

Complaint

IN THE MATTER OF

GIANT ENTERPRISES, INC., ET AL.

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

Docket C-2436. Complaint, Sept. 11, 1973—Decision, Sept. 11, 1973.

Consent order requiring three affiliated furniture and appliance firms located in Dallas, Texas, and Atlanta, Georgia, and Jacksonville, Florida, among other things to cease using misleading or deceptive sales plans; failing to make full disclosure as to any additional costs for services advertised; misrepresenting prices as special or reduced; misrepresenting forced or sacrifice sales; failing to give notice as to the possibility of third party holder of notes of indebtedness; failing to maintain adequate records; failing to disclose to customers, in connection with the extension of consumer credit, such information as is required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Donald B. Wiley.*

For the respondents: *Joseph F. Haas of Haas, Holland, Levison & Gilbert, Atlanta, Georgia.*

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 Giant Enterprises, Inc., Texas Giant Furniture Warehouse, Inc., and Furniture City, USA, corporations, and Hilbert Margol, Melvin Margol and Howard Margol, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the regulations 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. Respondent, Giant Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 3622 Beach Boulevard, Jacksonville, Florida.

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Respondent, Texas Giant Furniture Warehouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1407 N. Industrial Boulevard, Dallas, Texas.

Respondent, Furniture City, USA, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 1344 Stewart Avenue, S.W., Atlanta, Georgia.

Respondents, Hilbert Margol, Melvin Margol and Howard Margol, are officers of the corporate respondents. They formulate, direct and control the policies, acts and practices hereinafter set forth. Hilbert Margol's address is Giant Enterprises, Inc., 3622 Beach Boulevard, Jacksonville, Florida; Melvin Margol's address is Texas Giant Furniture Warehouse, Inc., 1407 N. Industrial Boulevard, Dallas, Texas, and Howard Margol's address is Furniture City, USA, 1344 Stewart Avenue, S.W., Atlanta, Georgia.

PAR. 2. Respondents are now, and for some time last past have been engaged in advertising, offering for sale, sale and distribution of, household furniture and appliances, and services in connection therewith to the general public.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations in 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 aforesaid business respondents have disseminated, and caused the dissemination of certain advertisements concerning said products and services by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of general circulation and by means of commercial announcements over television across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products and services; additionally, respondents own, operate and control a total of eight (8) retail furniture stores located in the states of Florida, Texas and Georgia.

PAR. 4. In the course and conduct of respondents' business and for the purpose of inducing the sale of their household furniture, appliances and services in connection therewith, respondents have made numerous statements and representations in newspaper advertisements and TV commercials and through oral statements by salesmen to prospective purchasers.

Typical and illustrative of statements made in respondents' newspaper advertisements and TV commercials, but not all inclusive thereof, are the following:

Come in and buy a living room suite or a bedroom suite or any single major furniture or appliance purchase of \$149.00 or more and get your choice of a complete professional style deluxe pool table outfit or a beautiful console stereo—your choice for only 9 cents more.

This is no gimmick!!! We have 1,000 pool tables and stereos to sell for only 9 cents with any single major purchase of \$149 or more, excluding carpet, portable TVs.

Get your 9 cent bonus. It's like getting double for your money. It's the world's biggest two-for-one sale now. Mama got two for the price of one and so can you! Deluxe stereo-phono combination or professional type pool table included at no extra cost—2 for 1 price sale.

Get a good used car or a live pony for only 9 cents. Liquidating action—Liquidator cuts prices viciously day after day—constantly until it's all gone.

Emergency—forced to sell—everything goes—Everything drastically reduced. For most shocking sacrifice in history.

Everything must go—Save up to 75% and more, prices slashed for selling out— $\frac{1}{2}$ price and much less.

Bankrupt stock—Merchandise Elimination.

Emergency today—everything has been marked down. We absolutely must sell it now.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondents' salesmen and representatives, the respondents have represented and are now representing directly or by implication that:

1. The offers set forth in said advertisements are genuine offers to sell the advertised products at the prices and on the terms and conditions stated.

2. There are no charges in addition to the advertised purchase price of respondents' furniture and/or appliances.

3. Through the device of "2 for 1 sales," with any single major furniture and/or appliance purchase of \$149 or more, the purchaser will receive a "bonus" or "gift," such as a pool table, stereo set, used car or pony, for an additional 9 cents.

