

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.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, distribution and repairing of furniture, appliances, housewares, and related products to the public at retail. In the course and conduct of their business, respondents have engaged in the extension of credit to customers through retail installment contracts for the financing of items sold and repair services rendered by respondents.

In the course and conduct of their business, respondents have also engaged in the collection of debts incurred by respondents' customers in connection with said customers' use of credit for the financing of items sold and repaired by respondents.

Respondents maintain a group of salesmen who travel door-to-door to the homes of respondents' customers to sell furniture, appliances, housewares, and related products. Respondents' salesmen also function as bill collectors, traveling door-to-door to the homes of respondents' customers to collect periodic payments due to respondents under retail installment contracts executed between respondents and respondents' customers.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents receive periodic payments from customers who have purchased merchandise from them under retail installment contracts. In many instances, respondents' customers make payments to respondents which are insufficient, untimely or not otherwise fully in compliance with the payments called for by their retail installment contracts. Respondents, through their salesmen and employees, accept these partial payments, thereby representing, directly or by implication, that such payments will be credited to the customer's account. Respondents then attempt to reject these payments by issuing a check to the customer for the amount of his payment, the check made payable to the customer and Walker-Thomas as co-payees. This practice makes it impossible for the customer to negotiate the check without Walker-Thomas' endorsement. Respondents, therefore, attempt to both reject

these payments and simultaneously retain use of the funds paid to them by the customers without crediting the customers' account with such payments. Such representations were false and misleading and such a practice was and is confusing and misleading to respondents' customers and constitutes an unfair and deceptive act and practice.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents receive periodic cash or money order payments from customers who have purchased merchandise from them pursuant to retail installment contracts. In many instances, respondents do not provide customers with a payment card or other record of the customer's payments received by respondents, nor do they issue receipts for these payments. The failure of respondents to issue such payment cards or receipts denies the customers proof that such payments were made, causes respondents' customers to be unaware of the status of their account at any given time, and prevents the customers from keeping an accurate record of their account with respondents. Such a practice was and is confusing and misleading to respondents' customers, and constitutes an unfair and deceptive act and practice.

PAR. 6. In the course and conduct of their business, as aforesaid, respondents sell and deliver merchandise to their customers. In many instances, this merchandise is returned to respondents, for various reasons, after said merchandise has been left in the homes of customers for periods up to as much as several weeks after the sale. Such merchandise, in many instances, is returned to respondents' inventory and is intermingled with new merchandise in respondents' inventory. In intermingling respondents' merchandise as aforesaid, said merchandise cannot thereafter accurately be identified or discerned as having been previously sold to, left in the possession of, or used by previous customers, and is sold as new merchandise without any disclosure that such merchandise has been or may have been previously sold to, left in the possession of, or used by previous customers. The acts and practices of respondents as alleged herein, including respondents' failure to disclose the material fact to prospective customers that merchandise from such inventory has been, previously sold to, left in the possession of, or used by previous customers, has the tendency and capacity to mislead a substantial portion of respondents' customers into the erroneous and mistaken belief that such merchandise is new, and into the purchase of said merchandise by reason of such erroneous and mistaken belief. Therefore, these acts and practices of respondents, including respondents' failure to disclose material facts as alleged herein, were and are unfair, false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, as aforesaid,

respondents guarantee their merchandise, in writing, in the following manner:

Televisions, Hi-Fis, Stereos, Radios, Record Players; Miscellaneous Electrical Appliances

NEW — Guarantee Picture Tube — 1 year

All other parts * * * * * 90 days All Plus 30 day Free Service

USED — Overall guarantee-90 days

Washers, Refrigerators, Freezers:

NEW — Washer Motor—1 year

Icebox Motor — 5 years All Plus 30 day Free Service

All Parts — 90 days

USED — Overall guarantee — 90 days

Furniture, House furnishings etc:

NEW — Free from all manufacturers defects and delivery damage.

