

IN THE MATTER OF
LINDAL CEDAR HOMES, INC., ET AL.

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

Docket C-2774. Complaint, Jan. 5, 1976—Decision, Jan. 5, 1976

Consent order requiring a Seattle, Wash., manufacturer and seller of pre-cut building packages and distributorships, among other things to cease making advertising claims without prior substantiation; using unfair contract terms; failing to provide consumers with right of rescission if timely delivery of product is not made; failing to provide warranties that their products will be delivered complete and free from defects in accordance with terms of the purchase contract; failing to make disclosures required by F.T.C.'s proposed Trade Regulation Rule on Sale of Franchises; and failing to comply with the disclosure requirements of Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *David R. Pender.*

For the respondents: *James R. Hermesen, Karr, Tuttle, Koch, Campbell, Mawer & Morrow, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Lindal Cedar Homes, Inc., a corporation, and Sir Walter Lindal, individually and as a former officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and the Truth in Lending Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent Lindal Cedar Homes, Inc. (hereinafter Lindal, Inc.) is a Washington corporation with its office and principal place of business located at 10411 Empire Way South, Seattle, Washington.

Respondent Sir Walter Lindal was the president and chairman of the board of directors of the corporate respondent and he formulated, directed and controlled the policies, acts and practices of Lindal, Inc., including those hereinafter set forth. He continues to have a substantial ownership interest in the corporate respondent. His address is 3764 S.W. 171st, Seattle, Washington.

Allegations below stated in the present tense include the past tense.

PAR. 2. Respondents are engaged in the advertising, offering for sale, and sale of pre-cut wood buildings, and distributorships to sell pre-cut wood buildings. Lindal, Inc. reported 1974 sales of pre-cut wood buildings as \$8,091,171, and distributorship fees received as \$64,725.

PAR. 3. Respondents' acts and practices as hereinafter set forth are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course of their business, and for the purpose of inducing the purchase of their pre-cut wood buildings, respondents, through advertisements, brochures, promotional material, and other means, make numerous statements and representations with respect to their products. By and through the use of such statements and representations, respondents represent, directly or by implication, that:

A. Most persons can assemble a Lindal, Inc. pre-cut wood building with little difficulty;

B. Because most Lindal, Inc. components are pre-cut to exact lengths and numbered for each assembly, a purchaser can save as much as 75 percent in assembly time;

C. A Lindal, Inc. pre-cut wood building can be erected to the weatherproof stage in two to three weeks, or about one-fourth of the time usually required for a conventional home.

PAR. 5. In truth and in fact:

A. In certain instances, purchasers have experienced difficulty in assembling a Lindal, Inc. pre-cut wood building.

B. In certain instances, because of incomplete part numbering, shortages and/or substitution of materials, purchasers, in assembling Lindal, Inc. pre-cut wood buildings, have not saved as much as 75 percent in assembly time.

C. In certain instances, because of incomplete part numbering, shortages and/or substitution of materials, purchasers have been unable to erect Lindal, Inc. pre-cut wood buildings to the weatherproof stage in three weeks.

Therefore, the acts, practices and representations set forth in Paragraphs Four and Five are false, misleading, deceptive and unfair in violation of Section 5 of the Federal Trade Commission Act.

PAR. 6. In the course of purchasing Lindal, Inc. pre-cut wood buildings, purchasers reasonably believe that respondents will make timely delivery of such buildings in a condition suitable for immediate commencement of construction. In truth and in fact, however, immediate commencement of construction of such buildings after the scheduled delivery date is difficult or impossible because in certain instances:

- A. Lindal, Inc. has failed to make timely delivery of its products;
- B. Lindal, Inc. has failed to make complete delivery of its products.

Furthermore, in certain instances, respondents have either failed to correct such untimely or incomplete delivery or have corrected such delivery only after protracted negotiations. Such acts and practices of respondents have resulted in substantial expense, inconvenience, and hardship to certain purchasers.

Therefore, said acts and practices are unfair in violation of Section 5 of the Federal Trade Commission Act.

PAR. 7. In the course of their business respondents have used sales and earnest money agreements which contain, *inter alia*, the following standard terms:

A. * * * Purchaser accepts delivery when the material is loaded on carrier at plant, and either the carrier or the Purchaser is responsible for any theft, fire or any damage by any cause once the material leaves the plant.

B. The factory price entered above is based on current published price list and specification sheet and is good for 60 days from the date of this order. Should delivery from the plant be after this period, the price and specifications will be adjusted to those then current.

C. This contract contains the entire contract as between the parties and there are no conditions, warranties or representations expressed or implied, statutory or otherwise, with respect to this contract or affecting the rights of the parties, other than as specifically contained herein. Nonesuch have been made by the Seller, its officers, or agents, nor shall any agreement collateral hereto be binding upon the Seller unless it is included in the contract in writing.

PAR. 8. In certain instances, the use of each of the aforesaid provisions, in combination with the acts and practices of respondents, is unfair to purchasers of Lindal, Inc. products in that:

A. The provision set forth in Paragraph Seven, subparagraph A, requires purchasers to accept the goods and pay the full purchase price prior to any opportunity to inspect the goods. In certain instances when purchasers have claimed that delivery was incomplete, respondents have rejected their complaints on the basis that incomplete delivery resulted from theft or damage after the goods were accepted by the purchasers. When subsequent negotiations have failed to resolve the disputes, certain claims have been abandoned by the purchasers due to the cost, inconvenience and problems of proof associated with pursuing such claims.

B. The provision set forth in Paragraph Seven, subparagraph B, permits respondents to adjust the purchase price to the price then current if, after the contract is made, delivery has not occurred within sixty days. Prior to the signing of the contract, however, respondents represent that the pre-cut wood building package is presently in

storage, or will be packaged and ready for delivery within sixty days. Nevertheless, when delivery does not occur within sixty days of the contract date, respondents, in certain instances, have increased the price to the new prevailing price for their product, if in fact a new prevailing price is in existence. Such new prices are higher than purchasers could reasonably have anticipated at the time the contract was made. Thus, certain purchasers are forced to pay new, higher contract prices set by respondents or forfeit part or all of the deposits required by respondents.

C. The provision set forth in Paragraph Seven, subparagraph C, purports to legally exclude and disclaim all implied-in-law warranties. In truth and in fact, under the applicable law of several states in which Lindal, Inc. buildings are sold at retail, such exclusions and disclaimers are unenforceable. Therefore, this contract term has the tendency and capacity to mislead purchasers as to their warranty rights.

Furthermore, the effect of the contract terms described in Paragraph Seven is not generally understandable to persons lacking legal training. Therefore, certain purchasers believe they have waived valuable remedial rights when respondents use or require others to use these terms in contracts for the purchase of Lindal, Inc. products. Thus, the use of the contract terms described in Paragraph Seven is unfair, deceptive and misleading in violation of Section 5 of the Federal Trade Commission Act.

PAR. 9. In the course of their business, respondents disseminate certain advertisements and promotional material in a continuing program of recruiting distributors to sell products of Lindal, Inc. Typical and illustrative of the representations and statements appearing in such material, but not all inclusive thereof, are the following:

A distributorship in an average metro area of 300,000 should make its owner \$50,000 income during the second or at least third year. Double, or \$100,000 is also highly possible. With a lesser effort and more leisurely life style, \$25,000 is probable.

A Lindal distributor recently grossed \$156,000 working one day a week. * * * by putting in an extra day or two each week he could have grossed at least \$300,000, for an income of well over \$70,000.

PAR. 10. Through the use of such statements and representations, and others not specifically set out herein, respondents have represented, directly or by implication, that an average distributor can reasonably expect to make a net profit between \$25,000 and \$100,000 after a few years of operation.

PAR. 11. In truth and in fact, at the time the representations were made, respondents had no reasonable basis from which to conclude that

an average distributor could reasonably expect to make a net profit between \$25,000 and \$100,000 after a few years of operation.

Therefore, the acts, practices and representations set forth in Paragraphs Nine, Ten and Eleven are false, misleading, deceptive and unfair in violation of Section 5 of the Federal Trade Commission Act.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and the aforesaid unfair and deceptive acts and practices have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that those statements and representations are true and complete and to induce substantial numbers of persons to purchase products and distributorships from Lindal, Inc.

