

Consent order requiring two affiliated Cleveland, Ohio, firms engaged in the retail sales of wall-to-wall carpeting and home improvements, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Vivian L. Solganik* and *Philip R. Fine*.

For the respondents: *Leonard T. Gilbert*, Cleveland, Ohio.

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 Imperial of Ohio, Inc., a corporation, and Imperial Aluminum, Inc., a corporation, and Albert Scholz, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation 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. Respondents Imperial of Ohio, Inc. and Imperial Aluminum, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio, with their principal offices and places of business located at 9300 Midwest Avenue, Cleveland, Ohio.

Respondent Albert Scholz is an individual and is the President of each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Imperial of Ohio, Inc., is now, and for some time last past has been, engaged in the offering for sale, sale, delivery and installation of wall-to-wall carpeting to the public at retail. Imperial Aluminum, Inc., is now, and for some time last past has been, engaged in the offering for sale, sale, delivery and installation of residential home improvements including, but not limited to, siding materials, storm windows and gutters to the public at retail.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents arrange for the extension of consumer credit, or offer to extend or arrange for the extension of such 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, respondents, in the ordinary course and conduct of their business, and in connection with credit sales, as the term "credit sale" is defined in Regulation Z, are now engaged,

and for some time last past have been engaged, in the extension of credit, as the term "credit" is defined in Regulation Z. Respondents many times have caused, and are now causing, their customers to execute a document entitled "Offer of Purchase Subject to Consumer Credit Protection Act of 1968," referred to herein as "the sales contract," and one or more confession of judgment (cognovit) notes for the purchase and installation of home improvements to the residence of the customer.

PAR. 5. Respondents many times, in the ordinary course of their business, negotiate to third parties the sales contracts or other instruments of indebtedness executed in connection with credit purchases.

By and through the use of both the sales contract and the cognovit note, respondents:

1. Have failed to accurately disclose the date on which the finance charge begins to accrue, as prescribed by Section 226.8(b)(1) of Regulation Z.
2. Have failed to accurately state the "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.
3. Have failed to disclose the "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.
4. Have failed to accurately disclose the number, amount and due dates, or periods of payments, scheduled to repay the indebtedness, as prescribed by Section 226.8(b)(3) of Regulation Z.
5. Have failed to state the "unpaid balance of cash price," as prescribed by Section 226.8(c)(3) of Regulation Z.
6. Have failed to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.
7. Have failed to disclose the "deferred payment price," as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

PAR. 6. In a number of instances, respondents have sold, and continue to sell, credit life, accident or health insurance to their customers as part of consumer credit transactions, and such insurance is not mandatory, thus making the cost of such insurance part of the amount financed, as "amount financed" is defined in Section 226.2(d) of Regulation Z. Respondents have caused the following terminology to be used in their sales contract with regard to such insurance:

4. Life Insurance\$.....
 Accident and Health Insurance\$.....

By and through the use of the aforementioned sales contract and terminology with regard to credit life, health or accident insurance, respondents:

1. Have failed to disclose, in writing, to the customer that insurance coverage is not required by the creditor, as prescribed by Section 226.4(a)(5)(i) of Regulation Z.

2. Have failed to obtain specific, dated, and separately signed, affirmative written indication from customers of the desire to have insurance coverage, as prescribed by Section 226.4(a)(5)(ii) of Regulation Z.

PAR. 7. By and through the use and acceptance of the sales contract and the cognovit note, and by virtue of the work performed by respondents' employees on a customer's residence, respondents have retained or acquired, or will retain or acquire, a "security interest," as "security interest" is defined in Section 226.2(z) of Regulation Z, in real property which is used, or which is expected to be used, as the principal residence of the customer. Respondents' retention or acquisition of such security interest in said real property gives their customers, who are extended consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the right to rescind the transaction until midnight of the third business day following the date of consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later, as prescribed by Section 226.9 of Regulation Z.

By and through the use of the aforementioned sales contract and cognovit note, respondents:

1. Have failed to provide the "notice to customer required by federal law" to the customer on one side of a separate statement which identifies the transaction to which it relates and in the form prescribed by Section 226.9(b) of Regulation Z.

2. Have failed to set out the "effect of rescission" required by Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

3. Have failed to furnish two copies of the "notice to customer required by federal law," as prescribed by Section 226.9(b) of Regulation Z.

