

Complaint

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IN THE MATTER OF

KIRBY OF NORTH PROVIDENCE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket C-2590. Complaint, Nov. 1, 1974 — Decision, Nov. 1, 1974*

Consent order requiring a North Providence, R.I., retailer of vacuum cleaners and related products, devices, parts and attachments, among other things to cease using misrepresentations to sell its products and violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of credit, such information as required by Regulation Z of said Act.

Appearances

For the Commission: *Lois M. Woocher.*

For the respondents: *William C. Hillman, Strauss, Factor, Chernick & Hillman*, Providence, R.I.

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 Kirby of North Providence, Inc., a corporation, and Emanuel Toro, individually and as an officer of said corporation, hereinafter sometimes referred 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 Kirby of North Providence, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 1883 Mineral Spring Avenue, North Providence, R.I.

Respondent Emanuel Toro is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of vacuum cleaners and related products, devices, parts and attachments to the general public.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said products when sold, to be transported from their place of business in the State of Rhode Island and Providence Plantations to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their products, respondents have made and are now making, numerous statements and representations through oral statements made by their salesmen and representatives with respect to the nature of their offer, their prices, time limitations, and performance characteristics of their products.

Typical and illustrative of said statements and representations but not all inclusive thereof, are the following:

I'll give you a special deal and reduce the price to \$350.00
I'm in a contest to win a car and because I need to make a sale, I'll give you a special low price on the Kirby
The price of the Kirby will never be this low again
This special offer is good only tonight
If you don't purchase the vacuum tonight, the price will be higher when another Kirby salesman comes
I'll take \$40.00 off the price if you will fill out 10 referral letters like the one you received.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not expressly set out herein, separately and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. Respondents' vacuum cleaners and related products are being offered for sale at special or reduced prices and that purchasers are

thereby being offered a savings from respondents' regular selling prices.

2. The said offer of respondents' products at reduced prices must be accepted at once or within a limited time.

3. Purchasers of respondents' products are being granted specific dollar reductions from respondents' regular selling prices in consideration of their furnishing the names of other persons as prospective purchasers of respondents' products.

PAR. 6. In truth and in fact:

1. Respondents' products are not being offered for sale at special or reduced prices, and savings are not granted respondents' customers because of a reduction from respondents' regular selling prices. In fact, respondents do not have a regular selling price but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

2. Respondents' offer need not be accepted at once or within a limited time. Said merchandise is offered regularly at the represented prices and on the terms and conditions therein stated.

3. Respondents do not reduce the prices of their products from the regular selling prices of such products in consideration of the purchasers thereof furnishing the names of other persons as prospective purchasers of respondents' products. In fact, respondents do not have a regular selling price for their products and respondents thereby utilize this practice to obtain leads for future sales and to mislead purchasers into the belief that they are receiving a reduced price for the referral of names of prospective customers to respondents.

Therefore, the statements and representations as set forth in Paragraph Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business, respondents have utilized various promotional devices for the purpose of obtaining leads to persons who will allow respondents' sales representatives into said persons' homes for the purpose of inducing said persons to purchase respondents' products. Among the inducements used to achieve the above purposes is the proffering of an item of "free" merchandise via telephone contact with such prospective customers who thereupon consent to allow respondents' sales representatives to visit their homes in order to deliver the gift.

Such persons who consent to allow the respondents' sales representatives to visit their homes in order to receive the "free" merchandise are not informed during the course of the telephonic contact of the material fact that as a result of receiving the gift, such persons will be subject to

a lengthy sales presentation by Kirby of North Providence, Inc. for respondents' vacuum cleaners and related products, nor is there any disclosure of the identity of corporate respondent Kirby of North Providence, Inc.

Therefore, respondents' statements, representations, acts and practices, and the failure to disclose material facts as aforesaid were and are deceptive acts and practices.

PAR. 8. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their products, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices.

1. In a substantial number of instances and in the usual course of their business, respondents sell, transfer or assign 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, as a general rule, 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.

2. In a substantial number of instances through the use of false, misleading and deceptive statements and representations set out in Paragraphs Four and Five above, respondents have been able through high pressure sales tactics to induce customers into signing contracts with respondents on the respondents' initial personal contact with the customers.

In many cases, the contracts signed are blank or incomplete at the time of signing. In such a situation, it is highly improbable that the customer was able to make an independent decision on whether or not he should enter into the contract and, therefore, had to rely heavily on the advice and information given to him by respondents.

Therefore, the acts and practices as set forth in Paragraph Eight hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 9. 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 vacuum cleaners and related devices of the same general kind and nature as that sold by respondents.

PAR. 10. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and

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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 by reason of said erroneous and mistaken belief.

PAR. 11. 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 in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend or arrange for the extension of consumer credit, and for some time last past have regularly extended or arranged for the extension of 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. 13. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with credit sales as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused and are now causing their customers to execute retail installment contracts, hereinafter referred to as "the contract."

PAR. 14. By and through the use of the contract, respondents, in a number of instances, have failed to:

1. Disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.
2. Disclose the finance charge expressed as an annual percentage rate as required by Section 226.8(b)(2) of Regulation Z.
3. Disclose the downpayment in property made in connection with credit sales and to describe that amount as the "trade-in," as required by Section 226.8(c)(2) of Regulation Z.
4. Disclose the "deferred payment price" as the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by Section 226.8(c)(8)(ii) of Regulation Z.

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5. Make the consumer credit cost disclosures heretofore set forth in this paragraph before consummation of the transaction, and to furnish the customer with a duplicate of the instrument or a statement by which the disclosures required by Section 226.8 are made, as prescribed by Section 226.8(a) of Regulation Z.