USED — As is only

ALL GUARANTEES INVALID IN CASE OF ABUSE OR DAMAGE BY CUSTOMER

In many instances, respondents' customers request respondents to repair merchandise still under respondents' guarantee. Respondents, however, do not acknowledge many of these requests until after the guarantee has expired. As a result, respondents effectuate the requested repairs after the guarantee has expired and charge customers for repairs which should have been covered by the guarantee. Such practices were and are unfair, false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, as aforesaid, respondents guarantee their merchandise in the manner described in Paragraph Seven of this complaint. Respondents, in many instances, do not inform their customers of the existence of said guarantee. Respondents' customers, in many instances, are therefore unable to assert their contractual rights pursuant to said guarantee. Thus, said practice was and is unfair, misleading and deceptive, and respondents' failure to inform their customers of the existence of said guarantee constitutes an omission of material fact.

PAR. 9. In the course and conduct of their business and for the purpose of inducing the sale of their merchandise, respondents, through oral sales presentations by their salesmen to prospective purchasers, represent, directly or by implication, that:

1. Merchandise sold by respondents will be delivered to the

customer free from damages or defects, or merchandise which is delivered to customers with damages or defects will be repaired or replaced to the satisfaction of the purchaser.

2. Merchandise which is delivered to customers with damages or defects will be repaired or replaced within a reasonable time.

PAR. 10. In truth and in fact, in many instances:

1. Merchandise sold by respondents is delivered to customers with damages and/or defects, and said merchandise is not repaired or replaced to the satisfaction of the customers.

2. Merchandise which is delivered to customers with damages and/or defects is not repaired or replaced within a reasonable time.

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

PAR. 11. In the course and conduct of their business, as aforesaid, respondents' salesmen and employees solicit orders for merchandise in the homes of respondents' customers. In many instances, customers order merchandise from respondents without knowing the exact cost of the merchandise or the cost of the financing of said merchandise, or the customers rely on the salesman's general representations as to price and financing. In many instances, respondents do not inform the customer of the exact cost of the merchandise or the cost of the financing of said merchandise until after the merchandise is delivered. These practices result in customers having merchandise delivered to and placed within their homes, while subsequently discovering that the prices and financing terms of said merchandise are more costly than what the customer had either reasonably anticipated or the salesmen had represented. Thus, said practices were and are unfair, false, misleading and deceptive and the failure of respondents to inform their customers of the cost of ordered merchandise and the financing terms at the time that the merchandise is ordered constitutes an omission of material facts.

PAR. 12. In the course and conduct of their business, as aforesaid, respondents solicit orders for merchandise in the homes of respondents' customers. In the course of such solicitation, respondents' salesmen and employees make representations to customers about various features and characteristics of merchandise which the customer orders. In many instances, the actual merchandise delivered to the customer by respondents does not contain the features and characteristics which were represented by respondents' salesmen and employees at the time of the purchase. Therefore, such representations were and are false, misleading, and deceptive.

PAR. 13. In the course and conduct of their business, as aforesaid, respondents knowingly extend credit through retail installment

contracts to many low income customers who are living on fixed incomes. In many instances, respondents' customers do not fulfill their contractual obligations to respondents because of, among other reasons, the failure of the merchandise purchased from respondents to properly perform for the purpose for which the merchandise was intended to be used, or the changing of circumstances affecting the customer's fixed income which render him economically unable to meet the periodic payments called for by the retail installment contract. In many of these instances, respondents utilize self-help repossession to take back the merchandise, or coerce the customer into "voluntarily" turning in the merchandise in exchange for respondents canceling the balance due on the customer's account. Respondents repossess this merchandise, in many instances, by removing the merchandise from a customer's home when no adult is present, or intimidating the customer into believing that the customer's only alternatives are to pay the full amount due on his account or give up the merchandise without judicial process.

Respondents normally resell the merchandise which they pick up in the manner described in the above paragraph. In many instances, customers who have had their merchandise repossessed or who "voluntarily" turn in their merchandise have paid a substantial amount to respondents for the merchandise, and receive no benefit or refund for the payments they have made when the merchandise is turned in. In addition, any valid reason the customers have for nonpayment under their retail installment contract can no longer be raised when the merchandise is given up. Thus, the practices as alleged herein, and the failure of respondents to give their customers a chance to raise valid defenses or reasons for nonpayment, as well as the failure of respondents to give their customers any credit or refund for equity built up by their customers in the returned or repossessed merchandise, was and is an unfair practice.