PAR. 8. Respondents have caused additional information and provisions to appear in the various versions of the sales contracts used by both corporate respondents. Typical and illustrative examples of such additional information and provisions, but not all inclusive thereof, are the following:

NOTICE

It is agreed and understood that cancellation of this agreement at any time after ——— and for any reason whatsoever shall constitute a breach thereof, and the cancelling party shall pay to the other party, as and for liquidated damages, a sum of money equal to thirty per cent of the cash price hereinafter set forth. However, it is further understood and agreed that the title or property in any of the material or items which are to be delivered

to the purchaser shall pass and be transferred to the purchaser immediately upon completion of the manufacturing process, if any, or if no manufacturing process is required, then upon delivery to said purchaser, or upon the date following the time during which the purchaser shall have been able to rescind this contract without penalty therefor, whichever event last occurs, property in said material or items shall thereupon pass and be transferred to the purchaser without any further notice thereof, and irrespective of the date of delivery as set forth herein.

In the event, however, that the purchasers cancel this order at any time prior to its completion as relates to the manufacture of merchandise, furnishing of labor or delivery of materials, and subsequent to the date set forth for cancellation and rescission herein without penalty, then in such event the purchasers, and each of them, acknowledge that they have executed a promissory note, in blank, containing a Warrant of Attorney, and do hereby authorize the Company to fill in and reduce that note to judgment against them or to any one of them, in an amount equal to thirty per cent of the purchase price as hereinafter appears, and levy execution thereon, and such amount shall be regarded as payment in full of liquidated damages for cancellation after the time herein provided by law. Should, however, the purchaser cancel this order subsequent to the manufacture of merchandise, if required, or subsequent to delivery of the materials, but prior to installation of the merchandise or materials upon the premises, if such installation herein is required, and should such cancellation occur subsequent to the time provided by law for its occurrence without penalty, then in that event, the purchasers do hereby authorize the Company to reduce the aforesaid promissory cognovit note to judgment against them in an amount equal to the cash purchase price as hereinafter set forth, less a credit for the sum which the Company would have spent for labor in the installation of the merchandise and materials, had the Company been permitted to perform in accordance with the written provisions contained herein, and levy execution thereon. Any judgment taken upon the aforesaid promissory note, as and for liquidated damages, shall be for the principal amount together with interest at the rate of eight per cent per annum from the date of cancellation.

It is specifically understood and again here reiterated that if the customer or purchaser cancels this offer or contract on or before the — day of —, 19 —, there shall be absolutely no liability for any liquidated damages, penalty or other provision resulting from such cancellation. HOWEVER, specific provision is herein made for cancellation upon payment of liquidated damages under the following circumstances, and for which the customer has executed a promissory cognovit note in blank and authorized its use as payment for such damages: 1. Cancellation prior to manufacture or delivery of merchandise; 2. Cancellation subsequent to manufacture of merchandise but prior to delivery thereof; 3. Cancellation subsequent to delivery of merchandise but prior to installation thereof. This agreement shall constitute the entire understanding of the parties, and no other understanding collateral or otherwise shall be binding unless in writing and signed by all parties hereto. The purchasers agree to hold IMPERIAL ALUMINUM, INC. harmless for non-delivery caused by fire, strikes, war, transportation, an Act of God, or inability to secure materials.

TERMS

☐ *Cash Sale*—A transaction whereby the purchase price is payable in four installments or less—*No disclosure statement required, and no right to rescission.*

☐ *Credit Sale*—A transaction whereby the purchase price is to be paid in more than four installments—*Disclosure statement required.*

☐ *Credit Sale with Right to Rescind*—The customer shall, in the event that this offer is accepted, have the right to rescind the resulting contract within the time so provided, in that

this transaction is one in which a security interest is or will be or may be retained or acquired in real property which is used or expected to be used as the *principal residence of the customer*.

☐ *Credit Sale with No Right to Rescind*—The customer shall not, in the event this offer is accepted, have the right to rescind the resulting contract in that this transaction is one in which a security interest is or will be or may be retained or acquired in real property which is *not used or expected to be used as the principal residence of the customer*.

Said additional information has been stated, utilized or placed by the respondents so as to mislead or confuse the customer and contradicts, obscures and detracts attention from the information required to be disclosed by Regulation Z, thereby violating Section 226.6(c) of Regulation Z.

