

(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

VAN SCHAAACK & COMPANY

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

Docket C-2769. Complaint, Dec. 15, 1975-Decision, Dec. 15, 1975

Consent order requiring a Denver, Colo., mortgage company, 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: *Tommie W. Wakefield.*

For the respondent: *Davis, Graham & Stubbs*, Denver, Colo.

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 Van Schaack & Company, a corporation, hereinafter 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 Van Schaack & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 624 17th St., Denver, Colo.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, mortgaging, offering for sale and sale of new and used housing to the general public.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends or arranges for the extension

of consumer credit or offers to extend or arrange for the extension of such credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of 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, respondent, in the ordinary course of business as aforesaid and in connection with credit sales, has caused, and is causing, to be published, advertisements, as "credit sale" and "advertisement" are defined in Section 226.2 of Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of other than open end credit.

PAR. 5. Respondent, in certain of these advertisements has stated, and is stating, the amount of the downpayment (in dollars or as a percentage of the sales price) or that no downpayment is required or the amount of an instalment payment 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):

- (a) the cash price; (the amount of the loan;)
- (b) the amount of the downpayment required or that no downpayment is required, as applicable;
- (c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and
- (d) the amount of the finance charge expressed as an annual percentage rate.

PAR. 6. Respondent, in other advertisements, has stated, and is stating, the rate of a finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, and has not expressed said rate as an annual percentage rate, using the term "annual percentage rate," as "annual percentage rate" is defined in Section 226.2 of Regulation Z, in violation of Section 226.10(d)(1) of Regulation Z.

PAR. 7. Subsequent to July 1, 1969, respondent, in the ordinary course of business as aforesaid, and in connection with credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, has caused, and is causing, its customers to enter into consumer credit contracts for first mortgage loans. In some instances, respondent has and is providing its customers with disclosure statements, in connection with first mortgage loans, which do not accurately disclose the "annual percentage rate" to the nearest quarter of one percent, as required by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

PAR. 8. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section

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Decision and Order

108 thereof, respondent has 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Kansas City Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated 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 its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Van Schaack & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 624 17th St., city of Denver, State of Colorado.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Van Schaack & Company, a corporation, its successors and assigns, and its officers, and respondent's 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 any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any instalment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of instalments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

- (a) the cash price; (the amount of the loan;)
- (b) the amount of the downpayment required or that no downpayment is required, as applicable;
- (c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and
- (d) the amount of the finance charge expressed as an annual percentage rate.

2. Stating in any advertisement the rate of a finance charge unless said rate is expressed as an annual percentage rate, using the term "annual percentage rate," as "finance charge" and "annual percentage rate" are defined in Section 226.2 and as required by Section 226.10(d)(1) of Regulation Z.

3. Failing, in any consumer credit transaction, to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent as prescribed by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

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

It is further ordered, That respondent 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 respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondent herein shall within sixty

(60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
THE GREAT ATLANTIC & PACIFIC TEA COMPANY,
INC., ET AL.

Docket 8866. Order, Dec. 19, 1975

Granting of motion by A&P Company to file reply to complaint counsel's opposition to motion for leave to lodge documents in the record.

Granting of motion by A&P Company for leave to lodge certain documents into the record.

Appearances

For the Commission: *John J. Mathias, Edwin R. Soeffing and Andrew G. Stone.*

For the respondents: *Ira J. Dembrow, Cahill, Gordon, Sonnett, Reindel & Ohl, New York City for The Great Atlantic & Pacific Tea Company, Inc. Sidley & Austin, Chicago, Ill. and Walter W. Kocher, New York City for Borden, Inc.*

ORDER GRANTING REQUEST TO FILE REPLY AND GRANTING
MOTION FOR LEAVE TO LODGE DOCUMENTS INTO RECORD

Respondent The Great Atlantic & Pacific Tea Company has filed a motion seeking leave to lodge in the record of this case two documents which were not entered during trial and which it claims are of relevance to the proceeding.

As a rule this is not a procedure of which we approve, since the time for presentation of evidence is at trial where it can be challenged by the other side and considered by the administrative law judge. Here, however, it appears that only a small quantity of documentation is involved, the authenticity of the tendered exhibits is not questioned, and their introduction will not impede the orderly progress of this proceeding. While we intimate no view respecting the claims made by the parties as to the significance of these documents, we will allow their lodging upon the record.

Therefore,

It is ordered, That the request of respondent The Great Atlantic & Pacific Tea Company, Inc., for permission to file a reply to complaint