

IN THE MATTER OF

BEAUTY-STYLE MODERNIZERS, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE TRUTH IN LENDING AND FEDERAL TRADE COMMISSION ACTS*Docket 8898. Complaint, Sept. 18, 1972 — Decision, June 11, 1974*

Order requiring a Newark, N.J., seller of home improvement materials, supplies and installation services, 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: *James Manos.*

For the respondents: *Martin Gelber, Newark, N.J.*

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 Beauty-Style Modernizers, Inc., a corporation, and Morris Jakel and Saul Jakel, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of 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 Beauty-Style Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 432 Central Avenue, Newark, N.J.

Respondents Morris Jakel and Saul Jakel are the president and general manager respectively, of said corporation. They formulate, direct and control the consumer credit policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 home improvement materials, supplies and installation services to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer

credit" are 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, in the ordinary course of their business as aforesaid, 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 provide these customers with no evidence of or information concerning the credit transaction, other than on the contract and the right of rescission form.

PAR. 5. By and through the use of the contract set forth in Paragraph Four respondents have:

1. Failed to obtain new contract forms or to alter their existing stock of contract forms prior to, during and subsequent to the period beginning July 1, 1969 and ending December 31, 1969, as required by Section 226.6 (k) of Regulation Z.

2. Failed to use the term "cash downpayment" to disclose and describe the amount of the downpayment in money made in connection with the credit sale, as required by Section 226.8 (c) (2) of Regulation Z.

3. Failed to use the term "unpaid balance of cash price" to disclose and describe the difference between the cash price and the cash downpayment, trade-in or total downpayment, as required by Section 226.8 (c) (3) of Regulation Z.

4. Failed to use the term "amount financed" to disclose and describe the amount of credit which the customer had the actual use of, as required by Section 226.8 (c) (7) of Regulation Z.

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

PAR. 6. In the ordinary course of their business as aforesaid, and subsequent to July 1, 1969, respondents caused newspaper advertisements to be published as "advertisement" is defined in Regulation Z. These advertisements aided, promoted or assisted directly or indirectly in extensions of consumer credit in connection with the sale of respondents' goods and services. By and through the use of the advertisements, respondents:

Stated that "1st Payment in 6 months—Call or Write Now!" and "NO DOWN PAYMENT—3 YEARS TO PAY"; thereby implying and stating that no downpayment was required in connection with consumer credit transactions, 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.7. 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.

INITIAL DECISION BY HARRY R. HINKES, ADMINISTRATIVE LAW
JUDGE

AUGUST 31, 1973

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this proceeding on Sept. 18, 1972, charging the respondents with failure to comply with the provisions of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System and, pursuant to Section 108 of said Act, with having violated the Federal Trade Commission Act. By answer duly filed respondents admitted only that they are and were engaged in the sale of home improvement materials, supplies and installation services to the public. Otherwise, respondents' answer either denied, or neither admitted nor denied, all of the other allegations of the complaint. Respondents also interposed "substantial compliance" as a special defense. By order dated January 17, 1973, the undersigned ruled that Paragraphs I and III of the complaint be deemed admitted because of the respondents' failure to conform to the requirements of Section 3.12(b)(1)(ii) of the Rules of Practice of the Commission by neither admitting nor denying the allegations contained in those paragraphs. In addition, respondents' special defense of "substantial compliance" with the requirements of Regulation Z of the Truth in Lending Act was stricken as insufficient at law or as failing to state a legal defense. On April 5, 1973, counsel to the parties in this proceeding executed an "Agreed Upon Statement of Relevant Facts and Documentary Evidence." This was supplemented by another statement executed by counsel to the parties on April 10, 1973. At around the same time

counsel to the parties also executed a stipulation specifying the contested issues of fact and law in this proceeding:

1. Whether respondents failed to obtain new contract forms prior to, during or subsequent to the period beginning July 1, 1969 and terminating December 31, 1969, which were in compliance with the requirements of Regulation Z.

2. Whether the retail installment contract forms as altered for the period July 1, 1969 to December 31, 1969, complied with the requirements of Regulation Z.

3. Whether respondents authorized, approved or ratified, expressly or impliedly, the publication of the various advertisements identified as Commission Exhibits 9(a), 9(b), and 9(c).

Evidentiary hearings were held at the New York Regional Office of the Federal Trade Commission on June 5, 6, and 7, 1973. Briefs have been submitted by the parties and have been given careful consideration. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this initial decision are hereby denied. To the extent the proposed findings, conclusions and briefs submitted by the parties have not been adopted by this decision in the form proposed or in substance, they are rejected as not supported by the evidence or immaterial.

References to the record are made in parentheses using the following abbreviations:

CX—Commission's Exhibit

RX—Respondents' Exhibit

RAC—Respondents' Answer to Complaint

Stip—Agreed upon statement of fact and evidence

Tr.—Transcript of testimony

Having reviewed the record in this proceeding with care and having considered the demeanor of the witnesses as they testified, together with the proposed findings, conclusions and briefs submitted by the parties, I make the following:

FINDINGS OF FACT

1. Respondent Beauty-Style Modernizers, 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 432 Central Avenue, Newark, N.J. (Order of Jan. 17, 1973 and Stip. 1).

2. Respondent Morris Jakel is an individual who is president of the corporate respondent. He formulates, directs and controls the consumer credit policies, acts and practices of the corporate respondent, including

the acts and practices of the corporate respondent (Order of Jan. 17, 1973).