PAR. 13. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting 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 the Federal Trade Commission Act, the allegations of Paragraphs One and Two above are incorporated by reference in Count II as if fully set forth herein.

PAR. 14. Respondents, in the ordinary course of their business as aforesaid, and particularly between July 1972 and December 1973, as to certain purchasers of Lindal, Inc. buildings, have regularly extended 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. 15. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused purchasers to execute promissory notes of various types upon which minimal consumer credit cost information is set forth. In most instances, respondents and their agents have not provided these purchasers with any other consumer credit cost disclosures.

By and through the use of such notes, respondents:

A. Failed to use the terms "cash price," "cash downpayment," "unpaid balance of cash price," "unpaid balance" and "prepaid finance charge" and have failed to give the corresponding disclosures with those terms as required by Sections 226.8(c)(1),(2),(3),(5) and (6), respectively, of Regulation Z.

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

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

D. Failed to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

E. Failed, in some instances, where a security interest was retained or acquired by respondents in connection with the credit sale, and where a clear identification of the property to which the security interest relates could be made on the note, to provide such identification as required by Section 226.8(b)(5) of Regulation Z.

F. Failed to furnish to the purchaser a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

PAR. 16. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further

conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

A. Respondent Lindal Cedar Homes, Inc. is a Washington corporation with its office and principal place of business located at 10411 Empire Way South, Seattle, Washington.

Respondent Sir Walter Lindal was the president and chairman of the board of directors of the corporate respondent, and he formulated, directed and controlled the policies, acts and practices of Lindal Cedar Homes, Inc., including those hereinafter set forth. He continues to have a substantial ownership interest in the corporate respondent. His address is 3764 S.W. 171st, Seattle, Washington.

B. 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

I.

It is ordered, That respondents Lindal Cedar Homes, Inc. (hereinafter Lindal, Inc.), a corporation, its successors and assigns, and its officers; Sir Walter Lindal, individually and as a former officer of Lindal, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of any building, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation in writing, orally, visually, or in any other manner, directly or by implication, as to the ease, economy or time involved in the construction of any building, unless at the time the representation is made respondents:

A. Have a reasonable basis for such representation based on a statistically valid sample of those persons who have either purchased or constructed Lindal, Inc. buildings; and

B. Make available to distributors of Lindal, Inc. products and to the general public, at the point of retail sale, copies of a brief but comprehensive statement of the substantiating material, in terms understandable to the average consumer.

II.

It is further ordered, That respondents, their successors and assigns, in connection with the advertising, offering for sale or sale of any building do forthwith:

A. Cease and desist from disseminating, using, or causing others to use, in any manner, any sales agreement, earnest money agreement, or other contract which provides directly or indirectly, that:

1. The purchaser must accept or has accepted delivery of respondents' products prior to the time the purchaser has had an opportunity to inspect the goods in a reasonable place, time and manner for damages, defects and shortages.

2. The respondents may increase the price of their product to a price higher than the respondents' prevailing price for like products.

3. Respondents disclaim liability for implied-in-law warranties where such disclaimers are in contravention to applicable state laws.

B. Abide by, and include in all sales agreements, earnest money agreements and other contracts which Lindal, Inc. distributes, uses, or causes others to use, a term which has the following effect and none in contradiction thereof:

The purchaser has the option to cancel the contract and obtain a return of all deposits, less costs for plans and engineering actually incurred by respondents prior to cancellation, should either of the following circumstances occur:

1. If shipment of the ordered merchandise is not made within thirty (30) days of the scheduled shipment date mutually agreed upon by the respondents and the purchaser.

2. If respondents increase the price of their product to the purchaser at any time after a contract for sale of the product has been signed or otherwise consummated.

C. Maintain, abide by, and continue to provide a warranty to every purchaser of their products, whether said purchasers buy directly from respondents or from one of respondents' distributors. Said warranty shall be written and shall incorporate, but not necessarily be limited to, the following standards and terms, in language understandable to the average purchaser:

1. The identity and address of the warrantor.

2. The materials ordered by the purchaser are warranted to be delivered complete at the site designated by the purchaser for delivery. The duration of this warranty shall in no event be less than 10 days from the date when delivery is made at the designated site to the purchaser or to his/her duly authorized agent. There shall be no exceptions or exclusions to this warranty.