PAR. 15. By and through the use of the contract, respondents have in various instances induced and caused their customers to affix their signatures to such contracts prior to the completion and insertion of all terms and figures relevant to such contract. In such manner the respondents have failed to provide those disclosures required by Section 226.8(a)(b)(c).

PAR. 16. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' failure to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents 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 Boston 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 the rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Kirby of North Providence, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its office and principal place of business located at 1883 Mineral Spring Avenue, North Providence, R.I.

Respondent Emanuel Toro is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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 Kirby of North Providence Inc., a corporation, its successors and assigns, and its officers, and Emanuel Toro individually and as an officer of said corporation trading under said corporation name or any trade name or names, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with advertising, offering for sale, sale and distribution of vacuum cleaners and related parts, attachments and devices or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally, visually, in writing or in any other manner, that:

(a) Any price for said products is a special or reduced price; unless such price constitutes a significant reduction from the regular selling price at which such products have been sold by respondents for a reasonably substantial period of time in the recent, regular course of their business; or misrepresenting in any manner, the savings available to purchasers.

(b) Any offer to sell said products is limited as to time or is limited or restricted in any other manner.

(c) Respondents offer reductions from the regular selling price of said products upon the occasion of the purchaser furnishing the names of other persons as prospective purchasers of such products unless the respondents clearly set forth on the contract the dollar amount of such reduction together with terminology which describes the nature of such reduction from the regular selling price and can affirmatively show that such regular selling price constitutes the price at which respondents

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have sold such products for a reasonably substantial period of time in the recent, regular course of business; or, in any manner, misrepresenting the amount of discounts, commissions, referral fees or allowances of any type receivable by the purchaser of respondents' products.

2. Failing to maintain adequate records, (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims of the type covered by Paragraph 1(a) of this order are based; and (b) from which the validity of any savings claim, including former pricing claims and similar representations of the type covered by Paragraph 1(a) of this order can be determined.

3. Failing to disclose to prospective customers, at the time of the initial contact by respondents via telephone call or any other type of contact, the fact that the individual making the call or contact is a representative of respondents, that the purpose of the call is to solicit the sale of said products and that if the prospective customer so agrees, respondents will send a salesman to the home of the prospective customer to demonstrate such products.

4. Representing to prospective customers that they will be provided with a free gift, valuable merchandise, or other consideration, at the time of the prior contact by respondents, unless respondents clearly and conspicuously disclose, orally or in writing, that such gift, merchandise or other consideration will be provided only if the prospective customers consent to allow respondents' sales representatives to visit their homes to demonstrate said products; or in any manner, misrepresenting the conditions, limitations, restrictions or requirements imposed upon the receipt of such free gifts, merchandise or other consideration.

5. Failing to inform the prospective purchaser prior to the signing of a contract wherein the respondents extend or offer to extend or arrange or offer to arrange for the extension of consumer credit that it is respondents' customary practice to sell, transfer, or assign their customers' obligations to various financial institutions, naming the specific financial institution which will receive the contract, if known by respondents, at the time of the sale.

6. Assigning, selling or otherwise transferring respondents' 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 documents evidencing the indebtedness.

1. 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.

8. Contracting for any sale arising out of a door to door solicitation which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of signing of the contract.
 9. Failing to orally disclose prior to the time of sale, and in writing conspicuously and clearly on any conditional sales contract, promissory note or other instrument executed by the buyer that the buyer may rescind or cancel the sale by written notice of cancellation to respondents' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale. Upon such cancellation the burden shall be on respondent to collect any goods left in the buyer's home and to return any payments received from him. Nothing contained in this right-to-cancel provision shall relieve buyers of the responsibility for taking reasonable care of the goods prior to, and for a reasonable period following, cancellation.
 10. Failing to provide a separate and clearly understandable form which the buyer may use as a notice of cancellation.
 11. Failing to refund immediately all monies or property to customers who have requested contract cancellation in writing within three (3) days from the execution of such contract.
 12. Negotiating any conditional sales contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day of execution by the buyer.
- Provided, however,* That nothing contained in Paragraphs 7 through 12 of this Order shall relieve respondent of any contractual obligations required by federal law or that law of the state in which the contract is negotiated. When such obligations are inconsistent, respondent may apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required.

COUNT II

It is ordered, That respondents Kirby of North Providence, Inc., a corporation, its successors and assigns, and its officers, and Emanuel

Toro, individually and as an officer of said corporation, trading under said corporate name or trading or doing business under any other name or names, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, or advertisement to aid, promote, 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 disclose the date on which the finance charge begins to accrue when that date is different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.
2. Failing to disclose the finance charge expressed as an annual percentage rate, as required by Section 226.8(b)(2) of Regulation Z.
3. Failing to disclose the downpayment in property made in connection with the credit sale, and to describe that amount as the "trade-in," as required by Section 226.8(c)(2) of Regulation Z.
4. Failing to disclose the "deferred payment price" as the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by Section 226.8(c)(8)(ii) of Regulation Z.
5. Failing to make consumer credit cost disclosures before consummation of the transaction, and to furnish the customer with a duplicate of the instrument or a statement by which the disclosures required by Section 226.8 are made, as prescribed by Section 226.8(a) of Regulation Z.
6. 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.

It is further ordered, That respondent corporation shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in (a) the offering for sale or sale of respondents' products or services or in the consummation of any extension of consumer credit or in (b) any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging the receipt of the order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence

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of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual 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 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 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

HAIR ENCORE, INC., TRADING AS HAIR ENCORE, ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT