

Complaint

84 F.T.C.

file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OFARLEN REALTY AND DEVELOPMENT CORPORATION,
ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2528. Complaint, Aug. 20, 1974—Decision, Aug. 20, 1974*

Consent order requiring a New York City development corporation and two of its subsidiaries, among other things to cease making deceptive claims concerning the price, quality or guarantee of home improvement products or services; and failing to maintain adequate records to substantiate advertised claims. Further respondents are required to maintain a customer relations department for servicing customer inquiries, complaints and requests for contract adjustments or replacement of faulty products or services; to institute a continuing surveillance program to see that home improvement contractors and employees abide by the order; to preserve all rights and defenses of customers purchasing home improvements on credit if their notes are assigned to third parties; and to cease acting in a manner not in accord with the Trade Regulation Rule (16 C.F.R. §429, 37 F.R. 22934) relating to the Cooling-Off Period for Door-to-Door Sales.

Appearances

For the Commission: *Herbert S. Forsmith.*

For the respondents: *Barry J. Brett of Parker, Chapin & Flattau, New York, N.Y., James M. Nicholson, Nicholson & Carter, Wash., D.C.*

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 Arlen Realty and Development Corporation, a corporation, and Charles C. Bassine and Leonard Blackman, individually and as officers or directors of said corporation, and E. J. Korvette, Inc., a corporation, and Mannix Industries, Inc., a corporation, doing business as the E. J. Korvette Home Improvement Department, and Mitchell Maged, Saul A. Stitch, Joseph G. Benjamin, Arnold Mandel and Mark Mitchell, individually and as officers or directors of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Arlen Realty and Development Corporation and E. J. Korvette, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. The principal office and place of business of each of the aforesaid corporations is located at 450 West 33rd Street, New York, N.Y.

Respondent Arlen Realty and Development Corporation owns a controlling interest in the stock of respondent Mannix Industries, Inc.

Respondents Charles C. Bassine and Leonard Blackman are individuals and officers or directors of Arlen Realty and Development Corporation. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondent Mannix Industries, 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 Glen Cove Road and Westbury Avenue, Carle Place, Long Island, N.Y.

Respondents Mitchell Maged, Joseph G. Benjamin, Saul A. Stitch, Arnold P. Mandel, and Mark Mitchell are individuals and are officers or directors of Mannix Industries, Inc. They formulate, direct and control the acts and practices of said corporation doing business as the E. J. Korvette Home Improvement Department, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

The above-named respondents (hereinafter sometimes referred to as "Korvette") formulate the policies of the E. J. Korvette Home Improvement Department and cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents, doing business as The E. J. Korvette Home Improvement Department have been and are now engaged in the advertising, offering for sale, sale and distribution of home improvement products and services.

PAR. 3. In the course and conduct of their business respondents now cause and for sometime last past have caused their advertising and promotional material, and their said products, sales contracts, and other business papers and documents to be shipped and transmitted to, from and between their several places of business, located as aforesaid, and to prospective purchasers and purchasers thereof located in various other States of the United States other than the state of origination; and maintain and at all times mentioned herein have maintained a substantial course of trade in said products and services in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their products and services, respondents and their employees, salesmen, representatives, licensees, franchisees or contractors represented and now represent, directly or by implication, in advertising and promotional material and in oral solicitations to prospective purchasers, that:

1. Korvette and its representatives and workmen are reliable and dependable.
2. Korvette's products and services are unconditionally guaranteed by Korvette for life or "a lifetime" or guaranteed unconditionally without limitation of time or up to 20 years.
3. Korvette's products or services are being offered for sale at special or reduced prices and that savings are thereby afforded to purchasers from respondents' regular selling prices.
4. Purchasers of products or services offered by Korvette would receive certain named or described services or products of a specific brand, type, style or model, or quality.
5. Korvette maintains a responsive customer relations department to which purchasers of respondents' products and services may refer complaints and/or requests for contract adjustments or replacement of faulty products or services.
6. Purchasers dealing with Korvette know exactly what they are going to pay before signing because Korvette submits detailed and complete pre-contract estimates with the result that there are no hidden costs or unknown expenses to worry about.
7. Korvette performs the entire job.
8. Korvette's home improvement service is fast, and certain services will be performed immediately, or within a time certain.
9. A purchaser dealing with Korvette can be sure of carefully inspected quality workmanship.
10. Korvette interior and exterior railings are permanently installed by Korvette or installed without screws or bolts or embedded in concrete.
11. Korvette's home improvement service includes permanent waterproofing of leaky basements or waterproofing of basements without digging, or without damage to lawns, driveways or shrubs.
12. Complete termite control treatment is included in the basement waterproofing service and complete waterproofing treatment is included in the termite control service.
13. Korvette offers a confidential home termite inspection.
14. The homes of prospective purchasers of termite control services are in immediate danger of serious termite damage.

