

SION ACTS

Docket C-2488. Complaint, Jan. 28, 1974—Decision, Jan. 28, 1974

Consent order requiring an Oakland, Calif., company, doing business as a department store, and as a finance company, 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: *Harold G. Sodergren.*

For the respondents: *Robert Wahrhaftig, Oakland, Calif.*

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 Sherwood Swan and Company, a corporation doing business as Swan's, and Sherwood Swan Co., a corporation, and Edward G. Morin, individually and as an officer of said corporations, and Sherley Swan Ketsdever, individually and as an officer of Sherwood Swan Co., hereinafter referred to as respondents, have 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 Sherwood Swan and Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 933 Washington Street, Oakland, Calif.

Respondent Sherwood Swan Co., a wholly-owned subsidiary of respondent Sherwood Swan and Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 933 Washington Street, Oakland, Calif.

Respondent Edward G. Morin is an officer of the named corporate respondents, and Sherley Swan Ketsdever is an officer of Sherwood Swan Co. They formulate, direct and control the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporate respondents.

PAR. 2. Respondent Sherwood Swan and Company doing business as Swan's, is now, and for some time last past has been engaged in the operation of a department store and in the advertising, offering for sale, sale and distribution of various articles of merchandise to the public at retail.

Respondent Sherwood Swan Co. is now, and for some time last past has been, engaged, as a finance company, in offering to customers applying for credit, coupon books in denominations from \$15 to \$300, the coupons in which are exchangeable for merchandise at the department store of respondent Sherwood Swan and Company. Respondent sells these coupon books on an other than open-end credit basis by means of a

retail installment credit coupon book contract, hereinafter referred to as the coupon book contract. Customers who sign a coupon book contract receive a coupon book and are obligated to pay to respondent, in equal monthly installments, the cash price of the coupon book, plus the finance charges computed in accordance with the provisions of the California Small Loan Law.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time 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. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute the coupon book contract. Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the coupon book contract, respondents:

1. 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.

2. Fail to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included in the finance charge, and to describe that sum as the "finance charge," as required by Section 226.8(c) (8) (i) of Regulation Z.

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

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

PAR. 5. 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 San Francisco 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, the Truth in Lending Act, and the regulations promulgated under the Truth in Lending 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 Sherwood Swan and Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 933 Washington Street, Oakland, Calif.

Respondent Sherwood Swan Co., a wholly-owned subsidiary of respondent Sherwood Swan and Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at the above stated address.

Respondent Edward G. Morin is an officer of both said corporations, and Sherley Swan Ketsdever is an officer of Sherwood Swan Co. They formulate, direct and control the acts and practices of the said corporations and their address is the same as that of the 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 Sherwood Swan and Company, a

corporation; Sherwood Swan Co., a corporation; their successors and assigns, and their officers, and Edward G. Morin, individually and as an officer of said corporations, and Sherley Swan Ketsdever, individually and as an officer of said Sherwood Swan Co., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (hereinafter, in this and other paragraphs of this order, referred to as "respondents"), in connection with any extension or arrangement of consumer credit or advertisement to aid, promote, or assist directly or indirectly any arrangement or 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 "amount financed" to describe the amount of credit extended, as required by Section 226.8(c) (7) of Regulation Z.
2. Failing to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included in the finance charge, and to describe that sum as the "finance charge," as required by Section 226.8(c) (8) (i) of Regulation Z.
3. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe the sum as the "total of payments," as required by Section 226.8(b) (3) of Regulation Z.
4. Failing to disclose the number and amount of payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.
5. 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, at the time and in the manner, form, and amount required by Sections 226.6, 226.8 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 respondents notify the Commission at least thirty (30) days prior to any proposed change in either of the corporate respondents, such as dissolution, assignment, or sales, resulting 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 the individual respondents named herein

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promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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.