3. The materials ordered by the purchaser are warranted to be delivered free from defects and of a kind and quality designated or specified in the contract of sale. The duration of this warranty shall in no event be less than 150 days from the date when the purchaser

receives the designated materials. There shall be no exceptions or exclusions to this warranty.

4. The duties and responsibilities of claimant shall be limited to the filing with respondents of all claims under the warranty in writing. Respondents shall fully and conspicuously disclose the procedure which the consumer should take in order to (a) obtain performance of any obligation under the warranty; and (b) file a complaint with respondents regarding any failure to perform the alleged warranty obligations of respondents, in accordance with the procedures set out in subsection (9), below.

5. All of respondents' warranty service and replacement obligations will be performed without charge to the purchaser.

6. All of respondents' warranty service and replacement obligations performed subsequent to the tender of the materials to the retail purchaser shall be rendered by respondents, either directly or through their distributors or other third parties at the site of the materials.

7. Respondents shall, directly or through their distributors or other third parties:

a. Respond to notice of the need for warranty service or replacement within a reasonable time not to exceed seven business days of receipt of said notice by respondents; and

b. Complete said service or replacement covered by the warranty within a reasonable time not to exceed forty-five calendar days following said receipt of notice.

8. Respondents shall maintain full and adequate records which disclose the date of receipt and the date of disposition of each request for warranty service (including any refusal to accept a request and the reason for such refusal) received by respondents.

9. Respondents shall, beginning within 120 days of the effective date of the order, establish a uniform procedure for the systematic receipt and analysis and fair disposition of all complaints or disputes which may arise between purchasers of respondents' products and respondents or respondents' distributors or other third parties, regarding any alleged failure of respondents to perform their warranty obligations.

Such procedure shall incorporate but not necessarily be limited to:

a. Prompt evaluation and response by respondents to all complaints within a reasonable time not to exceed seven business days after receipt by respondents;

b. The designation of a single focal point within the corporation for the receipt of said complaints;

c. An effective mechanism for the fair and impartial resolution of

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such disputes by corporate level personnel not responsible for sales on a day-to-day basis;

d. An accurate and complete recordkeeping system regarding the nature and disposition of all such disputes and complaints received by respondents;

e. Periodic review and evaluation by respondents of the effectiveness of such procedures and correction of such procedures where necessary.

10. Respondents shall disclose to each retail purchaser of their products, any delegation of warranty responsibility to distributors or other third parties, *provided however*, that disclosure of said delegation must be accompanied by the additional disclosure that such delegation in no way relieves respondents of the ultimate responsibility to fulfill all of respondents' warranty obligations.

11. Respondents shall fully and conspicuously disclose that the warranty provided for herein does not warrant the quality of the construction of the building by respondents' distributor or any other contractor, unless such is the fact.

D. Require each and every person, partnership or corporation which now or at anytime in the future is licensed, franchised or in any way authorized to sell or offer for sale Lindal, Inc. products, as a condition of doing business with Lindal, Inc., to sign an agreement, either at the time of initial franchising or authorization, or at the time of renewal of said franchise or authorization, which includes terms to the following effect and none in contradiction thereof:

1. Distributor will comply with all local, State and Federal laws with respect to the sale of Lindal, Inc. products.

2. Distributor will utilize only written contracts in the sale of Lindal, Inc. products. To this end, Lindal, Inc. will:

a. Provide each distributor with a form of sales contract for use by the distributor in sales to customers which shall comply with the provisions of Parts II.A. and II.B. of this order; and

b. Not discourage, directly or indirectly, the use of this form by distributors.

3. Distributor will make all sales of Lindal, Inc. products so that its customers acquire all rights in accordance with the Lindal, Inc. warranty. To this end, distributor shall include the full text of the Lindal, Inc. warranty as an express term of all contracts for the sale of Lindal, Inc. products.

4. Distributor acknowledges receipt of a copy of this order.

E. Enforce the agreement specified in Part II.D. of this order in the following manner:

1. Whenever respondents receive information, directly or indirect-

ly, that a distributor is not in compliance with said agreement, respondents shall immediately notify said distributor of his/her non-compliance.

2. Whenever a distributor fails to cure said non-compliance within 30 days of receipt of respondents' notice of non-compliance, respondents shall terminate said distributor.

F. Make contact with each distributor to whom respondents may have distributed sales and earnest money agreement forms which contain the language stated in Paragraph Seven of the complaint, and use their best efforts to obtain possession of such sales and earnest money agreement forms from the distributors, and destroy such forms.

III.

It is further ordered, That respondents, their successors and assigns, in connection with the advertising, offering for sale or sale of any distributorship or franchise do forthwith cease and desist from:

A. Failing to furnish each prospective franchisee with the following information in a legible, written document, at the earlier of the time when the first personal meeting for the purpose of discussing the possible sale of a franchise occurs between such prospective franchisee and Lindal, Inc. (hereinafter "franchisor") or its sales representative; or at least fifteen business days prior to the execution by the prospective franchisee of any franchise agreement or any other binding obligation or the payment by the prospective franchisee of any consideration in connection with the sale or proposed sale of a franchise:

1. a. The trade name or trademark under which the franchisor and the prospective franchisee will be doing business;

b. The official name and address and principal place of business of the franchisor, the parent firm or holding company of the franchisor, if any; and

c. All persons the franchisee is required or is suggested to do business with by the franchisor which have a substantial connection with the franchisor.

2. The business experience stated individually of each of the franchisor's directors and chief executive officers including the biographical data concerning all such persons.

3. The business experience of the franchisor, including the length of time the franchisor has conducted a business of the type to be operated by the franchisee; has granted franchises for such business; and has granted franchises in other lines of business.

4. A certified balance sheet for the most recent year; a certified profit and loss statement for the most recent three year period; and a

statement of any material changes in the financial soundness of the franchisor since the date of such financial statements.

5. Where such is the case, a statement that the franchisor or any of its current directors or chief executive officers:

a. Has been held liable in a civil action by final judgment, has been convicted of a felony or has plead nolo contendere to a felony charge if such felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property for the most recent seven year period.

b. Is subject to any currently effective State or Federal agency injunctive or restrictive order relating to or affecting franchise activities or the franchisor/franchisee relationship.

c. Has filed in bankruptcy or has been associated as a director or chief executive officer of any company that has filed bankruptcy or reorganization proceedings for the most recent seven year period.

d. Has been a party to any cause of action brought by franchisees against the franchisor since January 1, 1970 or for the most recent seven year period, whichever is shorter, which resulted either in an out of court settlement in excess of \$1,000 or a judgment against the franchisor.

6. A factual description of the franchise offered to be sold.

7. a. A statement of the total funds which must be paid by the franchisee to the franchisor or to a person having a substantial connection with the franchisor, in order to obtain or commence the franchise operation, such as deposits, downpayments and fees.

b. If all or part of these fees or deposits are returnable under certain conditions, these conditions must be set forth; and if not returnable such fact so disclosed.

8. A statement describing the recurring fees required to be paid, in connection with carrying on the franchise business, by the franchisee to the franchisor or to persons having a substantial connection with the franchisor, including but not limited to royalty, lease, advertising, training, and sign rental fees.

9. A statement disclosing:

a. The name and address of all franchises and company-owned outlets operating at the end of the last calendar year indicating which units are company-owned outlets, and

b. The number of franchisees operating at the end of the last calendar year who, during the last calendar year, purchased buildings from Lindal, Inc. in the following total quantities:

- i. 0 to 2
- ii. 3 to 5

- iii. 6 to 8
- iv. 9 to 15
- v. more than 15

10. A statement describing any real estate, services, supplies, products, signs, fixtures, or equipment relating to the establishment or the operation of the franchise business which the franchisee is required to purchase, lease or rent directly or indirectly from the franchisor or persons having substantial connection with the franchisor.

11. A description of the basis and the amount of any revenue or other consideration to be received by the franchisor, or persons having a substantial connection with the franchisor, from suppliers to the prospective franchisee in consideration for goods or services required or suggested to be purchased by the franchisee.