15. Korvette has evidence in its possession adequate to support its claim that seven out of ten homes in the locality of a prospective purchaser of termite control services have termites or probably have termites, or that the United States Government has warned about winter termites or that no home is safe from such termites.

16. Damp or leaky basements must be waterproofed before a home can be effectively protected against termites.

17. The purchaser of a Korvette termite control service receives the benefit of modern scientific methods backed by the finest technical staff.

18. The homes of prospective purchasers of termite or basement waterproofing control are infested with termites or are in danger of termite infestation, as determined by scientific tests or examinations.

19. Costly, prolonged or elaborate procedures involving very expensive equipment or several workmen are employed to waterproof a customer's basement or to perform termite control service and thus a heavy investment by the customer is justified.

PAR. 5. In truth and in fact:

1. Korvette agents, employees or salesmen have, in many instances, acted in an unreliable and undependable manner, and have demonstrated indifference and unconcern regarding customer product and service problems.

2. Throughout the period during which the afore-mentioned representations concerning guarantees were made, Korvette has offered only a one year, conditional warranty on home improvement products or services, has refused to honor oral representations of warranty covering a longer period of time and has refused to honor even its one year, conditional warranty. Further, representations of guarantee have been made without setting forth the extent and nature of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder.

3. Korvette's products are often not being offered for sale at special or reduced prices and savings are not thereby afforded purchasers because of reductions from Korvette's regular selling prices. In fact, Korvette does not have regular selling prices for many products and services, but to the contrary, the prices at which Korvette products and installations are sold often vary from customer to customer, depending on the resistance of the prospective purchaser.

4. Purchasers often did not receive the products or services bargained for but received products or services of a different brand, type, style, model or quality.

5. Korvette does not maintain a responsive customer relations de-

partment to which purchasers of respondents' products or services may refer complaints and/or requests for contract adjustments or replacement of faulty products or services.

6. Agents, employees or representatives of Korvette have frequently failed to submit detailed or complete estimates to purchasers, before contract, of the cost, method, nature, quality, or quantity of the products or services to be sold, and have refused to perform agreed-upon work without additional payments not included in contracts or in pre-contract estimates.

7. A substantial proportion of the services advertised are not performed by people supervised or controlled by Korvette.

8. Services offered by Korvette had been marked by delay and have not been fast as represented. Further, in many instances, services have not been performed immediately or within a time certain, as promised.

9. Services offered by Korvette have frequently been performed in a manner indicating lack of skill or training, incompetence or indifference, and have often been of poor quality.

10. Interior or exterior railings offered by Korvette are often temporarily installed, or fastened with screws or bolts, or not embedded in concrete.

11. Waterproofing services offered by Korvette often have not been permanent, and have resulted in damage to lawns, shrubs or driveways.

12. Complete termite control treatment is often not provided with the Korvette basement waterproofing service, or complete waterproofing treatment with the Korvette termite control service.

13. The results of Korvette termite inspections have been published among neighbors of persons whose homes had been inspected.

14. The majority of homes, even those infested with termites, are in no immediate danger of serious termite damage.

15. Korvette does not have evidence in its possession adequate to support its claim that seven out of ten homes in the locality of each prospective purchaser of termite control services have or probably have termites, or to support its claim that the United States Government has warned about winter termites or that no home is safe from such termites.

16. Homes with damp or leaky basements can be effectively protected against termites without the performance of waterproofing treatment.

17. The termite control methods offered by Korvette often were not effective and were often performed by poorly prepared or poorly equipped workmen, or recommended by ill-trained or uninformed salesmen.