PAR. 9. Respondents have caused the following additional information and clause to appear in their contract under the heading "Waiver of Right to Rescission:"

WAIVER OF RIGHT TO RESCISSION

☐ Not applicable

☐ The customer does hereby waive his right to rescission for the following reasons:

1. The extension of credit is needed in order to meet a bona fide immediate personal financial urgency of the customer.
2. The customer has determined that a delay of three (3) business days in performance of the creditor's obligation under the transaction will jeopardize the welfare, health or safety of natural persons or endanger property which the customer owns or for which he is responsible, and as more fully set forth below:

By and through the use of the above-quoted provision, respondents have, in a number of instances, provided their customers with a printed form to use for the purpose of modifying or waiving his right to rescind a transaction subject to the provisions of Section 226.9 of Regulation Z, thereby violating the provisions of Section 226.9(e)(3) of Regulation Z.

PAR. 10. By the aforesaid failure to make disclosures, respondents have failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with Regulation Z constitutes 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 a complaint charging that respondents named in the caption hereof have violated provisions of the Truth in Lending Act, 15 U.S.C. 1601, *et seq.*, and the implementing regulation promulgated thereunder, 12 C.F.R. Section 226; and

Respondents, while this matter was pending before the administra-

tive law judge, having voluntarily entered into an agreement containing consent order to cease and desist dated May 3, 1973; and

The Commission, by order issued Sept. 18, 1973, having withdrawn this matter from adjudication pursuant to Rule 3.22(a) and Rule 2.34(d) of the Commission's Rules of Practice; and

The executed agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint which the Commission issued, 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 agreement containing consent order to cease and desist and having provisionally accepted the same, and the agreement having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondents Imperial of Ohio, Inc. and Imperial Aluminum, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio, with their principal offices and places of business located at 9300 Midwest Avenue, Cleveland, Ohio.

Respondent Albert Scholz is an individual and is the President of each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth, and his address is the same as that of the corporate respondents.

2. The Federal Trade Commission has jurisdiction of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Imperial of Ohio, Inc., a corporation, and Imperial Aluminum, Inc., a corporation, their respective successors and assigns, and their respective officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, and respondent Albert Scholz, individually and as an officer of said corporations, in connection with the extension of consumer credit or advertisements to aid, promote or assist, directly or indirectly, in the extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. Section 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 accurately disclose the date on which the finance charge begins to accrue, as prescribed by Section 226.8(b)(1) of Regulation Z.

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

3. Failing to disclose the "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.

4. Failing to accurately disclose the number, amount, and due dates, or periods of payment, scheduled to repay the indebtedness, as prescribed by Section 226.8(b)(3) of Regulation Z.

5. Failing to state the "unpaid balance of cash price," as prescribed by Section 226.8(c)(3) of Regulation Z.

6. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.

7. Failing to disclose the "deferred payment price," as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

8. Failing to disclose, in writing, to the customer that insurance coverage is not required by the creditor, as prescribed by Section 226.4(a)(5)(i) of Regulation Z.

9. Failing to obtain specific, dated and separately signed, affirmative written indication from the customer of the desire to have insurance coverage, as prescribed by Section 226.4(a)(5)(ii) of Regulation Z.

10. Failing to provide the "notice to customer required by federal law" to the customer on one side of a separate statement which identifies the transaction to which it relates, and in the form prescribed by Section 226.9(b) of Regulation Z.

11. Failing to set out the "effect of rescission," required by Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

12. Failing to furnish two copies of the "notice to customer required by federal law," as prescribed by Section 226.9(b) of Regulation Z.

13. Supplying any additional information, contract clause, or other statement pertaining to a transaction generally, unless such additional information, contract clause or other statement is provided in a fashion which complies with Section 226.6(c) of Regulation Z.

14. Providing their customers with any kind of printed form by which the customer may modify or waive his right to rescind a

transaction, as prescribed by Section 226.9(e)(3) of Regulation Z.

15. Failing, in any consumer credit 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, 226.7, 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 each operating division and to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged, as well as a description of his duties and responsibilities.

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

IN THE MATTER OF
HOLIDAY MAGIC, INC., ET AL.

Docket 8834. Interlocutory Order, Jan. 23, 1974

Order granting application of complaint counsel for filing of contingent claim for restitution against estate of an individual respondent with the California State Superior Court. Complaint counsel may file a reply, within five days, to respondents' answer to the request for substitution of parties in the complaint.

Appearances

For the Commission: *Joseph S. Brownman and Stuart Cameron.*