3. Respondent Saul Jakel is an individual and the general manager of the corporate respondent. He formulates, directs and controls the consumer credit policies, acts and practices of the corporate respondent, including the acts and practices set forth in the complaint. His address is the same as that of the corporate respondent (Order of Jan. 17, 1973 and Stip. 2).

4. Respondents are now, and for sometime last past have been, engaged in the sale of home improvement materials, supplies and installation services to the public (Stip. 3; RAC).

5. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer credit" are 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 (Stip. 4; Order of Jan. 17, 1973).

6. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales as "credit sales" 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 (Stip. 5; CX 6(a)-6(iii)).

7. The contracts described in Finding 6 above were signed by respondents, their employees, agents or authorized representatives and the customers identified thereon (CX 6(a)-6(iii); Stip. 13; CX 11(a), (b)).

8. Prior to, during the subsequent to the period beginning July 1, 1969 and ending Dec. 31, 1969, in the normal course of their business activities, respondents utilized in the completion of customer agreements a printed contract form identified as CX 2, to which respondents had made additions by means of a rubber stamp in an attempt to alter the contract's format to the requirements of Regulation Z (Stip. 8; CX 2, 6(fff 1, 2), 6(hhh, 1, 2), 6(iii), 11(a), (b)).

9. Respondents continued the use of CX 2 as altered at least up to Feb. 1970 (Stip. 9; CX 6(a), (b), (c); Stip. 13).

10. Subsequent to Feb. 7, 1970, respondents used in the normal course of their business a new printed contract form identified as CX 3(a), (b), in connection with their consumer sales agreements (Stip. 9; CX 6(d)-6(aaa-1)).

11. Beginning July 1, 1969 and continuing to at least July 1972, the respondents on their contracts:

(a) Did not use the specific term "cash downpayment" to disclose and describe the amount of the downpayment in money made in connection with the credit sale, but used the language "deposit herewith;"

(b) Did not use the specific term "unpaid balance of cash price" to disclose the difference between the "cash price" and the "cash downpayment," trade-in, or total downpayment but used the language "cash balance;"

(c) Did not use the specific term "amount financed" to disclose and describe the amount of credit which the customer had actual use of, but used the language "cash balance;" and

(d) Did not use the specific term "total of payments" to disclose and describe the sum of the payments scheduled to repay the indebtedness, but used the language "time balance" (Stip. 10; CX 2, 3, 6).

12. Respondents were advised that their contract did not conform with the requirements of Regulation Z. Thus, respondent Saul Jakel was asked:

Q. Now, was anything told to you by anyone as to the use or in the industry as to the use of contract number 2 after the date of July 1?

A. Yes.

Q. What was that?

A. There was a six month grace period allowed to contractors from July 1, 1969.

Q. To do what?

A. To January 1, 1970.

Q. To do what?

A. To use up their old contracts, provided that they put a stamp on the contract.

Q. Did you?

A. Yes I did.

Q. What was that stamp?

A. The stamp showed the deferred payment price the annual percentage rate (Tr. 176).

Similarly, Mr. Jakel was visited by a representative of the Federal Trade Commission in April or May of 1970 and described the visit as follows:

A. She told me that the contracts were in violation.

Q. Of what sir, do you know?

A. The terminology used in the financing portion of the contract were not as required by law.

Q. What happened next?

A. I then went over this with her.

Q. How did you do this sir?

A. Well she showed me the wording that was required (Tr. 145).

* * * * *

Q. (By Judge Hinkes) Now did she show you a written document containing those—containing that language?

A. Yes.

Q. Or did she just simply tell you?

A. She showed me a document, your honor.

Q. Now do you remember what the document was entitled?

A. I—

Q. Or what it looked like?

A. Can I have that book please?

Mr. Gelber: The witness is requesting Regulation Z.

A. She showed me this terminology here that should have been in place of the—

Judge Hinkes: Well, the witness is referring to a form marked Exhibit C in Regulation Z on page 22 which includes typical formats of disclosures under the Regulation (Tr. 147).

Mr. Jakel continued:

A. The second time she visited me she told me what the violations were. We went over them. The violations seemed very minor—

Q. To you?

A. Yes. Since the essence of the law was in the contract as I had it. The important parts.

Q. What was wrong with your contract?

A. Ok. On number 2 under the Heading of "Time Payment" in my contract, I used the expression "Deposit herewith" next to which I have the words "Check and Cash" with a box to be checked, you know, depending upon what the salesman received from the customer.

Q. Did she say there was anything deficient or defective about that?

A. Yes.

Q. What?

A. She said that should "Cash Downpayment."

Q. What else?

A. Where I have on here number 3 where I have "Balance, Amount Financed," she said that the law required it to read "Unpaid Balance of Cash Price." Under item number 5 where I have "Time Balance" she said it had to read "Total Payments."

* * * * *

A. Well I pointed out to her that in essence I was complying with the law, that everything the law required was in here, although the phraseology was slightly different * * * and she agreed * * * she said "I agree with you that the differences are slight but the law is specific as to what is required."

* * * * *

Q. Well, was anything said about the further use of your contracts by her?

A. Yes.

Q. What?

A. She indicated to me that I could use up my contracts.

Q. And how did she convey that to you?

A. She said "Well, you can use these contracts unless you hear further from us." (Tr. 154-159).

Mr. Jakel also testified that this representative of the Federal Trade Commission visited him another time in May 1970 and again spoke to him about the improper language in the respondents' contracts that were in use (Tr. 178). Shortly thereafter Mr. Jakel received a letter from the Federal Trade Commission (RX 1) dated May 18, 1970. In it the respondents were informed:

Although you recently printed new retail installment contracts, we still must require your immediate compliance with the above requirements. Willful and knowing failure to comply

with Truth in Lending may result in criminal liability * * * failure to respond to the above requests within 10 days will result in formal administrative action.

Sometime during the summer of 1970, Mr. Jakel received a telephone call from a different representative of the Federal Trade Commission who also advised him that the contract in use was in violation of the Truth in Lending Act (Tr. 346). Mr. Jakel said that he would like to continue to use the contract until the stock was depleted but the Commission representative told him "I don't know who could authorize you to continue to use a contract in violation of a Federal law" (Tr. 347). Mr. Jakel was later visited by this representative and, according to Mr. Jakel, was told that the representative would go back to the office to find out if he couldn't get Mr. Jakel an extension of time to use up his contracts. Mr. Jakel admitted, however, that:

He said that he couldn't get me any more delays on the use of the contract and that if I didn't change the contract and sign the affidavit or sign the consent order * * * that they were going to start proceedings against me.

Q. And what was your response?

A. My response was that I would change the contracts but I would not sign any affidavit.

Q. And did you do so?

A. No.

Q. You did not do what?

A. I did not print the new contracts (Tr. 199).

13. It does not appear that the respondents took *bona fide* steps prior to July 1, 1969 to order contract forms which would satisfy the requirements of Regulation Z.

Mr. Jakel was asked:

Q. Were you told by anybody including the bank that you were required under the law to make efforts to obtain new printed forms to be used prior to January 1, 1970 during the period from July 1, 1969 through December 31 1969? Were you told by anyone?

A. Not that I recall.

Q. Did you have knowledge that this was required?

A. No sir.

* * * * *

Judge Hinkes: Mr. Jakel did you take any steps before July 1, 1969?

A. I don't remember. I don't think so, because my understanding of the law was that it wasn't necessary to have the new contracts before 1970.

* * * * *

Q. And you said three months before December 31, [1969] approximately, you did in any event order new contracts for the purpose of complying?

A. Yes. I mean I say that I believe that that's probably when I took the step to order it. I would have allowed myself that much time (Tr. 247Z-31-Z-37).

14. The respondents' newspaper advertisements directly or

indirectly aid, promote or assist in extensions of consumer credit in connection with the sale of respondents' goods and services (Step. 15).

15. The following is language excerpted from an advertisement placed by the respondents in the New York Sunday News, Passaic-Bergen edition, on Dec. 7, 1969:

Easy Payments Arranged * * * First payment in 6 months * * * Beauty-Style Modernizers, Inc. 432 Central Avenue, Newark (CX 7).

16. In placing advertisements in the New York Sunday News, Passaic-Bergen edition, the respondents deal and have dealt directly with the advertising department of that newspaper. Respondents do not employ any agency or intermediary. Copies of the advertising contracts covering the period beginning Jan. 1, 1968 through Jan. 11, 1971 are identified as Commission Exhibits 8(a), (b), (c). (Stip. 17).

17. Following the publication of the Dec. 1969 ad in the Sunday News, respondents were informed by the Federal Trade Commission that the advertising in that issue was in violation of Regulation Z. Mr. Jakel was asked:

Q. And will you explain to the court what about that ad was brought to your attention by the Federal Trade Commission letter which you then acted upon?

A. May I take a moment to read the letter?

Q. Of course.

A. The first payment in six months was objected to.

Q. Anything else?

A. I believe the easy payments arranged phrase also was objected to (Tr. 134-135; see also RX 3).

18. Advertisements appeared in the Sunday Star Ledger on the dates indicated below and employed the quoted language as indicated:

(a) Aluminum Combination Windows and One Door * * * No Downpayment * * * Three years to pay * * * Beauty-Style Modernizers, Inc., 432 Central Avenue, Newark. This ad appeared on June 14, 21, and July 5, 1970 (CX 9(a), (b), and (c)).

19. The advertisements described in Paragraph 18 above which appeared in the Sunday Star Ledger were prepared and placed by P & G Advertising Agency, 33 Evergreen Place, East Orange, N.J., for and in behalf of respondents (Stip. 20). According to respondents' clerk, Saul Jakel and P & G Advertising Agency prepared the copy for the ads jointly (Tr. 107).

20. The advertisements described in Paragraph 15 and 18, appearing in the Sunday Star Ledger and Sunday News failed to state:

(a) The cash price;

(b) The number, amount and due dates or period of payments, scheduled to repay the indebtedness if the credit is extended;

(c) The amount of the finance charge expressed as an annual percentage rate; and

(d) The deferred payment price (Stip. 21).

CONTENTIONS AND CONCLUSIONS

Counsel for the respondents contend that the respondents have not violated Regulation Z in either their contracts for the sale of their goods and services or in their advertising of their goods and services.

The Contracts

In this connection three specific time periods are involved: The period prior to July 1, 1969 when the Truth in Lending Act became effective, the period beginning July 1, 1969 and ending Dec. 31, 1969, and the period subsequent to Dec. 31, 1969.