18. Korvette salesmen reported actual or probable termite infestations to home owners upon the basis of unscientific tests or examinations.

19. Korvette basement waterproofing and termite control services were often performed hastily with simple and sometimes poorly maintained equipment and often by just two men.

Such statements, representations, acts and practices were and are therefore, unfair and false, misleading and deceptive.

PAR. 6. In the further course and conduct of their business and in furtherance of a sales program for inducing the purchase of their home improvement products and services, respondents and their salesmen, representatives, licensees, franchisees, or contractors have engaged in the following false, misleading and deceptive acts and practices:

1. Respondents and their salesmen or representatives have obtained purchasers' signatures on blank completion certificates and other instruments by making false and misleading representations and deceptive statements, including false and deceptive representations with respect to the nature or effect of such documents.

2. In a substantial number of instances, and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties may claim to be holders in-due-course and consequently may have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform, or for certain other unfair, false, misleading or deceptive acts and practices. Therefore, the acts and practices as set forth in Paragraph Six hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of home improvements, products and services of the same general kind and nature as those sold by respondents.

PAR. 8. The use by the respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Arlen Realty and Development Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 888 Seventh Avenue, New York, N.Y.

E.J. Korvette, Inc., is an operating division of respondent Arlen Realty & Development Corporation with its main office and principal place of business located at 450 West 33rd Street, New York, N.Y.

Mannix Industries, Inc., is a corporation doing business as the E.J. Korvette Home Improvement Department, with its main office and principal place of business located at Westbury Avenue and Glen Cove Road, Carle Place, L.I., N.Y.

Respondents, Mitchell Maged, Joseph G. Benjamin and Mark Mitchell,

are officers of Mannix Industries, Inc. They have formulated, directed and controlled policies, acts and practices of said corporation and their address is the same as said corporation.

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 Arlen Realty & Development Corporation, a corporation, and its officers, and E.J. Korvette, Inc., a corporation and Mannix Industries, Inc., a corporation and Joseph G. Benjamin, Mark Mitchell, and Mitchell Maged, individually and as officers or directors of said corporation, and respondents' agents, representatives, employees, successors and assigns directly or through any corporation, subsidiary, division or other device, in connection with the advertisement, offering for sale, sale or distribution of home improvement products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made, directly or by implication, in order to obtain leads or prospects for the sale of, or to induce purchases of goods or services.

2. Employing any claim or representation, directly or indirectly, to obtain leads for or to induce sales of goods or services without having in their possession evidence adequate to support a reasonable basis for such claim or representation.

3. Failing to disclose fully, both orally and in writing, prior to the execution of any contracts or retail installment applications, the nature and description of the work, services and products, including brand names and model numbers where applicable, to be provided and the total price thereof.

4. Failing to perform all contracts relating to home improvement products and services; or failing to undertake the delivery or performance of all home improvement products and services upon the terms and conditions and at the prices agreed upon.

5. Representing, directly or by implication, that any of respondents' products or services are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondents promptly and

fully perform all of their obligations under the terms of each such guarantee.

6. Representing, directly or by implication, that any price for respondents' products or services is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent, regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

7. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in this order are based, and (b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in this order can be determined.

8. Representing, directly or indirectly, that purchasers of products or services will receive certain brand name products, or products or services of a certain type, quality, style or model unless (i) such are available for sale and sold or delivered if ordered or (ii) such were available for sale at the time the customer's order was taken; or misrepresenting in any manner the nature, scope or effectiveness of such products or services.

9. Providing home improvement products or services while failing to (a) maintain a customer relations department for the full and expeditious serving of customer inquiries and complaints and requests for contract adjustments or replacement of faulty products or services, to which all purchasers of home improvement products and services are directed to submit inquiries and complaints with respect thereto, which department shall be supervised and staffed by persons other than those responsible for providing the products and services and (b) indicate prominently on all contracts for products or services the fact that all requests and inquiries should be directed to the customer relations department referred to in subparagraph (a) above and the telephone number and mailing address thereof.

10. Further, directly or indirectly, engaging in the business of providing termite control or waterproofing services from the date of this order without the written approval of the Federal Trade Commission. For purposes of this paragraph, respondents shall not be deemed to be engaged in providing termite control or waterproofing service in connection with the providing of goods or ser-

vices to any customer with whom a contract therefor was made before the date of this order.

