

Complaint

85 F.T.C.

IN THE MATTER OF

J. M. SANDERS T/A J. M. SANDERS JEWELRY
COMPANYORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket 8977. Complaint, July 1, 1974 - Decision, Feb. 18, 1975*

Consent order requiring a Chattanooga, Tenn., retailer of jewelry and small appliances, 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: *Edward J. Carnot, W. Roland Campbell, and Barbara S. Schanker.*

For the respondent: *Glen Copeland, Roberts, Weill, Ellis & Copeland, Chattanooga, Tenn.*

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 J. M. Sanders, an individual trading and doing business as J. M. Sanders Jewelry Company, hereinafter sometimes referred to as respondent, has 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 J. M. Sanders is an individual trading and doing business as J. M. Sanders Jewelry Company, under and by virtue of the laws of the State of Tennessee, with his principal office and place of business located at 1431 Market St., in the city of Chattanooga, State of Tennessee.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of jewelry, small appliances, and other types of merchandise to the public.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly extends consumer credit and arranges for the extension of consumer credit, as "consumer credit" and "arrange for the extension of credit" are 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, in the ordinary course of his business as aforesaid, and in connection with his credit sales, as "credit sale" is defined in Regulation Z, respondent has caused and is causing his customers to enter into contracts for the sale of respondent's goods. On these contracts, hereinafter referred to as "the contract," respondent provides certain consumer credit cost information. Respondent does not provide these customers with any other consumer credit cost disclosures.

By and through use of the contract, in many instances, respondent:

1. Fails to use the term "cash price" to describe the price at which respondent offers, in the regular course of business, to sell for cash the property or services which are the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z.
2. Fails to disclose the downpayment in money made in connection with the credit sale, and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.
3. Fails 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. Fails to disclose the sum of the "cash downpayment" and the "trade-in," and to describe that sum as the "total downpayment," as required by Section 226.8(c)(2) of Regulation Z.
5. Fails to disclose the difference between the cash price and the total downpayment, and to describe that difference as the "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.
6. Fails to disclose the sum of the unpaid balance of cash price and all other charges which are included in the amount financed but which are not part of the finance charge, and to describe that sum as the "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.
7. Fails to disclose the "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.
8. Fails to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z.
9. Fails to disclose accurately 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.
10. Fails to disclose the "annual percentage rate" accurately to the

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nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

11. Fails to disclose the number of payments scheduled to repay the indebtedness as required by Section 226.8(b)(3) of Regulation Z.

12. Fails to disclose accurately the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

13. Sets forth a ten percent (10%) national and railroad collecting fee and other percentage fees which tend to mislead and confuse the customer about the actual cost of credit extended, in violation of Section 226.6(c) of Regulation Z.

PAR. 5. In the ordinary course of business as aforesaid, respondent causes to be published advertisement of goods, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods. By and through the use of the advertisements, respondent:

States that no downpayment is required, in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

- (i) The cash price;
- (ii) The amount of the downpayment required or that no downpayment is required, as applicable;
- (iii) The number, amount, and due dates or period of payment schedule to repay the indebtedness if the credit is extended;
- (iv) The amount of the finance charge expressed as an annual percentage rate; and
- (v) The deferred payment price.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions Regulation Z constitute violations of that Act and, pursuant to Section 108(c) thereof, respondent has thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY WILLIAM K. JACKSON, ADMINISTRATIVE
LAW JUDGE

DECEMBER 31, 1974

Preliminary Statement

The Federal Trade Commission, on July 1, 1974, issued its complaint in this proceeding charging respondent J. M. Sanders, an individual

trading and doing business as J. M. Sanders Jewelry Company, hereinafter referred to as the respondent, with failure to comply with the provisions of Regulation Z,¹ the implementing regulation of the Truth in Lending Act,² duly promulgated by the Board of Governors of the Federal Reserve System and, pursuant to Section 108(c) of said Act (15 U.S.C. § 1607(c)), with having violated the Federal Trade Commission Act.³ Specifically, respondent is charged with 13 specific violations⁴ of Section 226.8 of Regulation Z (12 C.F.R. § 226.8) in connection with "credit sale" contracts in the sale and distribution of jewelry, small appliances, and other types of merchandise by him to the public by failing to disclose certain consumer credit cost information on said contracts. In addition, the complaint alleges that certain advertisements which aid, promote or assist, directly or indirectly, extension of consumer credit in connection with the sale of respondent's goods, fail to set forth certain prescribed information required by Sections 226.8 and 226.10(d)(2) of Regulation Z.

After being served on July 17, 1974 with the complaint, respondent appeared by counsel and filed, on Aug. 19, 1974, his answer to the complaint denying, in substance, the allegations of the complaint, but admitting certain jurisdictional facts. Thereafter, pursuant to order dated Aug. 20, 1974, the parties were directed to exchange lists of witnesses, documents and other physical exhibits and to complete certain other pretrial matters.

Pursuant to order dated Aug. 30, 1974, evidentiary hearings in this matter were held in Chattanooga, Tenn., on Oct. 2 and 3, 1974, during which complaint counsel adduced the testimony of three of respondent's customers (Halter, Sticher and Gibson), one of respondent's former employees (Tuder) and Mrs. Barbara Schanker, a Consumer Protection Specialist of the Federal Trade Commission's Atlanta Regional Office, to explain the Truth in Lending Act's prescribed computations. Respondent Sanders was the only witness called in his defense. Complaint counsel submitted 75 exhibits and respondent had no exhibits. The record was closed on Oct. 3, 1974, and the parties, at the undersigned's direction, thereafter filed proposed findings of fact, conclusions of law, and briefs.

Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of this initial decision, are hereby denied.

This proceeding is before the undersigned upon the complaint, answer, testimony and other evidence, proposed findings of fact and

¹ 12 C.F.R. § 226, *et seq.*; 15 U.S.C. p. 615.

² Truth in Lending Act, § 101, *et seq.*; 15 U.S.C. §§ 1601-1665.

³ 15 U.S.C. §§ 41, 45.

⁴ See Findings 7-20, *infra*.

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conclusions of law, and briefs filed by counsel supporting the complaint and by counsel for respondent. The proposed findings of fact, conclusions of law, and briefs in support thereof submitted by the parties have been carefully considered, and those findings not adopted either in the form proposed or in substance are rejected as not supported by the evidence or as involving immaterial matter.

Having heard and observed the witnesses, and after having carefully reviewed the entire record in this proceeding together with the proposed findings, conclusions and briefs submitted by the parties, as well as replies, the undersigned makes the following:

FINDINGS OF FACT

1. Respondent J. M. Sanders is an individual trading and doing business as J. M. Sanders Jewelry Company, under and by virtue of the laws of the State of Tennessee, with his principal office and place of business located at 1431 Market St., in the city of Chattanooga, State of Tennessee (Answer).

2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of jewelry, small appliances, and other types of merchandise to the public (Answer) since 1959 (Sanders 212).⁵ During 1971, respondent's gross sales reached nearly \$400,000 (CX 63C).

3. In the ordinary course and conduct of his business as aforesaid, respondent regularly extends consumer credit and arranges for the extension of consumer credit, as "consumer credit" and "arrange for the extension of credit" are 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 (Answer).

4. Miss Ruby Tudor, an employee who had worked in respondent's jewelry store and had accompanied him also on "road jobs" had worked for individual respondent Sanders during the past ten (10) years ending on June 14, 1974. She had been employed at first only as a sales clerk and then later as both sales clerk and bookkeeper (Tuder 64-65; Sanders 189). According to Miss Tudor, respondent's *modus operandi* is as follows:

Sanders had placed the store's advertisement (CX 55-CX 59) and had dictated the terminology contained therein (Tuder 78-79); he had ordered the matches (CX 51A-B; CX 52A-B) and directed the

⁵ References to the record are made in parentheses and certain abbreviations as hereafter set forth are used:

CX - Commission's Exhibit

RX - Respondent's Exhibit

RAR - Respondent's answer to complaint counsel's request for admissions

The transcript of the testimony is referred to with either the last name of the witness and the page number or numbers upon which the testimony appears or with the abbreviation Tr. and the page.

terminology on these match covers (Tuder 79-80) and had ordered pens (CX 61; CX 62) and had directed the terminology to be engraved on these pens (Tuder 80-82). These matches and pens, respectively, have been used for advertising purposes by J. M. Sanders Jewelry Company for dissemination to the public since 1968 until at least through June 14, 1974 (Tuder 80, 81, 84, 94).

Respondent consummated sales both at his store and "on the road" (Tuder 68-70). To record these transactions, whether they be cash or credit sales, respondent has, since 1968, used a "folio" (CX 1) on which individual respondent Sanders directed the terminology (Tuder 80). In the latter part of 1973, respondent began using both CX 65 and the folio (CX 1) to record retail installment contracts (Tuder 107; RAR 73). Both the folio (CX 1) and the retail installment contract (CX 65) have a space for the customer's signature.

A customer making a credit purchase from late 1973 on was supposed to receive a copy of both the folio and the retail installment contract (Tuder 82, 108). In all instances, the customer was asked to sign the folio first (Tuder 82) because respondent Sanders felt that said folio was a contract which would be enforceable in court in case of the customer's default (Tuder 69).

Respondent, when making sales, would accept trade-ins, cash downpayments or no downpayments (Tuder 68).

On installment sales to railroad employees, J. M. Sanders would charge the purchaser a 10 percent collecting fee, *i.e.*, the amount the railroads charge respondent Sanders for withholding from the railroad employees' pay checks money to pay J. M. Sanders for their purchases. On sales and credit balances over \$225, respondent made an additional 1 1/2 percent monthly finance charge (Tuder 83-85; Schanker 148).

J. M. Sanders also sold merchandise to railroad employees who lived and worked outside of the Chattanooga area. These sales were referred to as "road jobs" (Tuder 69-70). In installment sales on "road jobs," the purchaser received the merchandise and Sanders' calling card, on the back of which Sanders had computed the cost to the purchaser, including the interest, finance charges and tax. Sanders would remove from the sold merchandise the identification tag on which were inscribed the stock number and the cost, insert said tag in a brown envelope and mark on the outside of said brown envelope the same information he had written on the calling card he had issued to the purchaser, including the name and address of the customer. After respondent returned from a "road trip," the customer generally would be mailed a folio as evidence of his indebtedness (Tuder 108). Within the last year, however, instead of subsequently mailing only a folio, as was respondent's practice for similar sales more than a year ago (Tuder

108), he would mail a folio and a retail installment contract (CX 65) to be signed (Tuder 90-91), or in some cases these documents were signed in blank on the road (Tuder 92). In any event, with respect to sales "on the road" made within the last year, the customer did not receive the required cost of credit disclosures either prior to or at the time the sale was consummated, as required by 12 C.F.R. §226.8(a) (15 U.S.C.A. 1638(b)); *Ratner v. Chemical Bank New York Trust Co.*, CCH Consumer Credit Guide, ¶ 99.456, 329 F.Supp. 270 (S.D.N.Y. 1971).