Section 226.6(k) of Regulation Z is particularly pertinent to both the period preceding July 1, 1969 and the period between July 1, 1969 and Dec. 31, 1969. It states:

(k) Transition period. Any creditor who can demonstrate that he has taken bona fide steps, prior to July 1, 1969, to obtain printed forms which are necessary to comply with the requirements of this Part may, until such forms are received but in no event later than December 31, 1969, utilize existing supplies of printed forms for the purpose of complying with the disclosure requirements of this Part, other than the requirements of paragraph (b) of Section 226.9:

Provided, That such forms are altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose to the customer are set forth clearly and conspicuously.

The meaning of this section is obvious. It simply permits a creditor to continue using his existing supplies of printed forms after July 1, 1969, provided he can demonstrate that he took bona fide steps *before July 1, 1969* to obtain printed forms complying with requirements of Regulation Z and provided further that such forms are amended as necessary to convey all of the information the creditor is required to disclose to the customer. There is no doubt that here respondents continued to use their existing supply of forms after July 1, 1969 and indeed at least until Feb. 1970. Their use of such forms, assuming that they were altered to convey the required information, was proper only if the respondents had taken bona fide steps before July 1, 1969 to obtain printed forms which did comply. This the respondents did not do. Indeed, Saul Jakel admitted that he thought it wasn't necessary to have the new contracts before 1970 and ordered new contracts around Sept. 1969. He could not remember taking any such steps before July 1, 1969 nor could he recall any instructions to make such efforts (See Finding 13 above). Respondents' continued use of their old contract forms was therefore improper and illegal after July 1, 1969, unless, of course, such contract forms contained the disclosures required by Regulation Z. This was also true of the new contract forms adopted by the respondents in 1970.

Section 226.8(c) of Regulation Z requires the disclosure of certain specified items among which are:

- (1) The cash price of the property or service purchased, using the term "cash price."
- (2) The amount of the downpayment itemized, as applicable, as downpayment in money, using the term "cash downpayment," * * *
- (3) The difference between the amount described in subparagraphs (1) and (2) of this paragraph, using the term "unpaid balance of cash price."
- (4) All other charges * * *
- (5) The sum of the amount determined under subparagraphs (3) and (4) of this paragraph.
- (6) Any amounts required to be deducted under paragraph (e) of this Section * * *
- (7) The difference between the amount determined under subparagraphs (5) and (6) of this paragraph, using the term "amount financed."

Section 226.8(b) (3) of Regulation Z requires the disclosure of scheduled repayments:

- (3) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and * * * the sum of such payments using the term, "total of payments."

It has been stipulated that respondents' contracts did not use the specific terms "cash downpayment," "unpaid balance of cash price," "amount financed" or "total of payments." Instead, respondents' contracts used other language. Respondent contends, however, that the quoted language that was not used in their forms is not required by the terms of Regulation Z and that their use of different language was sufficient to disclose all of the credit terms to the customer. Counsel for the respondents cites Section 122(a) of the Truth in Lending Act:

- (a) Regulations of the Board need not require that disclosures pursuant to this chapter be made in the order set forth in this chapter, and may permit the use of terminology different from that employed in this chapter if it conveys substantially the same meaning.

Counsel for the respondents argues that respondents' use of language differing from that quoted in Regulation Z but conveying the same meaning should therefore be considered compliance with Regulation Z. I do not agree.

A close reading of Section 122 of the Truth in Lending Act makes it clear that the Board is empowered to permit different terminology than that used in the Truth in Lending Act. The Board, however, in its issuance of Regulation Z specified exactly what language was permissible. Here, too, a close reading of 226.8 of that regulation makes it obvious that the Board required the specific language stated therein. I note, for example, that the Board requires the disclosure of certain "terms" and encloses such "terms" in quotation marks. If the Board had intended the use of language conveying a similar meaning it would have been simple to have said so or at least to have omitted the quotation

marks around the language which was to be used. Moreover, Section 226.6 of Regulation Z requires the "terminology prescribed:"

(a) Disclosure: General Rule. The disclosures required to be given by this part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this Section, and at the time and in the *terminology prescribed* in applicable sections. (Emphasis supplied)

Nor can such a requirement be deemed arbitrary and unreasonable. Uniform disclosure language is less apt to be subject to varying interpretations and impressions which would lessen the intended effectiveness of the Truth in Lending Act.

The case of *Richardson v. Time Premium Co.* reported in CCH Consumer Credit Guide, Par. 99, 273 is particularly apposite. There, as here, a defendant's form statement failed to use the quoted terminology of Regulation Z at Section 226.8 and it was argued that the use of the specific terms was not mandatory. The court disagreed:

It is, first of all, clear that the Regulations do make the use of specific terminology mandatory. 12 CFR 226.2(a) [226.6(a)] reads in part, "The disclosures required to be given by this part shall be made * * * in the terminology prescribed in applicable sections." 12 CFR 226.8 in describing what disclosure is required repeatedly uses the format "shall be disclosed: * * * using the term [with applicable term stated in quotation marks]." (Bracketed portion in original)

There, too, it was argued that Section 122 of the Truth in Lending Act contradicted any interpretation requiring the use of specific terminology. The Court held, however:

The following language of 15 USC 1632 is cited to support that position. "Regulations of the Board [* * *] may permit the use of terminology different from that employed in this part if it conveys substantially the same meaning." We do not read this language as a limitation upon the broad power to prescribe regulations as contained in 15 USC 1604 but as a limitation upon the discretion which the Board may allow creditors, which discretion it is not required to "permit" at all.

The conclusion is inescapable that respondents' failure to use the specific terms required by Regulation Z as set forth in the Findings above violated the provisions of that Regulation and of the Truth in Lending Act.