PAR. 14. In the course and conduct of their business, as aforesaid, respondents engage in the collection of payments pursuant to debts owed on retail installment contracts between respondents and their customers. In the course and conduct of such collection, respondents contact third parties, including but not limited to the employers, friends, and relatives of their customers. Such practices have the capacity and tendency to coerce, pressure, and embarrass respondents' customers, thereby inducing them in many instances to make payments to respondents. Therefore, the use by respondents of such acts and practices was and is an unfair practice.

PAR. 15. In the course and conduct of their business, as aforesaid, respondents engage in the collection of payments pursuant to debts on retail installment contracts between respondents and their customers.

In the course and conduct of such collection, respondents' salesmen and employees harass customers owing money to respondents by repeated phone calls and visits, often made early in the morning and late at night. Such practices have the capacity and tendency to coerce, embarrass, pressure and inconvenience respondents' customers, thereby inducing them in many instances to make payments to respondents. Therefore, the use by respondents of such practices was and is an unfair practice.

PAR. 16. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. §41, *et seq.*, and the provisions of Subpart B, Part 1 of the Commission's Procedures and Rules of Practice, 16 C.F.R. §1.11, *et seq.*, has conducted a proceeding for the promulgation of a trade regulation rule pertaining to a cooling-off period for door-to-door sales. Notice of this proceeding, including a proposed rule, was published in the *Federal Register* on September 29, 1970 (35 F.R. 15164). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed rule.

After it had considered suggestions, criticisms, objections, and other pertinent information in the record, the Commission on February 17, 1972, published a revised proposed rule in a notice in the *Federal Register* (37 F.R. 3551) extending an opportunity to interested parties to submit data, views or arguments regarding the revised proposed rule. A period of 30 days was allowed for the submission of written statements.

The Commission considered all matters of fact, law, policy and discretion, including the data, views and arguments presented on the record by interested parties in response to the notices, as prescribed by law, and determined that the adoption of the trade regulation rule and its statement of basis and purpose was in the public interest, and, accordingly promulgated the Trade Regulation Rule Concerning a Cooling-Off Period for Door-To-Door Sales on October 18, 1972, effective June 7, 1974 (16 C.F.R. §429.1).

PAR. 17. In the course of their business, as aforesaid, respondents engage in door-to-door sales, as "door-to-door sales" is defined in the Federal Trade Commission Trade Regulation Rule entitled Cooling-Off Period for Door-To-Door Sales, effective June 7, 1974. In the course of these door-to-door sales, subsequent to June 7, 1974, respondents do not give their customers proper notice, as required by Sections (a) and (b) of the rule, of their right to rescind the contract within three business days after the date of the transaction.

PAR. 18. Respondents' aforesaid violations of the Trade Regulation Rule Concerning a Cooling-Off Period for Door-To-Door Sales constitutes a violation of Section 5 of the Federal Trade Commission Act.

PAR. 19. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

PAR. 20. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief. These unfair acts and practices also have the capacity and tendency to coerce respondents' customers into making payments of money to respondents.

PAR. 21. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

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.

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

ORDER

I

For the purpose of this Order the following definitions shall apply:

A. RETAIL INSTALLMENT CONTRACT — is a written agreement between respondents and a customer under which respondents sell merchandise to a customer while extending credit to said customer for the purchase of said merchandise and retaining a security interest in the merchandise. Such credit is extended on an installment basis, whereby respondents' customers agree to make a specified number of payments to respondents at specified time intervals to satisfy the obligation.

B. PAYMENT — is a periodic or installment payment due on a retail installment contract. The term "payment" shall also include the tender of a payment of money to respondents by a customer to satisfy a periodic or installment payment due under a retail installment contract, said tender of payment being insufficient, untimely or not otherwise fully in compliance with the payments called for by said retail installment contract.

C. PAYMENT CARD — is a ledger or record of payments made to respondents by respondents' customers which is given by respondents

to their customers. This record of payments reflects both all payments made to respondents by respondents' customers as well as a running balance of the customer's account revealing descending balances after all customer payments and ascending balances after all customer purchases from respondents.

D. SELF-HELP REPOSSESSION — refers to respondents' efforts to retake merchandise sold to customers without the use of judicial process.