4. During liquidation, emergency or bankrupt stock sales the prices for furniture and/or appliances as designated by respondents in their advertisements and/or verbally quoted by respondents' salesmen are substantially lower than those usually charged by respondents in the recent and regular course of business and respondents give discounts of up to 75 percent or more.

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5. During the periods advertised as "Prices slashed for selling out," "For most shocking sacrifice in history," and "Emergency, Forced to Sell," and by other terminology importing circumstances of distress, substantially all merchandise at the respondents' premises was for sale at prices or amounts representing a substantial and significant reduction from the prices at which such merchandise was sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business.

PAR. 6. In truth and in fact:

1. Respondents' said advertised offers are not genuine offers but are made primarily for the purpose of developing the prospective buyer's interest. Once the prospective buyer has entered the store and demonstrated an interest, respondents' salesmen attempt to sell and frequently do sell a different and/or more expensive product instead of the advertised product which originally aroused the customer's interest. Frequently the customer in buying a different or more expensive product will forfeit his entitlement to a "bonus" or "gift" for an additional 9 cents. The customer is unaware he will not receive the "bonus" or "gift" for an additional 9 cents until after the sale is consummated.

2. Respondents make extra charges, as applicable, such as delivery, set up or assembly, service, warranty, finance and life insurance charges over and above the regular advertised price of their products.

3. Respondents' established price in the recent and regular course of respondents' business for a single major furniture or appliance unit is not \$149 as advertised but is a lower price. The ordinary and usual price of such products has been increased to include the cost of the so-called "bonus" or "gift," and frequently respondents' salesmen will offer to sell such advertised products without the "bonus" or "gift" at the "best cash price" or "discount price." Therefore, respondents are not offering two products, including the so-called "bonus" or "gift" for the usual price of one, plus an additional 9 cents.

4. Such advertised merchandise is not always sold at significant price reductions as advertised during liquidation, emergency or bankrupt stock sales. Purchasers do not realize claimed savings up to 75 percent or more. In fact, many of the same items are being advertised at the same price before and after such sales. Respondents do not have regular selling prices but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

5. During the period advertised as "Prices slashed for selling out," "For most shocking sacrifice in history" and "Emergency, Forced to

Sell," and by other terminology importing circumstances of distress, substantially all merchandise at the respondents premises was not in fact for sale at prices or amounts representing a substantial and significant reduction from the prices at which such merchandise was sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent regular course of their business.

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

PAR. 7. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations procured by the aforesaid unfair, false, misleading and deceptive means to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for their failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

PAR. 8. In the conduct of their aforesaid business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of household furniture, appliances and services in connection therewith 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 said statements and representations were and are true and into the purchase of substantial quantities of respondents' products and services 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 violation 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.

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PAR. 11. In the ordinary course and conduct 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. 12. Subsequent to July 1, 1969, in the ordinary course of their business 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 have:

1. Induced certain customers to sign contracts in blank form. Respondents have subsequently filled in the blank spaces and frequently failed to give those customers a completed copy, thereby failing to furnish those customers any cost of credit disclosures prior to the consummation of the contract as required by Section 226.8(a) of Regulation Z in the manner and form prescribed by Section 226.8(b) and (c) of Regulation Z.

2. Failed to meet the requirements of Section 226.8(b) (7) of Regulation Z as the contract provides for the right of payment of the full amount due and "under certain conditions" to obtain a partial refund of the finance charge, without further disclosing the "certain conditions" under which prepayment could be made and a partial refund of the finance charge be obtained.

PAR. 13. In the ordinary course of their business as aforesaid, respondents caused 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 their goods or services. By and through the use of such advertisements respondents:

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

PAR. 14. 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(c) 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 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, Giant Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 3622 Beach Boulevard, Jacksonville, Florida.

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Respondent, Texas Giant Furniture Warehouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1407 N. Industrial Boulevard, Dallas, Texas.

Respondent, Furniture City, USA, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 1344 Stewart Avenue, S.W., Atlanta, Georgia.

Respondents Hilbert Margol, Melvin Margol, and Howard Margol are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporations including the acts and practices under investigation. Hilbert Margol's address is Giant Enterprises, Inc., 3622 Beach Boulevard, Jacksonville, Florida. Melvin Margol's address is Texas Giant Furniture Warehouse, Inc., 1407 North Industrial Boulevard, Dallas, Texas. Howard Margol's address is Furniture City, USA, 1344 Stewart Avenue, S.W., Atlanta, Georgia.

Respondents cooperate and act together in carrying out the acts and practices being investigated.

