

DAVID FRUIT AND COMPANY, 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-2261. Complaint, July 27, 1972.—Decision, July 27, 1972.

Consent order requiring among other things, a Lackawanna, New York, seller of furniture, jewelry and other merchandise to cease violating the Truth in Lending Act by failing to disclose to customers the annual percentage rate, the total number of payments, the method of computing penalty charges, the cash price, the unpaid balance of the cash price, the deferred payment price, the cash downpayment required, and other disclosures required by Regulation Z of the said Act. Respondent is further required to include on the face of its notes a notice that any subsequent holder takes the note with all conditions of the contract evidencing the debt.

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 David Fruit and Company, Inc., a corporation, and David Fruit, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 David Fruit and Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and only place of business located at 159 Ridge Road, Lackawanna, New York. Respondent David Fruit is the president and treasurer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of furniture, jewelry, and other merchandise to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend and arrange for the extension of 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. Respondents, many times in the ordinary course of their business, negotiate to third parties installment sales contracts or other instruments of indebtedness executed in connection with credit purchases.

PAR. 5. Subsequent to July 1, 1969, respondents, in the ordinary course of their business as aforesaid, and in connection with the financing of their own credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing, customers to execute sales slips, also known as invoices, statemants, etc., hereinafter referred to as "the contract."

By and through the use of the contract, respondents:

(1) Fail to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of furniture, jewelry and other merchandise, as required by Section 226.8(c)(1) of Regulation Z.

Complaint

81 F.T.C.

(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 use the term "total downpayment" to describe the sum of the "cash price" and "trade-in," 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 use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c) (8) (i) of Regulation Z.

(8) Fail to disclose the sum of the cash price, all charges which are not 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.

(9) Fail to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

(10) Fail to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

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

(12) Fail to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b) (4) of Regulation Z.

(13) Fail to describe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b) (5) of Regulation Z.

(14) Fail to identify the method of computing any 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.

PAR. 6. 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 Cleveland 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 Truth in Lending Act and the regulations promulgated thereunder and violation of the Federal Trade Commission Act; 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 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:

1. Respondent David Fruit and Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 159 Ridge Road, Lackawanna, New York. Respondent David Fruit is the president and treasurer of the corporate respondent. He formulates, directs and controls the acts and practices of said corporation.

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 David Fruit and Company, Inc., a corporation, and David Fruit, individually and as an officer of said corporation, its successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with any extension or arrangement for the 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 C.F.R. § 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 use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of furniture, jewelry and other merchandise, as required by Section 226.8(c)(1) of Regulation Z.

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

(5) Failing 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) Failing 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) Failing to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z.

(8) Failing to disclose the sum of the cash price, all charges which are not 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.

(9) Failing to disclose the annual percentage rate, computed

in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

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

(11) Failing to disclose the number, amount, and due dates or periods of payments, scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

(12) Failing to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b) (4) of Regulation Z.

(13) Failing to describe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b) (5) of Regulation Z.

(14) Failing to identify the method of computing any 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.

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

It is further ordered, That respondents cease and desist from:

Assigning, selling or otherwise transferring respondents' notes, contracts, or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract, or other documents evidencing the indebtedness.

It is further ordered, That respondents cease and desist from:

Failing to include the following statement clearly and conspicuously on the face of any note, contract, or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

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 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, for purposes of notification only, notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, 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.

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 therein.