12. a. A statement of the terms and conditions of any financing arrangement offered directly or indirectly by the franchisor or any person having a substantial connection with the franchisor, and

b. A description of any payments received by the franchisor from any person for the placement of financing with such person.

13. A statement whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services he may offer for sale, or limited in the customers to whom he may sell such goods or services.

14. A statement of the extent to which the franchisor requires the franchisee to participate personally in the direct operation of the franchise.

15. A statement disclosing:

a. The conditions and terms under which the franchisor allows the franchisee to sell, lease, assign, or otherwise transfer his franchise, or any interest therein, and

b. The amount of consideration which must be paid to the franchisor for such sale, lease, assignment or transfer, if any.

16. A statement disclosing:

a. The conditions under which the franchise agreement may be terminated by the franchisor, renewal may be refused, or the franchise may be repurchased by the franchisor at its option;

b. The number, stated for each category, of franchises which were terminated, renewal refused or repurchased during the preceding calendar year and a complete explanation thereof; and

c. The conditions under which the franchise agreement may be terminated by the franchisee and the number of franchises voluntarily terminated by franchisees during the preceding calendar year.

17. If site selection is involved, a statement disclosing the range of

time that has elapsed in the preceding calendar year, between signing of a franchise agreement and site selection. If, in addition, operating units are to be provided, a statement disclosing the range of time that has elapsed in the preceding calendar year between the signing of the franchise agreement and opening of the franchise outlet.

18. If the franchisor offers a training program or informs the prospective franchisee that it intends to provide him/her with training, the franchisor must specify the specific type and nature of the training, the number of hours or days of instruction, and the cost to the franchisee, if any.

19. If a franchisor uses the name of a "public figure" in connection with the recommendation of the franchise or as a part of the name of the franchise operation, a statement disclosing:

a. The nature and extent of the public figure's involvement and obligations to the franchisor, including but not limited to the promotional assistance the public figure will provide to the franchisor and to the franchisee;

b. The total investment of the public figure in the franchise operation; and

c. The amount of any fees the franchisee will be obligated to pay for such involvement and assistance provided by the public figure.

20. A statement explaining clearly the terms and conditions of any covenant not to compete which a franchisee may be required to enter into.

All of the foregoing information in Part III.A.1. through 20. is to be contained in a single disclosure statement, which shall not contain any promotional claims or other information not required by this order or required by State law. This does not preclude franchisors from giving explanatory data in separate literature so long as such explanatory data are not inconsistent with the disclosure statement required by this order. This disclosure statement shall carry a distinctive and conspicuous cover sheet with the following notice (and no other) imprinted thereon in boldface type of not less than 10 point size:

INFORMATION FOR PROSPECTIVE FRANCHISEES REQUIRED BY
FEDERAL TRADE COMMISSION

This information is provided for your own protection. It is in your best interest to study it carefully before making any commitment.

The information contained herein has not been reviewed or approved by the Federal Trade Commission. A false, inaccurate or incomplete statement may constitute a violation of federal law, and should be reported to the Federal Trade Commission, Washington, D.C. 20580.

B. Making any oral or written representation of a prospective franchisee's potential sales, income, gross or net profit unless:

1. Such sales, income or profits are reasonably likely to be achieved by the person to whom the representation is made;
2. The basis and assumptions for such representation are set forth in detail;
3. Such representation and the underlying data have been prepared in accordance with generally accepted accounting principles;
4. In immediate conjunction therewith, the following statement is clearly and conspicuously disclosed:

"THERE IS NO ASSURANCE THAT INCOME AND PROFIT PROJECTIONS WILL BE ATTAINED BY ANY SPECIFIC FRANCHISEE. THEY ARE MERELY ESTIMATED."; and

5. The amounts represented are not in excess of sales, income or profits actually achieved by existing franchises. If franchises have not been in operation long enough to indicate what sales, income or profits may result, then representations of such to a prospective franchisee are prohibited.

C. Making any representation with respect to sales, income or profits made by franchisees, unless such sales, income, or profit amounts are reasonably likely to be achieved by the person to whom the representation is made.