The Advertisements

Counsel for the respondents concedes that "the ads did appear as alleged in the complaint." He defends, however, on the ground that "respondent did not cause these ads to be so placed." He cites the fact that the Dec. 1969 ad appearing in the News was corrected after the Federal Trade Commission representative called its irregularities to the attention of the respondents. He goes on, however, to argue that "thereafter the ad reappeared inadvertently in format used before the

change. This was obviously an inadvertent placement of the ad * * * and not through the action of respondent." The record, however, does not support this argument.

The Dec. 1969 ad appearing in the News spoke of "Easy payments arranged—First payment in 6 months." The ads which appeared in June and July 1970 in the Star Ledger used different language stating "No downpayment—3 years to pay." The format was obviously not that of the old ad.

Nor can the respondents escape responsibility for the 1970 ads simply because they were placed through their advertising agency, P & G Advertising Agency. It has been stipulated that the ads were placed by that advertising agency "*for and on behalf of the respondents.*" Moreover, the testimony of respondents' clerk makes it quite clear that the copy for ads was created by both Saul Jakel and a representative from P & G. The relationship of principal and agent is, therefore, conclusively established (See *Libby-Ownes-Ford Glass Co.* 63 FTC 746, 772).

That the ads violated Regulation Z is also incontrovertible. Section 226.10(d) of that Regulation provides:

No advertisement to aid, promote, or assist directly or indirectly any credit sale * * * shall state * * * (2) the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless it states all the following items in terminology prescribed under Section 226.8:

- (i) the cash price or the amount of the loan, as applicable;
- (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.

The advertisements itemized in the findings above, while speaking of downpayments and the period of repayment, were deficient in one or more of the required disclosures and were, therefore, violative of Regulation Z.

THE REMEDY

Having found that the respondents have violated the Federal Trade Commission Act by failing to comply with the provisions of Regulation Z, the implementing regulation of the Truth in Lending Act, I shall order that they cease and desist from engaging in such illegal activities.

Complaint counsel have proposed an order similar to that proposed by the Commission in its complaint. In addition, complaint counsel suggest additional provisions. One would require the furnishing of specific information to the Commission in the event the named individual re-

spondents discontinue their present business. This additional provision appears to be appropriate and consistent with the established practice of the Commission. Complaint counsel also propose a provision in the order requiring respondents to file a compliance report within 60 days. This, however, appears superfluous as the requirement is already spelled out in Section 3.61 of the Commission's Rules of Practice, reference to which is hereby made.

Complaint counsel have also proposed an addition to the order as follows:

It is further understood that nothing contained in this order shall be construed to imply that any past or future conduct of respondents is subject to and complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

Complaint counsel seek the inclusion of the above paragraph because of the "proclivity of the respondent Saul Jakel demonstrated during the evidentiary hearing of deliberately misconstruing the plain meaning of both oral and written communications from the Commission." I do not think such a provision in the order to be issued is necessary or appropriate. It is difficult to perceive how such a hortatory admonition could prevent misunderstanding or misconstruction on the part of a respondent. The order to be entered herein is, in the opinion of the undersigned, specific and concise and is not subject to the implications feared by complaint counsel. Even if it were so subject, a statement to the effect that it is not to be construed as implying that the respondents have complied with the Federal Trade Commission's Regulations and Statutes, would not, in my opinion, add anything to the force and effect of the order. The omission of the proposed paragraph could not relieve the respondents from the consequences of any other wrongful acts.

ORDER

It is ordered, That respondents, Beauty-Style Modernizers, Inc., a corporation, its successors and assigns, Morris Jakel, individually, and as an officer of said corporation, and Saul Jakel, individually, and as general manager of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with any consumer credit sale 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, 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, 226.9 and 226.10 of Regulation Z.

2. Failing to use the term "cash downpayment" to disclose and describe the amount of 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 "unpaid balance of cash price" to disclose and describe the difference between the cash price and the cash downpayment, trade-in or total downpayment, as required by Section 226.8(c)(3) of Regulation Z.

4. Failing to use the term "amount financed" to disclose and describe the amount of credit which the customer has the actual use of, as required by Section 226.8(c)(7) of Regulation Z.

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

6. Representing, directly or by implication, in any advertisement as "advertisement" is defined in Regulation Z the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are stated in terminology prescribed under Section 226.8 of Regulation Z:

- (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.

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 each 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 respondents' current business address and a statement as to the nature of the 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 change in the corporate respondent, 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 which may affect compliance obligations arising out of the order.

OPINION OF THE COMMISSION

BY THOMPSON, *Commissioner*:

This matter is before the Commission on appeal from an initial decision of an administrative law judge in which it was found that respondents have violated the Truth in Lending Act (15 U.S.C. §§1601, *et seq.*) and the Federal Trade Commission Act (15 U.S.C. §45(a)) in failing to disclose certain consumer credit information in connection with their advertising and sale of various home-improvement materials, supplies and installation services. The order issued by the law judge would require respondents to disclose certain credit terms and information in accord with the specific requirements of the Truth in Lending Act and the Federal Reserve Board of Governors' Regulation Z implementing said Act (12 C.F.R. §266, *et seq.*).