E. DEBT COLLECTION — refers to any activity other than use of the judicial process which is intended to bring about or does bring about repayment of all or part of a consumer debt, except:

- a. inquiry to locate a consumer whose whereabouts are genuinely unknown to the respondents; and/or
- b. inquiry to determine the nature and extent of a consumer's wages or property;

Provided, That, in these two instances, no specific mention is made of the alleged indebtedness.

F. USED MERCHANDISE — is any merchandise which has been previously left in a customer's home or in a customer's possession or has been previously used for the purposes for which it was intended.

G. FLOOR SAMPLE — is any merchandise that is not used merchandise and has been displayed for inspection by prospective purchasers at respondents' retail outlets.

II

It is ordered, That respondents Walker-Thomas Furniture Co., Inc., a corporation, its successors and assigns, and its officers, and Robert Walker Thomas and Percy Weinberg, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device in connection with the repairing, offering for sale, sale and distribution of furniture and appliances, or any other products or services, and in connection with the collecting, attempting to collect, or assisting in the collection of debts, or inducing, or attempting to induce, the payment of accounts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Receiving any payment from a customer and returning said payment to the customer in either the form of a check payable to the customer and Walker-Thomas as co-payees, or in any form which does not give the customer full use of the rejected funds.
2. Failing to either clearly accept or reject any payment tendered by a customer to respondents.

3. Failing to credit customer accounts, within three (3) business days after its receipt, with any payment tendered by a customer to respondents, if that payment is accepted by the respondents.

4. Failing to give a written receipt for any payment which is tendered by a customer to respondents in a form other than a personal check, if that payment is accepted by respondents. Such receipts shall include the amount of the payment and must be given to the customer at the time the payment is made to the respondents; *provided, however*, that respondents may send such receipts by first class mail if the payment is made by mail.

5. a. Failing to deliver or mail, within three (3) business days of the date of sale, a payment card to all customers who initially finance their purchases from respondents under a retail installment contract, and failing to record each subsequent purchase, along with the current status of that account, on that payment card or a new payment card;

b. Failing to record on such payment card the amount of each payment received from respondents' customers at the time the payment is made by the customers; *provided, however*, that if respondents' customers do not make their payment card available upon request at the time of each payment, or if respondents' customers mail in their payment without enclosing their payment card, respondents do not have to record the amount of the payment on the customer's payment card if they issue a receipt for that payment indicating the amount of the payment and showing the current balance on that customer's account after the payment.

6. a. Selling any used merchandise without first clearly and conspicuously disclosing that such merchandise is "used" to any prospective customer orally, on any contract for the subsequent sale of that merchandise, and in a writing conspicuously attached to the merchandise when it is displayed in respondents' store.

b. Selling any floor sample without clearly and conspicuously disclosing that such merchandise is a floor sample to any prospective customer orally, on any contract for the subsequent sale of that merchandise, and in a writing conspicuously attached to the merchandise when it is displayed in respondents' store.

The oral disclosures required by this Paragraph II(6) must be made prior to the prospective customer's signing a retail installment contract for the merchandise.

7. Representing that any used merchandise or floor sample is new or misrepresenting, in any manner, the nature, extent or degree of prior use of any merchandise offered for sale or sold by respondents.

8. Failing to maintain records which will show the disposition of any used merchandise or floor sample after said used merchandise has been

previously left in a customer's home or in a customer's possession, or said floor sample has been displayed for inspection at respondents' retail outlets. These records shall include complete records of any subsequent sale of said merchandise.

9. Failing to promptly honor the terms of any guarantee or warranty, both express and implied, given by respondents to their customers, if respondents' customers request service or repairs at any time prior to the expiration of the warranty or guarantee. The failure of respondents to effectuate repairs or services prior to the expiration of any warranty or guarantee shall not relieve the respondents of the responsibility of honoring any request for such repairs or services made prior to the expiration of said warranty or guarantee.

10. Failing to issue a copy of any guarantee or warranty given by respondents to their customers at the time of each purchase by a customer.

11. Failing to maintain adequate records of any inquiry, either written or oral, made by respondents' customers to any of respondents' agents or employees requesting repairs to merchandise sold by respondents while such merchandise is still under respondents' warranty or guarantee. Such records shall indicate the date on which the request was made, the nature of the complaint and repair work involved, and the date on which the repair was effectuated.

