

COMMERCIAL CREDIT COMPANY

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

Docket C-2420. Complaint, June 26, 1973—Decision, June 26, 1973.

Consent order requiring one of the nation's largest independent consumer finance companies located in Baltimore, Maryland, to among other things cease violating the Truth in Lending Act when selling credit life and credit accident and health insurance.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission

Act, and 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 Commercial Credit Company, a corporation, hereinafter sometimes referred to as respondent, has 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 Commercial Credit Company 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 300 Saint Paul Place, Baltimore, Maryland.

Respondent Commercial Credit Company does not engage in any consumer loan transactions itself, but operates through approximately one-hundred fourteen (114) wholly-owned subsidiary loan offices located in all States of the United States except Alaska and Hawaii. Each subsidiary is incorporated in the respective state in which it is located under such names as Commercial Credit Plan or Commercial Credit Corporation. Respondent Commercial Credit Company formulates and controls the policies, acts and practices of each of the wholly-owned subsidiaries, including the acts and practices hereinafter set forth.

PAR. 2. Respondent, by and through its various wholly-owned subsidiary corporations, is now, and for some time in the past has been, engaged in consumer financing and the granting of consumer loans to members of the public in all 48 continental States of the United States.

PAR. 3. In the ordinary course and conduct of its business, as aforesaid, respondent regularly extends 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, respondent, in the ordinary course and conduct of its business, as aforesaid, has charged, and is now charging, a substantial number of consumers for credit life and credit accident and health insurance written in connection with consumer loans.

Typical and illustrative, but not all inclusive, of the circumstances in which such insurance charges are incurred by consumers are the following, which generally occur in the sequence set forth.

1. During the consumer's initial contact with respondent, either on the telephone or in person, respondent orally quotes a monthly repayment figure which includes charges for credit life and credit accident and health insurance.

2. Respondent automatically includes charges for credit life and credit accident and health insurance on the loan disclosure statement, and, unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

3. On that portion of the loan disclosure statement which contains the statements "I ☐ do, ☐ do not desire Credit Life Insurance", and "I ☐ do, ☐ do not desire Credit Accident and Health Insurance," followed by a line for the consumer's signature, respondent, without the permission or authority of the consumer, checks the "I do" boxes and then dates and places an "X" on the line for the borrower's signature.

4. The loan disclosure statement, filled out as indicated above, is presented to the consumer for two signatures, and the consumer is told by respondent's employees to sign next to the "X's" respondent's employees have made. The consumer is not told of the purpose of each signature. These signatures are intended (1) to indicate the consumer's request for the insurance coverage, and (2) to acknowledge the consumer's receipt of the completed loan disclosure statement.

5. Respondent places the charges for credit life and credit accident and health insurance in the "Record of Disbursements" section of the loan disclosure statement, and these charges become part of the "amount financed," but are not included in the computation of the finance charge or the annual percentage rate.

6. If a consumer becomes aware that he has a choice about obtaining credit life and/or credit accident and health insurance and specifically objects to or questions the inclusion of the charges for such insurance, respondent informs the customer that deletion of such charges will require it to have all the loan papers retyped as well as drawing a new check for the amount of the proceeds of the loan, and that this process of redoing the papers will result in delaying the completion of the loan, sometimes by as much as several days.

PAR. 5. By and through the acts and practices described in Paragraph Four, and others of similar import, meaning and consequence, but not specifically set forth herein, respondent, in a substantial number of instances, obtains consumers' signatures

through practices which operate, directly or indirectly, to defeat the elective language of the insurance authorization disclosures by obscuring from consumers knowledge about the option, by misrepresenting to consumers that their signatures are necessary solely for the purpose of consummating the credit transaction, and by discouraging the declination of the coverage when it is questioned. These practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain credit life and/or credit accident and health insurance.

Therefore, respondent, in a substantial number of instances, induces its customers to incur charges for credit life and credit accident and health insurance without said customers making a knowing, affirmative election to have such insurance and, thereby, respondent has failed to obtain from each of its customers a "specific dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a) (5) of Regulation Z, in spite of the existence of language to the contrary in the loan disclosure statement.

PAR. 6. By and through the acts and practices described in Paragraphs Four and Five hereof, respondent has failed to include the charges for credit life and credit accident and health insurance in the Finance Charge when a specific dated and separately signed affirmative written indication of the consumer's desire for such insurance has not been obtained, as required by Section 226.4(a) (5) of Regulation Z, and thereby respondent:

1. Failed to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and

2. Failed to compute and disclose the "annual percentage rate" accurately to the nearest quarter of one percent, as required by Sections 226.5 and 226.8 of Regulation Z.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with Sections 226.4, 226.5, and 226.8 of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

STATEMENT OF THE COMMISSION

As Commissioner Jones' dissent indicates, there were no easy solutions available to the Commission in this case. Simply put, the Commission had to decide whether it should take a chance on

litigation while respondent continued its present practices or whether it should obtain immediate relief for those consumers who will deal with respondent in the future. We believe that the public interest is best served by immediate protection of this company's future customers and, therefore, we are compelled to accept the settlement now rather than to proceed along the uncertain path of litigation.

Three factors convince us that the interests of consumers will best be served by the consent order.

—Until a litigated order becomes effective, future customers of Commercial Credit would be left unprotected. These consumers would be denied the immediate benefits the consent order will provide. As a practical matter, these benefits may very well be greater than the benefits which would be derived from resolicitation and restitution after several years of litigation.

—If this matter were to be litigated, the number of the present beneficiaries of the resolicitation and restitution provision would diminish progressively each year.

We cannot agree that the immediate effects of a consent order will not have a deterrent effect on other institutions engaged in similar practices.

DISSENTING STATEMENT OF COMMISSIONER JONES

In my judgment this consent order does not adequately protect the public interest in its disposition of the issues in this case.

The complaint in this case charged respondents with so marketing its loans that consumers were not aware either of the charges being made for credit life, accident and health insurance or of their option to refuse such coverage. Under this order, respondents agree in the future not to offer and collect payments for such insurance unless the consumer has made an affirmative election to have such coverage.

Yet the order permits respondents to continue to collect such premiums from consumers who in the past executed loan agreements containing such insurance premium payment without giving them an opportunity to signify whether they in fact want such coverage. Currently, therefore, consumers who are still making payments on their loan agreements, will, under this order, continue to pay premiums on credit life insurance, accident and health insurance which they may not want. I do not believe this is fair or

adequate relief since it will have no deterrent effect on other financial institutions engaging in this type of practice since they know that they will be able to benefit financially from this practice until the Commission's arm is actually placed on their shoulder.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intends 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 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 respondent 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 provisionally 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Commercial Credit Company 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 300 Saint Paul Place, in the city of Baltimore, State of Maryland.

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 respondent Commercial Credit Company, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corpora-

tion, subsidiary, division or other device, in connection with the granting of consumer loans subject to the provisions of Regulation Z (12 C.F.R. §226.8) 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, when the charges for credit life insurance and/or credit accident and health insurance are not included in the finance charge:

(a) To quote monthly payments, whether on the telephone, in person, or otherwise, which exclude the cost of credit life insurance and/or credit accident and health insurance.

(b) If monthly payments do reflect credit life insurance and/or credit accident and health insurance, such payments may be quoted only if the consumer is clearly told that:

(i) credit life insurance and/or credit accident and health insurance are optional; and

(ii) the consumer's choice regarding the insurance coverage will not be considered in respondent's approval of the consumer's credit.

(c) Respondent's obligation under this provision shall end concurrently with the customer's execution of the separate, personal insurance authorization form required by #2 below.

2. When the charges for credit life insurance and/or credit accident and health insurance are not included in the finance charge:

(a) Failing to present to the borrower as the first document at the time of closing, a separate, written personal insurance authorization form which sets forth clearly and conspicuously:

(i) the borrower has received credit approval up to a specified amount;

(ii) the borrower's decision with regard to the insurance available through respondent is not considered in granting the credit;

(iii) insurance is not required to obtain the loan;

(iv) the total premium for credit life insurance and the total premium for credit accident and health insurance;

(v) the monthly payments which would result

from the borrower's election to take the loan, set forth in the following order from left to right across the document: (1) without either credit life insurance or credit accident and health insurance, (2) with credit life insurance only, (3) with credit accident and health insurance only, and (4) with both credit life insurance and credit accident and health insurance; and

(vi) a signature and date line for each option set forth in (v) above for the consumer to indicate his election;

(vii) the borrower authorizes respondent on behalf of the borrower to pay the insurance premiums to the insurance company for such personal insurance which has been chosen.

(b) Failing to make the disclosures required by subparagraph (a) above on a separate document which contains no other printed or written material. The disclosures required by subparagraphs (ii) and (iii) above shall not be smaller than 12 point type. A form substantially in conformance with Attachment A herein will be considered as in compliance with the provisions of subparagraphs (a) and (b). Respondent shall maintain the original statement for two years following its execution and provide the customer with a copy thereof.

(c) Failing to leave the Truth in Lending disclosure statement blank as to the cost of credit life insurance and/or credit accident and health insurance and all other information or amounts which are affected by the election or declination of insurance until the borrower has signed the written disclosure required by subparagraph (a) above.

(d) Making any marks or otherwise instructing a consumer where to sign or date the separate personal insurance authorization form required by subparagraph (a) above in advance of the consumer's free and independent choice for such insurance.

(e) Misrepresenting, orally or otherwise, directly or by implication, that credit life and/or credit accident and health insurance are required as a condition of obtaining credit from respondent.

(f) Discouraging, by misrepresentation, oral or other-

wise, directly or by implication, the declination of credit life and/or credit accident and health insurance.

3. Failing to tell every customer the purpose(s) of each signature requested by respondent on any document directly related to the consummation of the credit transaction.

4. Failing to compute and disclose accurately the finance charge, as required by Sections 226.4(a) (5) and 226.8(d) of Regulation Z.

5. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent as required by Sections 226.5(b) and 226.8(b) of Regulation Z.

6. Failing, in any consumer loan transaction or advertisement, to make all disclosure, 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 respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent at its general offices in Baltimore and in each of its subsidiary loan offices who are engaged in the extension of consumer loans, and that respondent secure a signed statement acknowledging receipt of said copy of this order from each such person.

It is further ordered, That respondent notify the Commission within thirty (30) days of any change in the corporate respondent which may affect compliance obligations with regard to the extension of consumer loans arising out of this order, 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 with regard to the extension of consumer loans which may affect compliance obligations arising out of this order.

It is further ordered, That the respondents herein 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 this order.

Commissioner Jones dissented.

ATTACHMENT A

PERSONAL INSURANCE AUTHORIZATION

Your credit has been approved in an amount set forth below.

CREDIT LIFE OR CREDIT ACCIDENT & HEALTH INSURANCE IS NOT REQUIRED IN CONNECTION WITH THE EXTENSION OF CREDIT TO YOU AND YOUR DECISION WITH REGARD TO THE PERSONAL INSURANCE WILL NOT AFFECT THE TOTAL AMOUNT OF CREDIT WHICH HAS BEEN APPROVED FOR YOU.

Total Advance Approved \$ _____

Insurance Premiums
(For term of transaction)

Credit Life \$ _____

Credit A & H: \$ _____

I have read the above written disclosure of personal insurance and have received a fully completed and executed copy of this form. I have reviewed the monthly repayment options set forth below and understand that if I chose a repayment option that includes any of the insurance coverages I am authorizing the lender to pay the insurance premiums on my behalf. I have voluntarily chosen the following repayment option:

Option 1	Option 2	Option 3	Option 4
Monthly Payment Without Personal Insurance	Monthly Payment With Credit Life Only	Monthly Payment With Credit A & H Only	Monthly Payment With Credit Life and A & H
\$ _____	\$ _____	\$ _____	\$ _____
No. of months _____	No. of months _____	No. of months _____	No. of months _____
_____ (Borrower)	_____ (Insured Borrower)	_____ (Insured Borrower)	_____ (Insured Borrower)
_____ (Borrower)	_____ (Borrower)	_____ (Borrower)	_____ (Borrower)
_____ (Date)	_____ (Date)	_____ (Date)	_____ (Date)

Complaint

IN THE MATTER OF

VOLVO, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2421. Complaint, June 26, 1973—Decision, June 26, 1973.

Consent order requiring a Rockleigh, New Jersey, seller and distributor of a Swedish-built automobile, among other things to cease representing certain quantitative data as to the economy of its product without substantive information to support its claims; and failing to maintain adequate records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Volvo, Inc., a corporation and Scali, McCabe and Sloves, Inc., a corporation and referred to as respondents, have violated the provisions of said 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. Respondent Volvo, 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 Rockleigh, New Jersey.

PAR. 2. Respondent Scali, McCabe and Sloves, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 345 Park Avenue, New York, New York.

PAR. 3. Respondent Volvo, Inc., is now, and for some time last past has been, engaged in the sale and distribution of 142, 142E, 144, 145 and 164 models of Volvo automobiles.

PAR. 4. Respondent Scali, McCabe and Sloves, Inc., is now, and for some time last past has been, an advertising agency of Volvo, Inc., and now and for some time last past, has prepared and placed for publication and has caused dissemination of advertising material, including, but not limited to the advertising referred to herein, to promote the sale of 142, 142E, 144, 145 and 164 models of Volvo automobiles.

PAR. 5. Respondent Volvo, Inc., causes the said product, when sold, to be transported from its place of business in New Jersey to