clayton is the principal officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations and his business address is the same as that of said corporations.

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 Clayton Mobile Homes, Inc., Clayton Motors, Inc., Western Mobile Homes, Inc., Factory Housing Associates, Inc., Clayton Lincoln/Mercury, Inc., and Clayton Mobile Homes of Middlesboro, Inc., corporations, and their successors and assigns and their officers, and James L. Clayton, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and delivery of mobile homes and automobiles 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, that any product or service may be purchased for any dollar amount or percentage over wholesale cost unless substantial sales are made at the stated markup over respondents' actual wholesale cost, or misrepresenting in any manner respondents' selling prices and markups.

2. Representing, directly or by implication, that any price or amount for any product or service is respondents' wholesale cost unless such price or amount accurately represents re-

spondents' actual wholesale cost, or misrepresenting in any manner respondents' wholesale costs.

3. Representing, directly or by implication, that in event of a credit sale, downpayments of any dollar amount or percentage of the selling price will be accepted unless such downpayments are usually and customarily accepted.

4. Representing, directly or by implication, that in event of a credit sale credit terms of 5 percent add-on interest or any other percentage will be arranged unless such credit terms are usually and customarily made available and arranged.

5. Misrepresenting in any manner the downpayments required the interest rates arranged, or other terms and conditions incident to respondents' credit sales.

*It is further ordered*, That for a period of five (5) years respondents maintain records which disclose the factual basis for any representation of respondents' cost or special prices for any products or services.

## II

*It is further ordered*, That respondents Clayton Mobile Homes, Inc., Clayton Motors, Inc., Western Mobile Homes, Inc., Factory Housing Associates, Inc., Clayton Lincoln/Mercury, Inc. and Clayton Mobile Homes of Middlesboro, Inc., corporations, their successors and assigns and their officers, and James L. Clayton, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division 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 (Pub.L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the amount of the "finance charge," as required by Section 226.8(c) (i) of Regulation Z.

2. Failing to disclose accurately the "annual percentage rate," as required by Section 226.8(b) (2) of Regulation Z.

3. Failing in any credit sale to disclose accurately the "deferred payment price," as required by Section 226.8(c) (8) (ii) of Regulation Z.

4. Failing in any credit sale to describe payments which are more than twice the amount of an otherwise scheduled equal payment by the term "balloon" payment, as required by Section 226.8(b) (3) of Regulation Z.

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5. Failing in any credit sale to provide customers with the disclosures required by Section 226.8 of Regulation Z.

6. Stating the rate of any finance charge unless respondents state the rate of that charge expressed as an "annual percentage rate," as required by Section 226.10(d)(1) of Regulation Z.

7. Stating the amount of monthly installment payments which can be arranged in connection with a consumer credit transaction, 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:

- (i) The cash price;
- (ii) The amount of a downpayment or that no downpayment is required, as applicable;
- (iii) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (iv) The amount of the finance charge expressed as an annual percentage rate;
- (v) The deferred payment price.

8. 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 sale or extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

*It is further ordered.* That respondents notify the Commission at least thirty (30) days prior to any proposed change in 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 which may affect compliance obligations arising out of the order.

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