The law judge found that respondents had failed to make the required disclosures (a) in their printed contract forms and (b) in certain newspaper advertisements placed, in part, by an advertising agency. In the former, respondents omitted the required terms "cash downpayment," "unpaid balance of cash price," "amount financed," and "total of payments," *substituting* therefor the terms "deposit herewith," "cash balance" (twice), and "time balance." CX 1 (c)(d). In certain of its newspaper advertisements, respondent Beauty-Style advertised that no downpayment was required under its credit plan but failed to disclose, as required by Regulation Z, (a) the cash price, (b) the number, amount, and due dates or periods of payments scheduled to repay the indebtedness where such credit is extended, (c) the finance charge expressed as an annual percentage rate, and (d) the deferred payment price. CX 1(j).

Respondents' major contentions on this appeal are (1) that the terms they used in their printed forms were in fact more informative than those required by the regulation in question; (a) that the efforts they made to comply with the statute after its effective date of July 1, 1969 fully satisfied the "transition period" duties specified in the regulation;

(3) that Federal Trade Commission personnel approved the use of the printed forms found unlawful here; (4) that complaint counsel failed to prove a principal-agent relationship between Beauty-Style and the advertising agency that caused the publication of the advertisements in question; and (5) that the Federal Reserve Board exceeded the authority delegated to it by Congress in issuing the regulation they are charged with violating (Regulation Z).

The parties agreed prior to trial that the issues to be resolved were as follows:¹

1. Whether respondents failed to obtain new contract forms prior to, during or subsequent to the period beginning July 1, 1969 (effective date of the statute) and terminating December 31, 1969 which were in compliance with the requirements of Regulation Z.

2. Whether the retail installment contract forms as altered for the period July 1, 1969 to December 31, 1969 complied with the requirements of Regulation Z.

3. Whether respondents authorized, approved or ratified, expressly or impliedly, the publication of the various advertisements identified as Commission Exhibits 9(a), 9(b), and 9(c).

The parties also agreed upon most of the facts of the case prior to trial (CX 1(a-1)),² and it was essentially on an evaluation of these pretrial agreements that the law judge based his decision.³

With regard to the first of the issues, the law judge noted that Section 226.6(k) of Regulation Z provided a "transition period" on the following terms:

Transition period. Any creditor who can demonstrate that he has taken *bona fide steps*, prior to July 1, 1969, to obtain printed forms which are necessary to comply with the requirement of this Part may, until such forms are received but in no event later than December 31, 1969, utilize existing supplies of printed forms for the purpose of complying with the disclosure requirements of this Part, other than the requirements of paragraph (b) of §226.9: *Provided*, That such forms are altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose to the customer are set forth clearly and conspicuously. (Emphasis supplied.)

The law judge interpreted this provision as requiring that respondents undertake to *order* new conforming printed contracts *prior* to July 1, 1969, the effective date of the Truth in Lending Act, in order to

¹ "Agreed Upon Contested Issues of Fact and Law." This document appears in the exhibit binder unnumbered, but was made part of the record of the proceeding in this case by Judge Hinkes' "Order on Results of Prehearing Conference," dated April 12, 1973.

² Abbreviations:

CX—Commission Exhibit
RAB—Respondents' Appeal Brief
RX—Respondents' Exhibit
Tr.—Transcript

³ Complaint counsel rested their case upon the judge's acceptance of these two agreements (tr. 5).

qualify themselves for the special dispensation afforded by that "transition" language. (Tr. 247z-33, 34.)

On the second of these stipulated issues, the law judge ruled that the altered forms utilized by respondents subsequent to July 1, 1969 were not in conformance with the specific disclosure requirements of the Act, which he held mandatory. The language of Section 226.6 permits, in his view, no deviation from the terms prescribed:

(a) *Disclosures; general rule.* The disclosures required to be given by this Part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the *terminology prescribed* in applicable sections. * * * (Emphasis supplied.)

The law judge also ruled against respondents on the third of those three stipulated factual issues, respondents' approval or ratification of the published advertisements. Two local newspapers were used, the Sunday News and the Sunday Star Ledger. Respondents dealt with the former directly and hence could hardly deny responsibility for the ad in question.⁴ While an advertising agent acted as intermediary in the placement of the two challenged ads in the second of these publications,⁵ the law judge concluded that there was a principal-agent relationship involved and hence that the legal responsibility for their content rested with respondents.

RESPONDENTS' APPEAL

There is little in the way of a significant dispute on the facts before us and the various legal arguments raised by respondents turn largely on the quite specific and unambiguous language of the Truth in Lending Act and its implementing Regulation Z. The law judge was plainly correct in holding that the terms prescribed by the latter are mandatory, *i.e.*, it is not open to a creditor to substitute terms that, in his view, are "superior" to those laid down in that Regulation.⁶ In *Zale Corp., et al.*, 78 FTC 1195 (1971), for example, the respondents urged that while their disclosures were not in the specific language of the Act as implemented in Regulation Z, the phraseology used accomplished the same purpose. We disagreed: "Clearly such specificity is authorized under the broad statutory authority granted." *Ibid.*, p. 1223. See also

⁴ CX 7. This ad appeared in the News on December 7, 1969 and contained the language "Easy Payments arranged * * * 1st Payment in 6 months."

⁵ CX 9(a-c). These ads appeared in the Ledger on June 14, June 21, and July 5, 1970 and offered: "No downpayment * * * 3 years to pay." CX 1(i), (j); CX 9(a-c).

⁶ Respondents raise (RAB, p. 9) the point that Section 122 of the Act (15 U.S.C. §1632) *allows* the Federal Reserve Board's Governors to promulgate, by regulation, forms of credit disclosure couched in words other than those spelled out in the statute, so long as such substitute terms convey substantially the same meaning. We need only point out, however, that the regulation which the Board *did* promulgate requires the exact language which had originally been set out in the Act. Whatever regulation the Board *might* have adopted, the one actually before us is unambiguous.