D. 1. Making any claim with respect to past or potential sales, profits or earnings in any advertising, promotional material, or discussion between a franchisor's representatives and prospective franchisees, for which the franchisor does not have substantiation in its possession, which substantiation shall be made available to prospective franchisees or the Commission or its staff upon demand.

2. Making any claim or representation in advertising or promotional material, or in any oral sales presentation, solicitation or discussion between a franchisor's representatives and prospective franchisees, which is inconsistent with the information required to be disclosed by this order.

E. Failing to furnish the prospective franchisee with a copy of the completed franchise agreement proposed to be used at least fifteen business days prior to the date the agreement is to be consummated.

F. Failing to return the funds or deposits in accordance with the conditions stated pursuant to subparagraph (A)(7)(b) of this paragraph.

G. Failing to furnish the prospective franchisee with a copy of the Federal Trade Commission's publication entitled "FTC Buyer's Guide No. 4, Franchise Business Risks" at the earlier of the time:

1. When the first personal meeting for the purpose of discussing

the possible sale of a franchise occurs between such prospective franchisee and the franchisor or its sales representative; or

2. At least fifteen business days prior to the execution by the prospective franchisee of any franchise agreement or any other binding obligation, or the payment by the prospective franchisee of any consideration in connection with the sale or proposed sale of a franchise. (A limited number of said publication may be obtained from the Commission; printing or reproduction of said publication, however, shall be at the franchisor's expense.)

IV.

It is further ordered, That respondents, their successors and assigns, 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:

A. Failing to use the terms "cash price," "cash downpayment," "unpaid balance of cash price," and "pre-paid finance charge" and the corresponding disclosures with those terms as required by Sections 226.8(c)(1), (2), (3), (5) and (6), respectively, of Regulation Z.

B. 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.

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

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

E. Failing to describe or identify the type of security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and to provide a clear identification of the property to which the security interest relates as required by Section 226.8(b)(5) of Regulation Z.

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

G. 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.

V.

It is further ordered, That respondents, at all times subsequent to the date of this order, maintain complete records relative to the manner and form of their compliance with each Part of this order during the immediately preceding two-year period. Such records shall include all advertising, promotional literature, the basis for all applicable advertising claims, correspondence with persons who formulate or place advertising, and other pertinent documents, and shall be made available for inspection and photocopying by authorized representatives of the Federal Trade Commission upon reasonable notice at respondents' places of business or other properly designated location.

VI.

It is further ordered, That the corporate respondent shall forthwith distribute a copy of this order to each of its officers and distributors, and to each agent, representative or employee who is engaged in the preparation or placement of advertisements.

VII.

It is further ordered, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other persons, respondents shall require said successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order.

VIII.

It is further ordered, That the corporate respondent notify the Commission at least thirty days prior to any proposed change in said 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 this order.

IX.

It is further ordered, That the individual respondent named herein promptly notify the Commission of his affiliation with any business or employment, in the event of such affiliation. Such notice shall include his 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.

X.

It is further ordered, That respondents shall, within sixty days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

Complaint

87 F.T.C.

IN THE MATTER OF
WALKER-THOMAS FURNITURE CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2775. Complaint, Jan. 6, 1976—Decision, Jan. 6, 1976

Consent order requiring a Washington, D.C., retailer of furniture, appliances, and housewares, among other things to cease offering merchandise without disclosing prior use; failing to honor guaranties and warranties; failing to disclose cost terms; failing to deliver ordered merchandise; harassing delinquent debtors; failing to maintain adequate records; and failing to make disclosures concerning the extension of consumer credit required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Gary M. Laden, Alan L. Cohen and Robert L. Patterson.*

For the respondents: *Earl W. Kintner, Daniel C. Smith and Ruth P. Roland, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. Harry Protas, Protas, Kay, Goldberg, Spivok & Protas, Bethesda, Md.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Walker-Thomas Furniture Co. Inc., a corporation, and Robert Walker Thomas and Percy Weinberg, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said 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 Walker-Thomas Furniture Co. Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its principal office and place of business located at 1023-31 7th St., N.W., Washington, D.C.

Respondents Robert Walker Thomas and Percy Weinberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.