In order to collect for retail installment purchases of railroad employees, Sanders only needed the employee's social security number and a signed railroad payroll deduction authorization. The customers' signature on contracts and folios was therefore not vital (Tuder 91-92).

For credit sales at the store, individual respondent Sanders had instructed his employees on how to compute the various finance charges and applicable taxes and how to fill in the folios and contracts (Tuder 119-120).

Customers who made purchases from respondent on credit and paid their obligations directly to Sanders were not charged the 10 percent railroad deduction fee and were only charged a 1 1/2 percent monthly finance charge (Tuder 81-85).

5. Subsequent to July 1, 1969, respondent in the ordinary course and conduct of his business and in connection with his credit sales, as "credit sale" is defined in Regulation Z (§ 226.2(n), 12 C.F.R. §226.2(n)), has caused and is causing customers to enter into contracts for the sale of respondent's goods (CX 2-CX 43, CX 45, CX 69-CX 71, CX 79-CX 81, CX 84-CX 87). On these contracts, hereinafter referred to as "the contract," respondent provides certain consumer credit cost information (see CX 1). Prior to 1973, respondent did not provide the customers with any other consumer credit cost disclosures (Tuder 107-108).

6. Respondent used the folio (CX 1) to record both credit and cash transactions (Tuder 80; RAR 1, 2, 3, 4, 5, 6, 7). The folio has been in use since 1968 through at least June 14, 1974 (Tuder 80).

7. Respondent fails to use the term "cash price" to describe on the contract the price at which respondent offers, in the regular course of business, to sell for cash the property or services which are the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z (12 C.F.R. §226.8(c)(1)).

Respondent admits to using folios (such as CX 1) subsequent to July 1, 1969, to reflect financial obligations whether they be cash or credit transactions (RAR 1, 2, 3, 4, 5, 6, 7). The use of these folios to record credit transactions is verified by the testimony of respondent's customers (Halter 29-34; Sticher 38-53; Gibson 59-63) and the testimony of a former employee (Tuder 67-70).

An examination of the following exhibits, representing credit transactions, reveals respondent's failure to use the term "cash price": CX 1, CX 2-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84. See also RAR 8.

8. Respondent fails to disclose on contracts the downpayment in money made in connection with the credit sale, and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z (12 C.F.R. §226.8(c)(2)).

The uncontroverted testimony of respondent's former employee establishes that respondent did accept downpayments (Tuder 68-69). An examination of the exhibits reveals that respondent accepted downpayments but had failed to describe the amounts as "cash downpayments" (CX 10, CX 79, CX 81, CX 84. See also RAR 9).

9. Respondent fails to disclose on contracts 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 (12 C.F.R. §226.8(c)(2)).

Respondent's former employee testified that respondent did accept trade-ins (Tuder 68-69). The fact that respondent accepted trade-ins but had failed to describe the amounts as "trade-ins" is established by examination of the following contracts: CX 1 and CX 2. (See also RAR 10.)

10. Respondent fails to disclose on contracts the sum of the "cash downpayment" and the "trade-in," and to describe that sum as the "total downpayment," as required by Section 226.8(c)(2) of Regulation Z (12 C.F.R. §226.8(c)(2)) (see Findings Nos. 8 and 9; RAR 11; CX 69-CX 71; CX 79-CX 81; CX 84-CX 87).

11. Respondent fails to disclose on contracts the difference between the cash price and the total downpayment, and to describe that difference as the "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z (12 C.F.R. §226.8(c)(3)).

Witness Schanker explained by referring to CX 81:

The unpaid balance of the cash price is determined by subtracting from the cash price of \$67.50 the down payment of \$10.00 and the unpaid balance of cash price would be \$57.50 * * * [which] * * * does not appear on the document. (Tr. 166)

Using the same method of calculation as on CX 81, Mrs. Schanker explained that on CX 10 the "unpaid balance of cash price" should be \$1,131.36 which is determined by deducting from the cash price of \$1,196.00 the downpayment of \$64.64. On CX 10, this "unpaid balance of cash price" is not indicated (Schanker 166). Mrs. Schanker further indicated that neither on CX 79 nor on CX 81 does the "unpaid balance of cash price" appear (Tr. 167).

It should also be noted that on none of the folios (CX 1, *et seq.*) is the term "unpaid balance of cash price" used (see also RAR 12).

12. Respondent fails to disclose the sum of the unpaid balance of cash price and all other charges which are included in the amount financed but which are not part of the finance charge, and to describe that sum as the "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z (12 C.F.R. §226.8(c)(5)).

Mrs. Schanker testified that she computed on CX 11 the unpaid balance as follows:

I added the cash price of \$102.95, less the down payment, which is equal to zero, I then added the tax of \$6.55 and I came up with an unpaid balance of \$109.50. (Tr. 144)

She further testified that respondent's contract does not contain a space entitled "unpaid balance" (Tr. 145).

As to CX 12, Mrs. Schanker testified as follows:

In this case the cash price is \$289.95, to that you're supposed to subtract the downpayment which is zero, and you add the tax of \$17.80 and you come up with an unpaid balance of \$307.75. This does not appear on the document. (Tr. 145)

An examination of respondent's transactions reveals that not a single contract either shows the "unpaid balance" or has a space provided for the "unpaid balance" (see CX 1, CX 2-CX 5, CX 7-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84; RAR 13).

13. Respondent fails to disclose on contracts the "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z (12 C.F.R. §226.8(c)(7)).

Mrs. Schanker testified that on CX 35 she computed the "amount financed" as follows:

The cash price is \$375.00, there is no downpayment, I added the tax of \$23.64 and came up with an unpaid balance of \$398.64. Since there is no prepaid finance charge, the amount financed would be the same as the unpaid balance of \$398.64. (Tr. 146)

On CX 36, Mrs. Schanker calculated the "amount financed" as follows:

* * * the cash price is the sum of the three items purchased of \$96.00, \$299.95 and \$39.95, giving a cash price of \$435.90. There is no down payment, then there is a tax of \$20.57, giving an unpaid balance of \$456.47. Since there is no prepaid finance charge, the amount financed would be the same as the unpaid balance, which is \$456.47. (Tr. 147)

An examination of the exhibits reveals that the "unpaid balance" does not appear on CX 1-CX 5, CX 7-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84. (See also Schanker 146-147; RAR 14.)

14. Respondent fails to use on contracts the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z (12 C.F.R. 226.4) to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z (12 C.F.R. §226.8(c)(8)(i)).

Respondent "had an agreement with the railroad in which he could have certain amounts taken out of the railroad people's pay checks, but this amount could not exceed - the total of the purchase, \$225; therefore he charged an additional finance charge when the balance was over \$225." (Schanker 148; see also Tudor 83-85).

The 10 percent rate expressed in the "National & R.R. 10% Collecting Fee" is a finance charge imposed on respondent's credit customers who are railroad employees and who authorize the railroad to withhold from their pay checks money to pay to J. M. Sanders for their purchases. Said 10 percent, however, is not imposed on cash customers or railroad employees who make their payments directly to J. M. Sanders (Tuder 83-85; Halter 29; Sticher 42, 47; Gibson 49, 63).

Mrs. Schanker testified that on CX 2 she calculated the "finance charge" as follows:

* * * the finance charge would be the sum of the railroad 10 percent collection fee of \$12.60 plus the additional 1-1/2 percent charge of \$12.60, giving a finance charge of \$25.20 * * * [which] * * * does not appear in the document. (Tr. 149)

An examination of respondent's transactions shows that the term "finance charge" does not appear on CX 2-CX 5, CX 7, CX 8, CX 10, CX 12, CX 26, CX 29, CX 33, CX 35, CX 36, CX 41, CX 43, CX 45, CX 69-CX 71, CX 74, CX 81, CX 84. (See also Schanker 149-150; RAR 15.)

15. Respondent fails to disclose accurately 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 (12 C.F.R. 226.8(c)(8)(ii)).

Mrs. Schanker testified:

On Commission Exhibit 11, the deferred payment price is the total cost of the item to a person buying on cash so it would be the cash price plus \$102.95 plus a tax of \$6.55 plus a finance charge of \$11.80, giving a deferred payment price of \$121.30 * * * [which] * * * does not appear on the document. (Tr. 160-161)

What does appear on CX 11 is \$121.40 as the deferred payment price.

As to CX 29, Mrs. Schanker testified:

* * * the deferred payment price is equal to the cash price of \$548.99 with the tax of \$27.40 plus a finance charge of \$112.91, giving a total - a deferred payment price of \$689.30 and this amount does not appear on the document. (Tr. 161)

The deferred payment price on CX 29, however, is marked as \$689.20.

It is, therefore, obvious that on CX 11 and CX 29 respondent has failed to *accurately* disclose the deferred payment price.

The following additional exhibits demonstrate that using Mrs. Schanker's calculation, respondent has failed to *accurately* disclose the deferred payment price:

CX	Figures on Contract	Should Read
10	\$1464.64	\$1596.24
43	78.32	77.32
45	362.27	362.33
82	69.83	79.83
88	90.99	116.23

The term "deferred payment price" does not appear on the 108(c)

exhibits: CX 1-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84 (see also RAR 16).

16. Respondent fails to disclose on contracts the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z (12 C.F.R. 226.5), as required by Section 226.8(b)(2) of Regulation Z (12 C.F.R. §226.8(b)(2)).

As to CX 11, Mrs. Schanker explained the method of calculating the annual percentage rate as follows:

In a regular transaction where you calculate an annual percentage rate, you multiply the finance charge times 100 and divide that amount by the amount financed and you come up with a ratio. Then you look in the - Volume I of the Federal Reserve Board tables and you go down to the number of monthly payments and go across to find out what the annual percentage rate is. You match up the ratio that you just computed. On Commission Exhibit 11, the finance charge of \$11.80 you multiply by 100 and you divide that amount by \$109.50 and you come up with a ratio of * * * 10.78 * * * you go down the table and you have four payments and you come up with an annual percentage rate of 50.75 percent. (Tr. 161-162)

No annual percentage rate, however, is disclosed on CX 11.

On CX 15, Mrs. Schanker calculated the annual percentage rate as follows:

* * * you multiply the finance charge of \$15.70 times 100 and divide that by the amount financed of \$141.75 and you come up with a ratio of 11.07 with four monthly payments you have an annual percentage rate of 52 percent. (Tr. 162)

Again, nowhere on CX 15 is there an annual percentage rate disclosed.

Employing Volume I of the Federal Reserve Board's annual percentage rate tables, Mrs. Schanker computed the annual percentage rate of CX 2 to be 76.25 percent (Tr. 162) and that of CX 3 to be 94.75 percent (Tr. 163).

Neither the annual percentage rate nor the term "annual percentage rate" appears on either the aforesaid Commission Exhibits or CX 4-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84. (See also RAR 17.)

17. Respondent fails to disclose on contracts the number of payments scheduled to repay the indebtedness as required by Section 226.8(b)(3) of Regulation Z (12 C.F.R. §226.8(b)(3)).

After examining respondent's contracts admitted into evidence, Mrs. Schanker testified (Tr. 163-164) that respondent had failed to indicate the number of payments on the following transactions: CX 3, CX 7-CX 9, CX 12, CX 13, CX 15-CX 19, CX 21-CX 28, CX 30-CX 33, CX 37-CX 39, CX 41, CX 42, CX 68.

An examination of CX 5 and CX 10 reveals that respondent had failed to *accurately* disclose the number of payments.

18. Respondent fails to disclose on contracts accurately the sum of the payments scheduled to repay the indebtedness, and to describe that

sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z (12 C.F.R. §226.8(b)(3)).

After examining CX 43, Mrs. Schanker explained that respondent has disclosed as "total of payments" \$78.32. By, however, simply adding the figures on CX 43, namely: cash price of \$60.15 less downpayment (which is zero) plus a tax of \$3.62 plus a finance charge of \$13.55, the sum is \$77.32, which is the actual "total of payments." Respondent, therefore, has failed to accurately disclose the "total of payments" (Schanker 150-151), the error being \$1.00.

By using the same method of addition as on CX 43, Mrs. Schanker explained on CX 11 that respondent discloses the total of payments to be \$121.40 whereas the figure should be \$121.30 (to the sum of the cash price of \$102.95 add a tax of \$6.55 and a finance charge of \$11.80, the sum of which is \$121.30) (Schanker 151-152). The error, therefore, is 10 cents.

According to Mrs. Schanker's testimony, the errors appear on the subtotal, the total and the new balance on hold, the latter of which is the new total (Tr. 153).

Mrs. Schanker's calculation of the "total of payments" on CX 6 should be \$90.56 (to the cash price of \$81.76 add the finance charge of \$8.80, which totals \$90.56) although respondent's total of payments is listed as \$88.15, which is an error of \$2.41 (Tr. 154-155).

On CX 10, Mrs. Schanker calculated the "total of payments" to be \$1,531.60 while CX 10 lists the total of payments to be \$1,400.00, which is an error of \$131.60. Mrs. Schanker's calculation on CX 10 is as follows:

From the cash price of \$1,196.00 deduct the downpayment of \$64.64, which results in an unpaid balance of cash price of \$1,131.36, which respondent does not disclose. To the unpaid balance of cash price of \$1,131.36 add a tax of \$69.60 and the finance charge of \$330.64, which results in the total of payments of \$1,531.60. Respondent's total number of payments, however, add up to \$1,400 (Schanker 155-156).

Using the same method of adding the charges, Mrs. Schanker testified that on CX 29 there is a 10-cent error in that respondent has disclosed the "total of payments" to be \$689.20 while they should be \$689.30 (Tr. 157-159).

On CX 45, Mrs. Schanker computed the "total of payments" to be \$362.33 while respondent's figure on CX 45 is \$362.27, an error of 6 cents (Tr. 159-160).

The following documents fail to use the term "total of payments": CX 1-CX 43, CX 45, CX 47, CX 69-CX 71, CX 79-CX 81, CX 84-CX 87 (see also RAR 18).

19. Respondent sets forth on the contract a ten percent (10%)

national and railroad collecting fee and other percentage fees which tend to mislead and confuse the customer about the actual cost of credit extended, in violation of Section 226.6(c) of Regulation Z (12 C.F.R. §226.6(c)).

The "10%" rate expressed in the "National & R.R. 10% Collecting Fee" is computed solely on the cash price and applicable taxes, without consideration of the number of payments scheduled to repay the indebtedness (RAR 22, 44; Copeland 53). Miss Tudor, a former employee of respondent, testified that the 10 percent collecting fee was computed on the total which consists of the sum of the cash price, the tax and service charge. Only after this total, to which was added the 10 percent railroad collecting fee, did respondent deduct any downpayments or trade-ins (Tuder 68-69).

It should also be noted that for other than open end credit, the type respondent extends, one ratio is used to compute the annual percentage rate because there is only one amount to be financed and only one finance charge. In addition to the folio (CX 1) respondent, since late 1973, has also used a retail installment contract (CX 65) which shows under "ANNUAL PERCENTAGE RATE" two annual percentages. This fails to comply with Section 226.6(c) of Regulation Z (12 C.F.R. §226.6(c)) (Schanker 167-168).

The testimony of respondent's customers and past employee clearly establishes that the 10 percent collecting fee was very confusing as to whether or not it was included in the annual percentage rate and whether it was computed on the cash price or deferred payment price (Halter 29-30, Sticher 42, 44; Gibson 59, 61-62; Tuder 68-69, 76, 83-84).

The term "National & R.R. 10% Collecting Fee" appears on the following contracts: CX 1-CX 43, CX 45, CX 47, CX 69-CX 71, CX 79-CX 81, CX 84-CX 87.

20. In the ordinary course of business, respondent causes to be published advertisements of goods, as "advertisement" is defined in Section 226.2(b) of Regulation Z (12 C.F.R. §226.2(b)). These advertisements aid, promote, or assist directly or indirectly in extensions of consumer credit in connection with the sale of these goods.

Respondent's former employee, Miss Tudor, testified that respondent had placed and directed the terminology of newspaper advertisements (Tuder 78-79; CX 50, CX 55-CX 59; RAR 43), that respondent had directed the terminology on the match covers (CX 51A-B, CX 52A-B; RAR 44) and the ballpoint pens (CX 61, CX 62) which were used for dissemination to the public (Tuder 79-82). Both the matches and the ballpoint pens have been disseminated to the public from 1968 on through at least June 14, 1974 (Tuder 80-82; see also generally, Sanders 197-198).

Respondent started using folios (CX 1) in 1968 to record both credit and cash transactions. He directed the terminology to be used on these folios which were still in use on June 14, 1974 (Tuder 80).

What these exhibits have in common (*e.g.*, CX 1, CX 50, CX 51A-B, CX 52A-B, CX 55-CX 59, CX 61, CX 62) is that they use the term "No money down" without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z (12 C.F.R. §226.8), as required by Section 226.10(d)(2) (12 C.F.R. §226.10(d)(2)) thereof:

- (i) The cash price;
 - (ii) The amount of the downpayment required or that no downpayment is required, as applicable;
 - (iii) The number, amount, and due dates or period of payment scheduled to repay the indebtedness if the credit is extended;
 - (iv) The amount of the finance charge expressed as an annual percentage rate; and
 - (v) The deferred payment price.
- (See also RAR 46, 47, 48.)

21. Respondent's credit transactions are other than open end credit transactions and, therefore, come under the purview of Section 226.8 of Regulation Z (12 C.F.R. §226.8) (Schanker 167-169).

RESPONDENT'S DEFENSE OF DISCONTINUANCE

Respondent testified that he had been in the jewelry business since 1959 (Sanders 212), a full ten years before July 1, 1969, the effective date of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*).

Respondent's defense consists almost entirely of a plea of discontinuance. Respondent testified that on or since June 1974, he has attempted in good faith to comply with the requirements of the Truth in Lending Act (Sanders 196-207).

Assuming, *arguendo*, that respondent had not been aware of the Truth in Lending Act on the date it became effective, he was certainly put on notice about the Truth in Lending Act on or about Aug. 15, 1972, when he received a letter from the Federal Trade Commission's Atlanta Regional Office (CX 63A-B) to which respondent Sanders had replied on Sept. 27, 1972 (CX 63C). Respondent Sanders was subsequently visited by officials of the Federal Trade Commission during the end of Jan. 1973 (Schanker 148; Sanders 190).

As of June 14, 1974, the date Miss Tuder had left her employment with respondent, respondent was still using the folio (CX 1) to record credit sales to his customers (Tuder 80, 82, 89; RAR 1, 2, 3, 4, 5, 6, 7). The folio has been in use since 1968 (Tuder 80).

Not until late in 1973 did respondent make an effort to comply fully

with the requirements of the Truth in Lending Act by using, in addition to the folio, a retail installment contract in connection with sales consummated with railroad employees in his store and financed through the railroad (CX 65; Tudor 107; RAR 73).⁶ However, respondent, during the last two years, frequently went "on the road," and during these trips sold as much as \$3,000 of merchandise in three hours to railroad employees (Tuder 71). When credit sales are made "on the road" to railroad employees, the customer only receives as evidence of his indebtedness one of respondent's business cards with limited information written on the back of the card. The information indicates the cost of the merchandise, the 10 percent railroad fee, the 1 1/2 percent collecting fee, and the sales tax. These figures are totaled, the amount of the monthly payments and the number of months to pay are also set forth on the back of the card (Tuder 70). After respondent returned from a "road trip," the customer generally would be mailed a folio as evidence of his indebtedness (Tuder 108). Within the last year, however, instead of subsequently mailing only a folio, as was respondent's practice for similar sales more than a year ago (Tuder 108), he would mail a folio and a retail installment contract (CX 65) to be signed (Tuder 90-91), or in some cases these documents were signed in blank on the road (Tuder 92). In any event, with respect to sales "on the road" made within the last year, the customer did not receive the required cost of credit disclosures either prior to or at the time the sale was consummated, as required by 12 C.F.R. §226.8(a) (15 U.S.C.A. 1638(b)); *Ratner v. Chemical Bank New York Trust Co.*, CCH Consumer Credit Guide, ¶ 99.456, 329 F.Supp. 270 (S.D.N.Y. 1971).

An examination of said retail installment contract (CX 65; see also CX 72, dated 8/26/74; CX 73, dated 2/27/74; CX 74, dated 6/10/74; and CX 82, dated 6/10/74), which is presently in use by respondent (RAR 73), reveals that it still fails to comply with the requirements of the Truth in Lending Act, *e.g.*, because on respondent's installment sales contracts only one amount can be financed and one ratio only used to compute the annual percentage rate. CX 65, however, under "ANNUAL PERCENTAGE RATE" has a space for two figures (Schanker 168-169). Apparently no other efforts have been made by respondent since issuance of the complaint in this matter (July 1, 1974) to comply with the requirements of the Truth in Lending Act on his installment contracts.

Matches (CX 51A-B, CX 52A-B) and ballpoint pens (CX 61, CX 62), both bearing the logo "No money down" without other required credit

⁶ On or since June 15, 1972, in addition to the folio, respondent used a retail installment contract (CX 68) for "open account" sales, that is, purchases not financed through the railroad (Tuder 108-110). CX 68 was limited to (a) lay-away transactions, *i.e.*, when merchandise was kept in respondent's store until the customer's financial obligation had been paid, or (b) "open account," *i.e.*, credit transactions not financed through the railroad (Tuder 110).

cost disclosures, have been disseminated by respondent to the public for promotional purposes from 1968 on through at least June 14, 1974 (Tuder 78-82). Respondent's newspaper advertisements (CX 55-CX 59) advise the reader that he can purchase respondent's goods with "No money down" without disclosing other required credit cost information. Yet it was not until "several months ago" that respondent had allegedly ceased to advertise "No money down" (Sanders 197).

It is, therefore, clear that respondent, as of this date, has not fully complied in all respects with the requirements of the Truth in Lending Act.

Even assuming, *arguendo*, that respondent is now complying with all the requirements of the Truth in Lending Act, the evidence clearly establishes that his "compliance" insofar as merchandise financed through the railroad would have been subsequent to being contacted in Jan. 1973 by representatives of the Federal Trade Commission. Therefore, as noted in footnote 6 of *Guziak v. FTC*, 361 F.2d 700 (8th Cir. 1966), *cert. denied*, 385 U.S. 1007 (1967), the Court of Appeals stated that:

The mere fact that the [respondent] is no longer engaged in some, if not all, of the activities which were the basis for the Commission's action does not prevent the issuance of a cease and desist order against such activities. *Automobile Owners Safety Ins. Co., v. FTC*, 255 F.2d 295, (8th Cir. 1958).

More recently, the Commission stated that:

It is well established that the mere fact that the offending practices have been discontinued prior to the issuance of a complaint does not provide, by itself, the requisite assurance that an order is unnecessary and not in the public interest. As the courts have noted, it is the timing and circumstances of the claimed abandonment which is of importance to the issue of the necessity for an order. Where, as here, *the abandonment took place only after the Commission's hand was on respondent's shoulder*, the courts are clear that abandonment of the practices under such circumstances will not support a conclusion that the practices will not be resumed. (*Zale Corporation*, 78 F.T.C. 1233, 1240 (1971) [emphasis supplied]; see also *Spencer Gifts, Inc. v. FTC*, 302 F.2d 267 (3d Cir. May 4, 1962); *Damar Products Inc. v. United States*, 309 F.2d 323 (3d Cir. 1962); *Marlene's, Inc. v. FTC*, 216 F.2d 556, 559 (7th Cir. 1954); *Galter v. FTC*, 186 F.2d 810, 812, 813 (7th Cir. 1951), *cert. den.*, 342 U.S. 818 (1951); *Eugene Dietzgen Co. v. FTC*, 142 F.2d 321, 330 (7th Cir. 1944), *cert. den.*, 323 U.S. 730 (1944); *Coro, Inc. v. FTC*, 338 F.2d 149, 153 (1st Cir. 1964), *cert. den.*, 380 U.S. 954 (1965); *Ward Baking Co.*, 54 F.T.C. 1919 (1958); *Arnold Constable Corporation*, 58 F.T.C. 49 (1961); *Art National Manufacturers Distributing Co. Inc.*, 58 F.T.C. 719, 724 (1961)).

In view of the foregoing, it is clear that the Commission's investigation commenced on Aug. 15, 1972; that a full field investigation was made in Jan. 1973; that as of June 14, 1974, respondent was still using a folio (CX 1) that did not comply with the law; and that as late as Oct. 2, 1974, the date of the hearing, respondent had not complied in all respects with the law. Accordingly, it does not appear that respondent has completely abandoned the unlawful practices, and there is no

assurance that without a cease and desist order he will comply with the law.

DISCUSSION

The Truth in Lending Act and the regulations enacted pursuant to it require that certain disclosures be made in connection with consumer credit transactions. The purpose of requiring these disclosures, as stated by Congress in § 1601, is:

The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.

See also S.Rep. No. 392, 90th Cong., 1st Sess. 1-3 (1967); H.R.Rep. No. 1040, 90th Cong., 2d Sess. 7, 13 (1968). The key to assuring that the required disclosures will provide for the knowledgeable use of credit and make "comparison shopping" possible is standardization of what certain credit terms mean. In order to avoid violation of the Truth in Lending Act, a creditor must calculate these terms in compliance with technical statutes and regulations. This technical precision is, however, necessary if the congressional purpose is to be fulfilled. Recognizing this, the courts have found violations of the act based upon slight deviations. See, e.g., *Buford v. American Finance Co.*, 333 F.Supp. 1243 (N.D.Ga. 1971) (failure to include one dollar notary fee in "finance charge").

As to the enumerated violations of the Truth in Lending Act, it is clear that the Regulations do make the use of specific terminology mandatory. 12 C.F.R. §226.2(a) [226.6(a)] reads in part, "The disclosures required to be given by this part shall be made * * * in the terminology prescribed in applicable sections." 12 C.F.R. §226.8 in describing what disclosure is required repeatedly uses the format "shall be disclosed: * * * using the term [with applicable term stated in quotation marks]."

In the present case, there is no question that respondent failed to make the required disclosures in proper form.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over respondent.
2. The complaint herein states a cause of action and this proceeding is in the public interest.
3. Respondent, by violating Sections 226.6, 226.8, and 226.10 of Regulation Z (12 C.F.R. §226.6, §226.8, and §226.10), is in violation of the Truth in Lending Act by virtue of Section 103(q) of said Act (15

U.S.C. 1602(q)). Violation of the Truth in Lending Act by virtue of Section 108(c) of the Truth in Lending Act (15 U.S.C. 1607) is a violation of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*).

4. The facts having been found to be as alleged in the complaint, and respondent having violated the Federal Trade Commission Act, the following order should be issued to protect the public interest.

ORDER

It is ordered, That respondent J. M. Sanders, an individual trading and doing business as J. M. Sanders Jewelry Company, his successors or assigns, respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement 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 in any consumer credit transaction to disclose the price at which respondent, in the regular course of business, offers to sell for cash the property or services which are the subject of the credit sale, and to describe that price as the "cash price," as required by Section 226.8(c)(1) of Regulation Z.
2. Failing to disclose the amount of any downpayment in money made in connection with any consumer credit transaction and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.
3. Failing to disclose the amount of any downpayment in property made in connection with any consumer credit transaction 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 sum of the "cash downpayment" and the "trade-in" made in connection with any consumer credit transaction, and to describe that sum as the "total downpayment," as required by Section 226.8(c)(2) of Regulation Z.
5. Failing to disclose the "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.
6. Failing to disclose the "unpaid balance" to describe the sum of the "unpaid balance of cash price" and all other charges included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(5) of Regulation Z.
7. Failing to disclose the amount of credit extended, and to describe

that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

8. Failing to disclose the sum of all charges made to the customer which are 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.

9. Failing in any consumer credit transaction to disclose accurately 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.

10. Failing to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

11. Failing to disclose the number, amount, and due dates or period of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

12. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe the sum as the "total of payments" as required by Section 226.8(b)(3) of Regulation Z.

13. Stating, utilizing, or placing any information or explanation not required or authorized by Regulation Z in a manner which might tend to mislead or confuse the customer or contradict, obscure, or detract attention from the information required by Regulation Z to be disclosed, as required by Section 226.6(c) of Regulation Z.

14. Stating in any advertisement the amount of the downpayment or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless there is also stated in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

- (i) The cash price;
- (ii) The amount of the downpayment required or that no downpayment is required, as applicable;
- (iii) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness if the credit is extended;
- (iv) The amount of the finance charge expressed as an annual percentage rate; and
- (v) The deferred payment price.

15. Failing in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and

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Final Order

226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z.

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

It is further ordered, That the 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.

FINAL ORDER

The administrative law judge filed his initial decision in this matter of Dec. 31, 1974, finding respondent to have engaged in the acts and practices as alleged in the complaint and entering a cease-and-desist order against respondent. A copy of the initial decision and order was served on the respondent on Jan. 23, 1975. No appeal was taken from the initial decision.

The Commission having now determined that the matter should not be placed on its own docket for review, and that the initial decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice.

It is ordered, That the initial decision and order contained therein shall become effective on Feb. 24, 1975.

It is further ordered, That J. M. Sanders, an individual trading and doing business as J. M. Sanders Jewelry Company, shall, within sixty (60) days after service of this order upon him, file with the Commission a report in writing, signed by respondent, setting forth in detail the manner and form of his compliance with the order to cease and desist.

Complaint

85 F.T.C.

IN THE MATTER OF
BAGATELLE INTERNATIONAL LTD., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND WOOL PRODUCTS
LABELING ACTS

Docket C-2639. Complaint, Feb. 18, 1975 - Decision, Feb. 18, 1975

Consent order requiring a New York City importer of wool blend fabrics and clothing manufacturer, among other things to cease misbranding its wool products and importing wool products into the United States without filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty on them.

Appearances

For the Commission: *Jerry R. McDonald.*

For the respondents: *Jack G. Wasserman*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bagatelle International Ltd., a corporation, and Irving Weinstein and Sidney Weinstein, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Bagatelle International Ltd. 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 1407 Broadway, N.Y., N.Y.

Individual respondents Irving Weinstein and Sidney Weinstein are officers of Bagatelle International Ltd. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

Respondents are engaged in the importation of wool products, namely wool blend fabrics, the manufacturing of said products into clothing, and the sale and distribution of said items of clothing.

PAR. 2. Respondents, now and for some time last past, have imported