Richardson v. The Time Premium Co., CCH Consumer Credit Guide Par. 99273 at p. 89, 240 (S.D. Fla. 1971).⁷

Nor is there any dispute in this record on the point that respondents were repeatedly advised by the Commission's staff that their contract forms failed to make consumer-credit disclosures in the precise language required and therefore that the use of those forms violated the Act. (Tr. 144, 145, 154, 157, 178, 183, 199, 247z-11 and 12, 272, 311, 316, 346, 347; RX 1.)⁸ Indeed, respondents' counsel conceded in argument before the law judge that his clients had not used the prescribed language in making the disclosures required by the regulation in question. (Tr. 376.) His argument, rather, was to the effect that they were nonetheless in "substantial" compliance with the statute.

There is no such thing as "substantial" compliance with the Truth in Lending Act and the regulation that implements it. Either you are or you aren't. The purpose of that statute is to permit the ordinary consumer, without regard to the degree of his commercial sophistication, to receive the kind of credit information that will allow him effectively to compare the credit terms being offered in the marketplace and thus to "shop" for the most favorable terms available. (15 U.S.C. §1601.) Only uniform terms, universally used, would allow the kind of credit comparison mandated by the Act. (See *Zale Corp., et al.*, 78 FTC 1195, 1223 (1971); H.R. Rep. No. 1040, 90th Cong., 1st Sess. 13 (1967).) The Act was concerned not only with the *substance* of disclosure but, for purposes of consumer comparison shopping, was concerned as well with the *form* of that disclosure. We agree with the administrative law judge, therefore, that respondents' contracts were in violation of the Truth in Lending Act and Regulation Z in the particulars set out in the stipulated facts (CX 1(c), (d)).

Nor do we find any error in the law judge's ruling on the deficiencies in respondents' newspaper advertisements. According to respondents, the allegedly illegal advertisement in the News (CX 7) was placed "inadvertently" (RAB, p. 11), and once respondents' attention was called to it, was withdrawn and never again appeared. With regard to the June 14, June 21 and July 5, 1970 advertisements in the Ledger (CX 9(a-c)), respondents deny liability because the ads were placed by an advertising agency after the agency had been instructed to correct the

⁷ This view is also underscored in the Federal Reserve Board's own publication, "What You Ought to Know About Federal Reserve Regulation Z" 7 (1969), of which respondents' counsel caused the judge to take official notice (tr. 116).

⁸ Respondents contend that staff members of the Federal Trade Commission *approved* the use of their altered sales contract forms through 1969 (tr. 159, 195). The record itself indicates, however, only that one staff member promised to make inquiry of his superiors regarding the physical arrangement on the forms of some particular terms of credit information (tr. 313, 317). Direct testimony of two staff members as well as documentary evidence amply supports complaint counsel's argument that respondents were repeatedly informed of the non-conformance of their contracts to the requirements of the law and were never, at any time, given permission to continue use of the altered but non-conforming forms. (Tr. 274, 292, 298, 311, 316, 346, 347, 372.) In fact, one staff member testified that he informed Mr. Jakel, "[W]e can't authorize you to continue to use a contract in violation of a federal law." (Tr. 347.)

advertisements by Beauty-Style's office clerk (tr. 94, 101, 130, 169, 170, 223, 247z-22, 43, 379).

The same general legal principles which govern the consumer credit disclosures on written contracts also govern in situations where advertising of credit terms is undertaken. As we observed in *Zale*:

* * * The advertising provision of the Truth in Lending Act and Regulation Z are directly parallel to the other substantive sections which require disclosures. Wherever applicable, the same terminology mandated in the contract forms is mandated in the advertising. Given the purpose of the statute, to enhance competition among financial institutions and other firms extending consumer credit and to increase the informed use of credit by consumers (§102, Title I), and the structure of the regulation, the advertising provisions of the Act are clearly part and parcel of the general disclosure scheme. (78 FTC 1242.)

It is undisputed that the December 7, 1969 advertisement in the News and the June 14, June 21 and July 5, 1970 advertisements in the Ledger failed to make certain credit term disclosures (tr. 128, 134, 135, 247-z-42, 43; RX 3). Nor is it disputed that these violations were brought to the attention of the respondents, both orally and in writing, including personal visitation by Commission staff members (tr. 93, 94, 127, 134, 135, 164, 168, 169, 247z-22, 279, 308; RX 3). Respondent Jakel, who was generally in charge of Beauty-Style's advertising, conceded that he did not check the Ledger to determine whether the agency had, in fact, altered the suspect advertising. Nor did respondents' clerk check the Ledger (tr. 97, 247-z-19-22, 25). Respondents' advertising agency was stipulated to have acted "for and on behalf of the respondents" in its placing of advertising generally (CX 1(j)). Respondent Jakel and representatives of the agency were joint draftsmen of the advertising copy in question (tr. 107, 108). When the non-conforming advertisements were run, respondents became liable by virtue of their principal-agent relationship (see *Libby-Owens-Ford Glass Co.*, 63 FTC 746, 772 (1963)). We therefore agree with the administrative law judge's conclusion that all the respondents' advertisements in question violate Section 226.10(d) of Regulation Z.

