

IN THE MATTER OF

McGEE TRADERS INC. t/a PINON MERCANTILE TRADING
COMPANY, ETC., ET AL.

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

Docket C-2569. Complaint, Oct. 8, 1974—Decision, Oct. 8, 1974

Consent order requiring a Keams Canyon, Ariz., retailer of general merchandise and pawnbroker, among other things to cease offering unfair inducements to purchase or deal; delaying actions owed; securing signatures in a wrongful manner; and failing, in connection with the extension of consumer credit, to disclose to consumers all information as required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Paul R. Roark.*

For the respondents: *Raleigh W. Johnson, Arline & Johnson, Holbrook, Ariz.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that McGee Traders Incorporated, a corporation doing business as Pinon Mercantile Trading Company, Keams Canyon Trading Company and Polacca Trading Post, and Clifton Ferron McGee, William Bruce McGee, Clifton Ferron McGee, Jr., Johnny Lynn Kay and Leland Noel, individually and as officers of said corporation, hereinafter sometimes referred

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to as respondents, have violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent McGee Traders, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona and is licensed to conduct business on the Navajo and Hopi Reservations by the Bureau of Indian Affairs, with its principal office and place of business located at Keams Canyon, Ariz.

Respondents Clifton Ferron McGee, William Bruce McGee, Clifton Ferron McGee, Jr., Johnny Lynn Kay and Leland Noel, are officers of the corporate respondent. They formulate, direct and control the 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 buying, selling, ordering and exchanging and dealing generally in all classes of goods, wares, merchandise and articles of trade with consumers and in pawn broking and money lending.

PAR. 3. In the course and conduct of their businesses respondents have operated several trading posts on the Navajo and Hopi Reservations and maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

COUNT I

PAR. 4. In the further course and conduct of their businesses respondents have engaged, and are now engaging in numerous acts and practices. Typical of these acts and practices, but not all inclusive thereof, are the following:

1. In many instances respondents have misled consumers as to the actual purchase price of certain merchandise by failing to plainly and conspicuously mark or indicate the price at which all their merchandise is offered for sale.

2. In many instances respondents have tied consumers to their places of business by refusing to cash government issued or other checks in lawful United States currency. In lieu of said currency respondents give trade slips, due bills or other form of purchase orders indicating a credit owed to a consumer which can be redeemed only at respondents' places of business.

3. In many instances respondents have tied consumers to their places

of business by giving trade slips, due bills or other form of purchase orders indicating a credit owed to a consumer which can be redeemed only at respondents' places of business in return for rugs, blankets, jewelry or other forms of handicraft or livestock purchased from consumers by respondents.

4. In many instances respondents have placed the burden of proof of a credit owed to a consumer on the consumer by failing to record on their books, or in any other way memorialize, trade slips, due bills or other form of purchase orders indicating a credit owed to a consumer.

5. In many instances respondents have misled and deceived consumers as to the true amount owed to respondents on purchases made by consumers by failing to present, or offering to present, itemized statements of purchases.

6. In many instances respondents have offered to present or have presented itemized statements of purchases only to selected consumers, such as Bureau of Indian Affairs employees.

7. In many instances respondents require, as a condition of doing business, that all credit or charge accounts held by consumers be paid in full prior to allowing the redemption of any item held in pawn by the respondents, regardless of the fact that credit or charge accounts are in no way connected to or dependent on pawn transactions; nor is the pawn held by respondents held as security for said credit or charge accounts.

8. In many instances respondents have refused to make restitution to consumers for the value of items pawned by consumers with respondents at the time the consumer wishes to effect redemption and the respondents are unable or unwilling to present the pledged item.

9. In many instances respondents have induced consumers by deception to sign change of address cards or forms, or in other ways effect the delivery of government issued or other checks to the respondents' places of business and thus unfairly bind the consumer to the respondents' places of business.

PAR. 5. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals, in the furnishing of services of the same general kind and nature as those furnished by respondents.