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 Giant Enterprises, Inc., Texas Giant Furniture Warehouse, Inc., and Furniture City, USA, corporations, and their officers and directors, Hilbert Margol, Melvin Margol, and Howard Margol, individually and as officers of said corporations, their agents, representatives, employees, successors and assigns, directly or through any corporate subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of household furniture, appliances, and any other products, or services in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, any advertising, sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of other merchandise or services.

2. Failing to make full disclosure either in its advertising or at the time of sale and prior to consummation of the sale that in addition to the price quoted in respondents' advertising, certain other charges, as applicable, are made, such as, delivery, set-up or assembly, service, and warranty charges.

3. Representing, directly or by implication, that a bonus, gift, award or other consideration consisting of a pool table, stereo set, used car or pony, or any other products or services will be included in a "2 for 1" sale, or any other sale, for 9¢ additional, or any other nominal amount, or at no charge, with any single major furniture or appliance purchase of \$149 or more, or for any amount unless in each instance said bonus, gift, award or other consideration is given to the purchaser as advertised and the advertised price or prices quoted by respondents' salesmen does not exceed the price at which the same merchandise has been sold, or offered for sale without said bonus, gift, or award or other consideration, in the recent and regular course of respondents' business.

4. Representing, directly or by implication, that any price for respondents' products is a special or reduced price, unless such price constitutes a significant reduction from the regular selling price at which such products have been sold or offered for sale by respondents for a reasonably substantial period of time in the recent and regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

5. Making representations purporting to offer merchandise for sale when the sole purpose of the representations is not to sell the offered merchandise at the advertised prices but to obtain leads or prospects for the sale of other merchandise at higher prices, unless sufficient quantities of the offered merchandise are on hand to meet the reasonably anticipated demand at the offered price.

6. Using the words, "Prices slashed for selling out," "For most shocking sacrifice in history," "Emergency, Forced to sell," "—forced to sell \$250,000 worth—from our Georgia warehouse," "\$100,000—ordered sold—Florida's Greatest Sale," or other words or symbols importing circumstances of distress, unless the merchandise so described or alluded to has been reduced in price, by an amount or proportion of practical significance to respondents' customers and prospective customers, from the actual bona fide price or prices at which it has been sold, or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent and regular course of their business.

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7. Failing, prior to consummation of the sale, to incorporate or stamp the following statement on the face of all sales contracts, or all customer's copies of invoices, or all notes or other instruments of indebtedness executed by or on behalf of respondent's customers with such conspicuousness and clarity as is likely to be read and understood by the purchaser:

NOTICE

If you are required to sign a promissory note, sales contract or other instrument of indebtedness and if this instrument is sold, you may be required to make your payments to someone other than the Seller, even if your purchase contract is not fulfilled.

8. Failing to maintain adequate records:

(a) For a period of three (3) years which disclose the factual basis for any representations or statements as to special or reduced prices, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraphs 3, 4, 5, and 6 of this order.

(b) For a period of three (3) years invoices, notices for payment and all similar documents which respondents receive in the conduct of their business from suppliers, distributors, and other persons, and for a period of three (3) years copies of all sales invoices, to include retail installment contracts entered into between respondents and their customers.

II

It is further ordered, That respondents Giant Enterprises, Inc., Texas Giant Furniture Warehouse, Inc., and Furniture City, USA, corporations, and their officers and directors, Hilbert Margol, Melvin Margol, and Howard Margol, individually and as officers of said corporations, their agents, representatives, employees, successors and assigns, directly, or through any corporate, 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 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 make all disclosures required by Section 226.8 of Regulation Z before the consummation of the contract as required by Section 226.8(a) (1) or (2) of Regulation Z.

2. Failing to disclose the conditions entitling a customer to a partial refund of the finance charge as required by Section 226.8 (b) (7) of Regulation Z.

3. Stating the amount of the downpayment required and the amount of weekly installment payments which can be arranged in connection with a consumer credit transaction, without also stating all of the following items, in a 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 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.

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, 226.7, 226.8, and 226.10 of Regulation Z.

It is further ordered, That respondents prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

III

It is further ordered, That respondents shall forthwith show a copy of this order to cease and desist to all of its operating divisions and to all present and future employees or other persons engaged in the offering for sale, or sale of any product and in the consummation of any extension of consumer credit or in any aspect of preparation, creation or placing of advertising, and respondents will secure a signed statement from each such employee or person as applicable acknowledging that he has read and understands such order.

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

It is further ordered, That 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.