The time-frame issue runs throughout this case and has to do with three crucial deadlines for respondents' compliance with the several aspects of Truth in Lending. The Federal Reserve Board's own pamphlet, explaining the requirements of Section 226.6(k) of Regulation Z, sets forth these basic time obligations under the Act:

If you have taken the proper steps to get any new credit forms before July 1, 1969, and find they cannot be delivered to you by that date, then you may be able to use your existing forms. But they must show clearly the information a customer must be given under Regulation Z. You may do this by adding to or altering your forms. However, after December 31, 1969, you may no longer do this. ("What You Ought to Know About Federal Reserve Regulation Z" 4 (1969).)

It is uncontested that respondents undertook no steps to secure new contract forms until late in 1969 (tr. 247z-31-37). They were therefore in violation of the statute from the first day of its effectiveness (see *Kroll v. Cities Service Oil Company*, CCH Consumer Credit Guide Par. 99102 at 88,794-95 (N.D. Ill. 1972)). Further, the respondents continued to be in violation of the statute throughout 1969 because the altered forms they used did not, as noted, make the required disclosures in the form prescribed by law (CX 1(c), CX 2). New printed forms were not available for use until February 1970 (CX 1 (c), CX 3(a)(b)). And the precise disclosures required by the Act did not appear in them until at least July 1972 (CX 1(c)(d)).

Finally, respondent have raised for the first time on appeal the question of the validity of the delegation to the Board of Governors of the Federal Reserve Board the power to formulate regulations administering the Act (RAB, pp. 7-11). In respondents' view, the Federal Reserve Board, in requiring the specific disclosure language set out in Regulation Z, has exceeded the congressional mandate of its delegated power as spelled out in the Act.

Section 104 of Truth in Lending provides:

The Board shall prescribe regulations to carry out the purposes of this chapter. These regulations may contain such classification, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter to prevent circumvention or evasion thereof, or to facilitate compliance therewith. (15 U.S.C. §1604.)

Congress is free to delegate legislative authority provided it has exercised "the essentials of the legislative function—of determining the basic legislative policy and formulating a rule of conduct" (*Yakus v. United States*, 311 U.S. 414, 424 (1944)). A delegation of legislative power is proper "if Congress shall lay down by legislative act an intelligible principle" to which the official or agency must conform (*Hampton v. United States*, 276 U.S. 394, 409 (1928)).

One seeking to challenge the legality of a delegation of legislative authority to an agency bears the burden of showing in the delegation such an absence of standards for agency conduct as to frustrate the ability of Congress to determine if its policy is being effectuated (*Amalgamated Meat Cutters v. Connally*, 337 F. Supp. 737, 746, 747 (D.D.C. 1971)).⁹ In *Zale Corp., et al., infra*, and *Charnita, Inc., et al.*, 80 FTC 892 (1972), the Commission recognized the validity of the particular

⁹ This case involved a challenge to the President's authority to freeze wages and prices under the Economic Stabilization Act of 1970, where the delegation of power was couched in terms of the President's power "to issue such orders and regulations as he may deem appropriate to stabilize rents, wages, and salaries." The delegation in question there was upheld (337 F. Supp. 744).

delegation of power in issue here. In *Zale*, for example, the law judge found that the Board, "in the valid exercise of its expert discretion," could "very properly require" specific phraseology it "regards as important," and "since the words (required by Regulation Z) are reasonably adopted to the enforcement of the Act and their use does not contravene some other requirement of the law, the regulation must be followed" (*ibid.*).

Respondents' counsel advised us during oral argument that, if "every creditor must use these 'X' words and 'B' words, then we simply will fold our tents and go to whatever forum is available * * * ." ¹⁰ Believing as we do that the statute before us is of the *malum prohibitum* character and therefore leaves no room for the substituting of Y words for X words, we can only hope that respondents will strike their legal tents in an appropriately poetic spirit:

"And the night shall be filled with music,
And the cares that infest the day,
Shall fold their tents like the Arabs,
And as silently steal away."*

The decision of the administrative law judge will be affirmed and adopted as the decision of the Commission.

Commissioner Nye did not participate.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the administrative law judge's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That respondents, Beauty-Style Modernizers, Inc., Morris Jakel and Saul Jakel 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.

Commissioner Nye not participating.

¹⁰ Transcript of Oral Argument before the Commission (March 6, 1974), p. 26.

* Henry Wadsworth Longfellow, "The Day Is Done," stanza 2.

Complaint

IN THE MATTER OF
WALCO TOY COMPANY, INC., ET AL.
ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8921. Complaint, March 13, 1973—Decision, June 25, 1974

Order requiring a New York, N.Y., seller and distributor of toy, gift and hobby products to jobbers and retailers, among other things to cease packaging its products in oversized boxes or other containers; packaging its products in boxes or other containers which misrepresent the size, amount of quantity of products contained in such boxes or containers; and providing wholesalers, retailers or other distributors of its products with means with which to deceive the purchasing public.

Appearances

For the Commission: *Herbert S. Forsmith, Alan Rubinstein and Armando Labrada.*

For the respondents: *Daniel Diamond of Lindemann & Diamond, New York City, N.Y.*

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 Walco Toy Company, Inc., a corporation, and Samuel S. Wallach, individually and as an officer of said corporation, 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 Walco Toy 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 38 West 37th Street, New York, N.Y.

PAR. 2. Respondent Samuel S. Wallach is an individual and is president of the corporate respondent, and formulates, directs and controls its acts and practices, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of toy, gift and hobby products to jobbers and retailers for resale to the public.