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

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COUNT II

PAR. 7. The allegations of Paragraphs One through Three hereof are incorporated by reference herein as if set forth verbatim.

PAR. 8. In the ordinary course and conduct of the business as aforesaid respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 9. Subsequent to July 1969, in the ordinary course and conduct of their business as aforesaid, and in connection with credit sales, as "credit sale" is defined in Regulation Z, respondents:

1. Fail to determine the finance charge as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, as prescribed by Section 226.4(a) of Regulation Z.

2. Fail to make the disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

3. Fail to print the terms "annual percentage rate" and "finance charge" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

4. Fail to make the required disclosures together in any one of the following two ways, as prescribed by Section 226.8(a) of Regulation Z:

- (a) On the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature;

- (b) On one side of a separate statement which identifies the transaction.

5. Fail to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.

6. Fail to disclose the cash price of the property purchased, using the term "cash price," as prescribed by Section 226.8(c)(1) of Regulation Z.

7. Fail to disclose the amount financed, using the term "amount financed" as prescribed by Section 226.8(c)(7) of Regulation Z.

PAR. 10. Subsequent to July 1, 1969, in the ordinary course and conduct of their business as aforesaid, respondents arrange for the extension of loans which are not a credit sale. In these transactions, respondents:

1. Fail to make the disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.
2. Fail to print the terms "annual percentage rate" and "finance charge" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.
3. Fail to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.
4. Fail to disclose 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," as prescribed by Section 226.8(b)(3) of Regulation Z.
5. Fail to disclose a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates, as prescribed by Section 226.8(b)(5) of Regulation Z.
6. Fail to disclose identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as prescribed by Section 226.8(b)(7) of Regulation Z.
7. Fail to disclose the amount of credit which will be paid to the customer including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed," as prescribed by Section 226.8(d)(1) of Regulation Z.
8. Fail to disclose the total amount of the finance charge, with description of each amount included, using the term "finance charge," as prescribed by Section 226.8(d)(3) of Regulation Z.

PAR. 11. By the aforesaid failure to make disclosures, respondents have failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with Regulation Z constitutes violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and 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 McGee Traders Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business located at Keams Canyon, Ariz.

Respondents Clifton Ferron McGee, William Bruce McGee, Clifton Ferron McGee, Jr., Johnny Lynn Kay, and Leland Noel are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of 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

I

It is ordered, That respondents McGee Traders Inc., a corporation doing business as Pinon Mercantile Trading Company, Keams Canyon Trading Company and Polacca Trading Post, its successors and assigns, and its officers, and Clifton Ferron McGee, William Bruce McGee,

Clifton Ferron McGee, Jr., Johnny Lynn Kay and Leland Noel, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offer for sale, sale, or purchase of all classes of goods, wares, merchandise and articles of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to plainly and conspicuously mark or indicate the price at which all merchandise is offered for sale.
2. Cashing government issued or other checks in other than lawful United States currency unless the consumer presenting the check has expressly indicated his desire to receive trade slips, due bills or other form of purchase orders indicating a credit owed to the consumer, and unless the respondents have advised the consumer orally in the language in which the consumer is most fluent, and in writing, of his right to receive the full value of the check tendered in lawful United States currency.
3. Purchasing rugs, blankets, jewelry or other forms of handicraft or livestock from consumers for other than lawful United States currency unless the consumer offering to sell the goods to the respondents has expressly indicated his desire to receive trade slips, due bills or other form of purchase orders indicating a credit owed to the consumer, in partial or full payment, and unless the respondents have advised the consumer orally in the language in which the consumer is most fluent, and in writing, of his right to receive the purchase price in lawful United States currency.
4. Issuing trade slips, due bills or other form of purchase orders indicating a credit owed to a consumer without recording, in a permanent fashion in the books of the respondents at the particular place of business where the trade slips, due bills or other form of purchase orders were issued, in such a manner as to indicate the date of issuance, the name and address of the consumer to whom issued, the amount of the credit, and the reason for the issuance of the credit.
5. Failing to present each consumer with an itemized statement showing the price of each item purchased, the correct total of all purchases made and the date of the transaction.
6. Requiring consumers to pay in full any credit account or other indebtedness to the respondent at the time the consumer attempts to effect redemption of a pawn item held by respondent.
7. Failing to make immediate restitution for the market value of a pawned item held as security by the respondents in the event the

respondents are unable to locate the deliver said item to the pledgor at the time the pledgor wishes to effect redemption.

8. Inducing consumers by deception or any other means to sign change of address cards for the receipt of government or other checks; or in any other way to interfere with delivery of said checks from the method desired by the consumer.

It is further ordered, That respondents, their successors and assigns:

1. Maintain adequate records for a period of two years from the date of each transaction:

(a) evidencing a consumer's desire to receive trade slips, due bills or other form of purchase orders indicating a credit owed to a consumer in place of lawful United States currency in return for government issued or other checks;

(b) evidencing a consumer's desire to receive trade slips, due bills or other form of purchase orders indicating a credit owed to a consumer in return for any product or goods sold to the respondents; and

(c) which disclose the issuance of trade slips, due bills or other form of purchase orders indicating a credit owed to a consumer for purchases made from a consumer or checks cashed for a consumer.

2. Permit the inspection and copying of such records by Federal Trade Commission representatives.

II

It is further ordered, That respondents McGee Traders Inc., a corporation doing business as Pinon Mercantile Trading Company, Keams Canyon Trading Company, and Polacca Trading Post, its successors and assigns, and its officers, and Clifton Ferron McGee, William Bruce McGee, Clifton Ferron McGee, Jr., Johnny Lynn Kay, and Leland Noel, individually and as officers of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or other device in connection with the extension of "consumer credit" or arranging for "consumer credit" as defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. 1601 *et seq.*) do forthwith cease and desist from:

1. Failing to determine the finance charge as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, as prescribed by Section 226.4(a) of Regulation Z.

2. Failing to make disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

3. Failing to print the terms "annual percentage rate" and "finance charge" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

4. Failing to make the required disclosures in either of the two ways prescribed by Section 226.8(a) of Regulation Z.

5. Failing to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.

6. Failing to disclose the cash price of the property or service purchased, using the term "cash price," as prescribed by Section 226.8(c)(1) of Regulation Z.

7. Failing to disclose the amount financed, using the term "amount financed," as prescribed by Section 226.8(c)(7) of Regulation Z.

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

9. Failing to disclose a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates, as prescribed by Section 226.8(b)(5) of Regulation Z.

10. Failing to disclose identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as prescribed by Section 226.8(b)(7) of Regulation Z.

11. Failing to disclose the amount of credit which will be paid to the customer including all charges, individually itemized which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed," as prescribed by Section 226.8(d)(1) of Regulation Z.

12. Failing to disclose the total amount of the finance charge, with description of each amount included, using the term "finance charge," as prescribed by Section 226.8(d)(3) of Regulation Z.

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13. Failing in any consumer credit transaction to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form, and amount required by Sections 226.6, 226.7, and 226.8 of Regulation Z.

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 any new business or employment which is located within the boundaries of the Navajo or Hopi Reservations or which involves the extension of or arranging for the extension of "consumer credit" as defined in Regulation Z. 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 respondent corporation, its successors and assigns, shall forthwith distribute a copy of this order to each of its operating divisions.

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 this order.

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.

IN THE MATTER OF

TURKEY MOUNTAIN ESTATES, INC., ET AL.

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

Docket C-2570. Complaint, Oct. 8, 1974—Decision, Oct. 8, 1974

Consent order requiring four affiliated Shell Knob, Mo., developers of recreational or retirement home sites, among other things to cease using bait advertising and other deceptive selling practices, and violating the Truth in Lending Act by failing to