

Complaint

84 F.T.C.

IN THE MATTER OF

4 WHEEL COUNTRY, INC., ET AL.

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

Docket C-2587. Complaint, Oct. 23, 1974 — Decision, Oct. 23, 1974

Consent order requiring a Yakima, Wash., retailer of new and used mobile homes, travel trailers, campers and other motor vehicles, among other things to cease violating the Truth in Lending Act by failing to disclose to customers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act. Further, respondent must cease representing that credit insurance is mandatory in order to obtain credit and filling out contracts in such a manner as to obtain customer's signature requesting said insurance without full disclosure of what the customer is signing.

Appearances

For the Commission: *Dean A. Fournier.*

For the respondents: *Douglas D. Peters, Felthous, Peters & Schmalz,*
Selah, Wash.

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 4 Wheel Country, Inc., a corporation, and Harvey G. Ferguson, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent 4 Wheel Country, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 2401 South First Street, Yakima, Wash.

Respondent Harvey G. Ferguson is an individual and an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporation, including the acts and practices hereinafter set forth. His 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 offering for sale, and retail sale of new and used mobile homes, travel trailers, campers and other motor vehicles to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute a binding order, hereinafter referred to as the "Order Contract," and subsequently to execute a conditional sales contract, hereinafter referred to as the "Sales Contract." Respondents do not provide these customers with a copy of the Order Contract, nor with any other consumer credit cost disclosures except those set out on the Sales Contract.

PAR. 5. By and through their use of the order contract, respondents:

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

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

3. Fail to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.

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

5. Fail to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

6. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Fail to disclose the amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

8. Fail to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

9. Fail to describe or identify the type of security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

10. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

11. Fail to furnish to the customer, before the transaction is consummated, a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

PAR. 6. By and through their use of the aforesaid Sales Contract, respondents in some instances have failed to include in the finance charge certain premiums or other charges for Vendor's Single Interest insurance protecting the creditor against the customer's default or other credit loss, when subrogation rights against the customer have not been waived by the insurer in accordance with Section 226.4(a)(7) of Regulation Z.

PAR. 7. In a substantial number of instances subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, respondents have charged and are now charging customers for credit life, accident, health and/or disability insurance written in connection with their credit sales.

Typical and illustrative, but not all inclusive, of respondents' means and methods in bringing about such insurance charges on their customers, are the following:

1. During the initial discussion of credit terms with the customer, respondents quote a monthly repayment figure which includes charges for credit life, accident, health and/or disability insurance.

2. Respondents in some instances advise the prospective customer that credit life, accident, health and/or disability insurance is required as a condition of the extension of credit.

3. Prior to presenting the Sales Contract to the customer, respondents automatically include in the "amount financed," as typewritten on such contract, a charge or premium for credit life, accident, health and/or disability insurance; and, unless the customer specifically objects, such insurance coverage becomes part of the credit transaction.

4. Without the permission or authority of the customer, respondents place the date and an "X" on the line for the customer's signature immediately beneath the statement on the Sales Contract, "I desire to

purchase through seller the type of insurance for which the premium costs have been set forth above."

5. The Sales Contract, filled out as indicated above, is presented to the customer for two signatures, with oral instructions to sign next to the "X's" placed thereon, but without explaining to the customer that one of the signatures is requested in order to exercise an option for insurance coverage not required of him.

PAR. 8. By and through the means and methods described in Paragraph Seven, and others of similar import and consequence, but not specifically set forth herein, respondents obtain and have obtained customers' signatures on insurance authorizations through practices which operate, directly or indirectly, to defeat the elective language of such authorization by obscuring from customers' knowledge about the option, by representing to customers that both signatures are necessary to consummate the extension of credit, and by discouraging the declination of the coverage when it is questioned. These practices have the effect of preventing substantial numbers of customers from exercising an independent, voluntary choice of whether or not to obtain credit life, accident, health and/or disability insurance.

Therefore, respondents, in a substantial number of instances, have induced their customers to incur charges for credit life, accident, health and/or disability insurance without said customers making a knowing, affirmative election to have such insurance and, thereby, respondents have effectively eliminated the option and have not obtained from customers a "specific dated and separately signed affirmative written indication of [the customer's] desire" for such insurance coverage as prescribed by Section 226.4(a)(5) of Regulation Z, in spite of the existence of language to the contrary in the Sales Contract.

PAR. 9. By and through the acts and practices described in Paragraphs Seven and Eight hereof, respondents have failed to include in the finance charge the charges or premiums for credit life, accident, health and/or disability insurance when a specific dated and separately signed affirmative written indication of desire for such insurance has not been obtained as prescribed by Section 226.4(a)(5)(ii) of Regulation Z, and/or when respondents have required such insurance within the meaning of Section 226.4(a)(5)(i) of Regulation Z. Respondents have thereby:

1. Failed to determine and disclose accurately the finance charge as required by Sections 226.4 and 226.8(c)(8)(i) of Regulation Z; and
2. Failed to compute and disclose the annual percentage rate accurately to the nearest quarter of one percent as required by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

PAR. 10. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent 4 Wheel Country, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 2401 South First Street, Yakima, Wash.

Respondent Harvey G. Ferguson is an individual and an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporation, and his address is the same as that of the 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 respondents 4 Wheel Country, Inc., a corporation, and its officers, and Harvey G. Ferguson, individually and as an officer of said corporation, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit 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 to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

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

3. Failing to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.

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

5. Failing to compute and disclose the annual percentage rate accurately to the nearest quarter of one percent, as required by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

6. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Failing to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

8. Failing to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

9. Failing to describe or identify the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

10. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

11. Failing to furnish to the customer, before the transaction is consummated, a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

12. Failing to itemize and include in the finance charge, for purposes of disclosure of the finance charge and computation of the annual percentage rate, any and all charges or premiums for Vendor's Single Interest insurance unless all subrogation rights against the customer have been effectively waived by the insurer in accordance with Section 226.4(a)(7) of Regulation Z.

13. Failing to itemize and include in the finance charge, for purposes of disclosure of the finance charge and computation of the annual percentage rate, any and all charges or premiums for credit life, accident, health or disability insurance, unless respondents can demonstrate that they have:

(a) Refrained from including the cost of such insurance in the "amount financed" and in all other amounts affected by the election or declination of insurance, as such amounts are set forth on the sales contract and any document containing credit cost disclosures, until respondents have completed the actions prescribed by Subparagraphs (b) and (c), below, and have secured the customer's signature on the statement there provided.

(b) Quoted to the customer, whether in person, by telephone, or otherwise, installment payment amounts exclusive of the charges or premiums for such insurance.

(c) Read and presented to the customer the following statement, printed clearly and conspicuously in 12-point or larger type on one side of a single sheet of paper:

"Credit life, accident, health and/or disability insurance are entirely optional. You are NOT REQUIRED to purchase such personal insurance in order to obtain credit through our company, and your voluntary decision in this regard will not affect the granting of credit to you.

Your cost for such insurance, if you choose to purchase it, will be:

[itemize, as applicable]

I have read this statement to the customer.

(Sales Representative)

(Date and Time)

I ACKNOWLEDGE THAT THIS STATEMENT WAS READ TO ME at the date and time indicated. In light of the costs shown above, my voluntary choice is to:

☐
☐
☐

Not purchase any such personal insurance.

Purchase credit life insurance.

Purchase [specify type(s)] insurance.

(Signature of Consumer)

(Date and Time)

14. Making any marks or otherwise instructing a consumer as to signing or dating any document respecting an election of optional insurance, prior to a clear, voluntary exercise of the consumer's free and independent choice of such insurance.

15. Misrepresenting, orally or otherwise, directly or by implication, that credit life, accident, health and/or disability insurance coverage is required as a condition of obtaining credit from or through respondents.

16. Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of optional or voluntary credit life, accident, health and/or disability insurance.

17. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, at the time and in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation or placing of advertising, and that respondents secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents prominently display the following notice in two or more locations, including that portion of respondents' business premises most frequented by prospective customers,

and including also each area where customers normally sign consumer credit documents or other binding instruments; *Provided, however,* That such notices shall be considered prominently displayed only if so positioned as to be easily observed and read by the intended individuals:

NOTICE TO CREDIT CUSTOMERS

IF THE DEALER IS FINANCING OR ARRANGING THE FINANCING OF YOUR PURCHASE, YOU ARE ENTITLED TO CONSUMER CREDIT COST DISCLOSURES AS REQUIRED BY THE FEDERAL TRUTH IN LENDING ACT. THESE MUST BE PROVIDED TO YOU IN WRITING BEFORE YOU ARE ASKED TO SIGN ANY DOCUMENT OR OTHER PAPERS WHICH WOULD BIND YOU TO SUCH A PURCHASE.

This notice required by order of the Federal Trade Commission.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include the respondent's 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.

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

H. ALLEN McKINNEY TRADING AS S & H MOBILE HOMES,
ETC.

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

Docket C-2588. Complaint, Oct. 23, 1974 — Decision, Oct. 23, 1974

Consent order requiring a Missoula, Mont., retailer of new and used mobile homes and travel trailers 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: *Dean A. Fournier.*

For the respondents: *Pro se.*

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 H. Allen McKinney, an individual doing business as S & H Mobile Homes and as S & H Mobile Homes of Missoula, hereinafter referred to as respondent, has violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent H. Allen McKinney is an individual trading and doing business as S & H Mobile Homes and as S & H Mobile Homes of Missoula. His principal office and place of business is located at Route 2, Missoula, Mont.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, and sale of new and used mobile homes and travel trailers to the public in metropolitan Missoula, Helena and Bozeman, Mont.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly engages in credit sales and arranges for the extension of consumer credit, as "credit sale," "arrange for the extension of credit," and "consumer credit" are defined in Section 226.2 of