

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

Docket C-2614. Complaint, Dec. 16, 1974—Decision, Dec. 16, 1974

Consent order requiring a Rochester, N.Y., furniture and appliance retailer, 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: *Martin Gorman.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provision 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

Brown's Quality Furniture, Inc., a corporation, and Willie C. Brown and Philip Reed individually and as officers of said corporation, hereinafter 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 Brown's Quality Furniture, Inc. 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 500 Genesee Street, Rochester, N. Y.

Respondents Willie C. Brown and Philip Reed are the president and vice president respectively, of said corporation. The said individual respondents formulate, direct and control the acts and practices of the corporate respondent, including the consumer credit policies, as well as the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been engaged in the advertising, offering for sale and sale of furniture and appliances to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit and arrange 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. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing their customers to execute retail installment contracts and security agreements, hereinafter referred to as the "Contract."

By and through the use of the contract, respondents:

1. Fail to use the term "cash price" to describe the price at which respondents offer, in the ordinary course of business, to sell for cash the property which is the subject of the credit sale, as required by Section 226.8(c)(1).

2. Fail to disclose the sum of the "cash downpayment" and "trade-in," and to describe that sum as the "total downpayment" as prescribed by Section 226.8(c)(2) of Regulation Z.

3. 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.

4. 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.

5. Fail in some instances 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.

6. Fail in some instances to disclose the amount of the finance charge, determined in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z; and in those instances where the finance charge is disclosed, fail to use the term "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

7. 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 prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

8. Fail to use the term and disclose the "annual percentage rate" accurately to the nearest quarter of one percent as required by Sections 226.5 and 226.8 of Regulation Z.

9. Fail to print the terms "finance charge" and "annual percentage rate" more conspicuously than other required terminology, as required by Section 226.6(a) 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 make 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. 5. 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 New York 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 Truth in Lending Act and the implementing regulation promulgated thereunder, and 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 Acts, 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 Brown's Quality Furniture, 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 place of business located at 500 Genesee Street, Rochester, N. Y.

Respondents Willie C. Brown and Philip Reed are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their 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 Brown's Quality Furniture, Inc., a corporation, its successors and assigns, and its officers, and Willie C. Brown and Philip Reed, 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 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 disclose the "cash price" in the manner and form required by Section 226.8(c)(1) of Regulation Z.

2. Failing to disclose the "cash downpayment" and "trade-in," and to describe the sum of the cash downpayment and trade-in as the "total downpayment" as prescribed by Section 226.8(c)(2) of Regulation Z.

3. 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.

4. 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.

5. 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.

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

7. 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 prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

8. Failing to use the term and disclose the "annual percentage rate" accurately to the nearest quarter of one percent as required by Sections 226.5 and 226.8 of Regulation Z.

9. Failing to print the terms "finance charge" and "annual percentage rate" more conspicuously than other required terminology, as required by Section 226.6(a) 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 make consumer credit cost disclosures before consummation of the transaction, and to furnish the customer with the 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.

12. 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 prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

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 consumer credit transaction or in any aspect of preparation, creation, or placing of advertising, and to all personnel of respondents responsible for the sale or offering for sale of all products covered by this order, and that respondents secure a signed statement acknowledging receipt of said 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 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 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 respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

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Order

IN THE MATTER OF

READER'S DIGEST ASSOCIATION, INC.

Docket C-2075. Interlocutory order, Dec. 17, 1974

Order denying respondent's request to reopen proceeding for modification of order provision prohibiting respondent from "using or distributing simulated checks, currency, 'new car certificates'; or using or distributing any confusingly simulated item of value."

Appearances

For the Commission: *J. Thomas Rosch.*

For the respondents: *William Barnabas McHenry* for Reader's Digest Association, Inc.

ORDER DENYING REQUEST TO REOPEN PROCEEDING

This matter is before the Commission on Reader's Digest Association's petition, dated Nov. 2, 1974, to reopen the proceeding in the above-captioned matter for modification of the order provision that prohibits respondent from "using or distributing simulated checks, currency, 'new car certificates'; or using or distributing any confusingly simulated item of value."

Reader's Digest requests that the Commission delete the aforesaid provision and substitute therefor the following: "representing that promotional materials are negotiable instruments which can be cashed, redeemed, or exchanged for money."*

Respondent's principal contention in support of this request is that the language: "confusingly simulated items of value," is so broad that it does not permit the application of reasonable standards to be consistently applied in determining whether respondent's promotional material violates the order.

Complaint counsel, in their answer received Nov. 26, 1974, object to the modification, pointing out that the "myriad of forms and materials submitted by respondent in connection with its promotions" makes any single or objective standard "other than that they should not simulate checks, currency, etc.," not practical.

We agree that the language of the subject order provision should not be narrowed. While the Commission strives in each order to set stan-

*By a petition dated Nov. 27, 1974, Reader's Digest requested that the proposed modification be changed to delete a second sentence which read: "The clear and conspicuous use of the term, 'non-negotiable,' on the face of the promotional materials shall act as a disclaimer of the ability to be cashed, redeemed or exchanged."