11. Inducing or causing purchasers or prospective purchasers of products or services to sign blank or partially filled-in completion certificates or other legal instruments or documents; or misrepresenting, in any manner, the true nature or effect of such documents.

12. Assigning, selling or otherwise transferring notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other document evidencing the indebtedness.

13. Failing to include the following statement clearly and conspicuously on the face of any note, contract or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

14. Acting in a manner which does not accord with the requirements of the Trade Regulation Rule (a copy of which is attached hereto as Exhibit A) set forth in 16 C.F.R. §429; 37 Federal Register 22934, and any amendments thereto; it being expressly agreed that the requirements of that rule shall apply notwithstanding the repeal or invalidity thereof, and that respondents accept the application of the provisions set forth in that rule to all sales subject to this order, including those which do not fall within the rule's definition of door-to-door sales.

It is further ordered, That respondents deliver by registered mail a copy of this order to each of their operating divisions and departments and to each contractor, subcontractor, agent, representative, licensee, franchisee, and employee presently or in the future engaged in the consummation of any extension of consumer credit or engaged in the offering for sale or sale of any product or service, or in any aspect of the 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 respondents institute a program of continuing surveillance adequate to reveal whether the business operations of each of the aforesaid persons and firms conform to requirements of this order; give prompt warning against the initiation or continuance of acts

or practices prohibited by this order to any of the aforesaid persons or firms discovered to be planning or engaging in any such prohibited act or practice; and discontinue dealing with any of such persons or firms if they, after warning, are found to have initiated or continued any act or practice prohibited by this order.

It is further ordered, That respondents or their successors or assigns notify the Commission at least 30 days prior to any proposed change in any of the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or corporate affiliates or any other change in the corporate respondents which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondents named herein 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.

EXHIBIT A.

Cooling-Off Period for Door-to-Door Sales

16 CFR 429; 37 *Federal Register* 22934; effective date to be announced.

§429.1. The Rule.

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

(a) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face

type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) Fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10-point bold face type in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

(date)

You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller, or if the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to

(name of seller)

at _____
(address of seller's place of business)

not later than midnight of _____
(date)

I hereby cancel this transaction.

(date)

(buyer's signature)

(c) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically his right to cancel the sale in accordance with the provisions of this section.

(e) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

(f) Misrepresent in any manner the buyer's right to cancel.

(g) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

NOTE 1: *Definitions.* For the purposes of this section the following definitions shall apply:

(a) *Door-to-Door Sale*—A sale, lease, or rental of consumer goods or services with a purchase price of \$25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U. S. C. 1635) or regulations issued pursuant thereto; or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

(4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or

(5) In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(6) Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

(b) *Consumer Goods or Services*—Goods or services purchased, leased, or rented primarily for personal, family, or household purposes,

including courses of instruction or training regardless of the purpose for which they are taken.

(c) *Seller*—Any person, partnership, corporation, or association engaged in the door-to-door sale of consumer goods or services.

(d) *Place of Business*—The main or permanent branch office or local address of a seller.

(e) *Purchase Price*—The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

(f) *Business Day*—Any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

NOTE 2: *Effect on State Laws and Municipal Ordinances.*

(a) The Commission is cognizant of the significant burden imposed upon door-to-door sellers by the various and often inconsistent State laws which provide the buyer with the right to cancel door-to-door sales transactions. However, it does not believe that this constitutes sufficient justification for preempting all of the provisions of such laws or of the ordinances of the political subdivisions of the various States. The Record in the proceedings supports the view that the joint and coordinated efforts of both the Commission and State and local officials are required to insure that a consumer who has purchased from a door-to-door seller something he does not want, does not need, or cannot afford, is accorded a unilateral right to rescind, without penalty, his agreement to purchase the goods or services.

(b) This section will not be construed to annul, or exempt any seller from complying with the laws of any State, or with the ordinances of political subdivisions thereof, regulating door-to-door sales, except to the extent that such laws or ordinances, if they permit door-to-door selling, are directly inconsistent with the provisions of this section. Such laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale which is substantially the same or greater than that provided in this section, or which permit the imposition of any fee or penalty on the buyer for the exercise of such right, or which do not provide for giving the buyer notice of his right to cancel the transaction in substantially the same form and manner provided for in this section, are among those which will be considered directly inconsistent.

Statement of Basis and Purpose

[Statement of basis and purpose of the door-to-door rule omitted, except for Chapter XII, dealing with effective date, which follows. The

statement covers the following topics: (1) history of the proceeding; (2) background; (3) nature of door-to-door sales; (4) problems associated with door-to-door sales, including deceptive door openers, high-pressure sales tactics, misrepresentation of price and quality, and other aspects; (5) a discussion of the proposed rule; (6) support for the rule, noting consumer, government and industry support; (7) past history of the effectiveness of cooling-off rules; (8) opposition to the rule, noting consumer and industry opposition; (9) authority of the FTC to promulgate the rule; (10) scope of the rule; (11) mechanics of the rule; and (12) effective date. The statement follows the rule in the *Federal Register*. See citation preceding the rule.—CCH.]

Chapter XII. Effective Date of the Rule

Industry representatives originally stated they would need 9 months following promulgation of the rule to change contracts, train sales personnel, adjust computers, and take the other actions necessary to implement the rule following its promulgation.²⁴⁴

In the notice which included the revised proposed rule when it was released for comment, industry members and other knowledgeable persons were specifically invited to provide information relative to the length of time industry members would need to make the necessary arrangements to comply with the rule following its promulgation in final form. Industry recommendations on this point ranged from a low of 60 days to a high of 2 years, with perhaps the majority agreeing that 6 months should be sufficient.²⁴⁵

Among the factors which it was said should be considered were time to design and print the revised contract forms and notices, distribution of these to the various offices in the field, training of sales personnel in the use of the new forms, and finally a reasonable period to permit exhaustion of the existing stocks on hand.²⁴⁶

Encyclopaedia Britannica recommended that the rule be made effective upon promulgation with the understanding that companies who are unable to comply with its provisions be granted a 6- to 9-month grace period.²⁴⁷

The view of the Commission which is shared by at least one consumer

²⁴⁴ Tr. 881, R. 794.

²⁴⁵ Airline Schools Pacific of Van Nuys (R. 2182); National Pest Control Association, Inc. (R. 2284); Direct Selling Association (R. 2225); Ad Hoc Committee (R. 2263); Crowell, Collier and Macmillan, Inc. (R. 2419).

²⁴⁶ "An effective date, 6 months after promulgation of the Rule, would allow sufficient time to prepare new contract forms, have them printed, and distributed to all sales representatives. It would also enable most companies effectively to reach and train all sales and administrative personnel in the mechanics of operation, as well as the imperative for compliance with the spirit as well as the letter of the Rule." (Stephen Sheridan, vice-president, Electrolux. (R. 2180).

²⁴⁷ R. 2264

Decision and Order

84 F.T.C.

group²⁴⁸ is that the rule should become effective as soon as possible but that the practical obstacles to prompt action on the part of most industry members should be recognized by allowing them a maximum of 6 months to comply with the rule.

The Commission has carefully considered whether it would be best to issue the rule in the form of a policy statement or guide, or to issue it in its present form and to defer its effective date. The affirmative requirements of this rule do not lend themselves to either a guide or policy statement format. Moreover publication of either a guide or a policy statement would not reduce the enforcement problems or enhance the possibility of industry compliance in the interim period. Accordingly, the Commission has decided to promulgate the rule.

In view of pending litigation regarding the Commission's rulemaking authority, the Commission has decided to defer the announcement of an effective date for this rule. It should be noted, however, that this rule constitutes an expression of the Commission's view of what should be the application of section 5 of the Federal Trade Commission Act to door-to-door transactions. The Commission will encourage all States and localities with cooling-off legislation to begin immediately to remove inconsistencies between their cooling-off requirements and the provisions of this rule, in order to remove the burden of compliance with differing requirements at the State and Federal level.

²⁴⁸ Virginia Citizens Consumer Council, Inc. (R. 2406).

IN THE MATTER OF

CAMPERTOWN, INC., ET AL.

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

Docket C-2529. Complaint, Aug. 20, 1974—Decision, Aug. 20, 1974

Consent order requiring a Hayward, Calif., new and used camper and motor home dealer, 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