12. Accepting orders from customers for merchandise or arranging delivery of merchandise to customers unless respondents first disclose to the customer the following in writing:

a. the cash price of the merchandise, as "cash price" is 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.*);

b. the amount of downpayment required;

c. the number, amount and due date or period of payments scheduled to repay the indebtedness;

d. the amount of the finance charge, as "finance charge" is 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.*);

e. the amount of the finance charge expressed as an annual percentage rate, as "finance charge" and "annual percentage rate" 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.*); and

f. the deferred payment price, as "deferred payment price" is 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.*), or the sum of all the payments.

13. Delivering any merchandise to customers which is not what the customer ordered or does not conform to the representations made by

respondents' salesmen and employees concerning said merchandise; *provided, however*, that any nonconforming delivery of merchandise which is made through mistake or inadvertence will not be a violation of this Paragraph II(13) if respondents correct the mistake and deliver conforming merchandise within seven (7) days after respondents are notified by any customer of such nonconforming delivery.

14. Failing to comply with any and all provisions of the Federal Trade Commission's Trade Regulation Rule concerning a *Cooling-Off Period for Door-to-Door Sales* (16 C.F.R. §429.1), which are in effect on the date this order becomes effective, and with any modifications or changes in the aforesaid rule which may be made from time to time. A copy of said rule shall be made a part of this order for purposes of complying with Part IV of this order.

Provided, however, That nothing contained in this order shall relieve respondents of any contractual obligations respecting contracts required by Federal law or the law of the jurisdiction in which the contract is negotiated. When such obligations are inconsistent, respondents may apply to the Commission for relief from Paragraph II (14) of this order with respect to contracts executed in the State in which such different obligations are required.

15. Utilizing any self-help repossession of merchandise sold to any of respondents' customers unless respondents:

a. Orally tell that customer who has purchased the merchandise (*i.e.*, the person who has signed the contract for that merchandise), that the merchandise cannot be taken back without the customer's permission; and

b. Immediately preceding any attempt to repossess merchandise, furnish that customer who has purchased the merchandise with a document containing only the following language appearing in the following manner:

NOTICE — READ THIS

By order of the Federal Trade Commission, Walker-Thomas Furniture Company cannot take back any merchandise from you without your written consent. If you wish to have Walker-Thomas Furniture Company take back any merchandise you have bought from it, you must sign this paper. YOU DO NOT HAVE TO SIGN THIS PAPER AND YOU DO NOT HAVE TO CONSENT TO THE RETURN OF YOUR MERCHANDISE. If you have any problem with defective or damaged merchandise you have bought from Walker-Thomas Furniture Company, call the Better Business Bureau of Metropolitan Washington, D.C., 1111 E Street, N.W., Washington, D.C., at 393-8017. They can help you solve your problem. If you have a dispute with Walker-Thomas concerning defective or damaged merchandise, you have a right to submit your dispute for settlement (arbitration) to the Better Business Bureau within one year from the date your merchandise was delivered.

I consent to have Walker-Thomas Furniture Company take back merchandise I have bought from it. I UNDERSTAND THAT THEY CANNOT TAKE BACK THIS MERCHANDISE UNLESS I CONSENT TO IT.

(date)

(name)

c. Obtain the signature of that customer who has purchased the merchandise from respondents on the document described in Paragraph II (15)(b) of this order; and

d. Maintain adequate records to indicate compliance with Paragraph II (15)(c) of this order.

16. Utilizing any self-help repossession or any attempt without judicial process to take back merchandise sold to any of respondents' customers when such repossession or taking back is accomplished or attempted through the use of any intimidation, deception, coercion, threats of any nature or any statements or conduct which give the customer the impression that the merchandise can be repossessed without the full consent of the customer.

17. a. Communicating or threatening to communicate, in the course and conduct of debt collection, with the consumer's employer or any agent of the employer or any other person not liable for the debt other than the customer's spouse or attorney, except as permitted by order of a court.

b. Failing to provide on the face of all of its retail installment contracts, with such conspicuousness and clarity as is likely to be read and understood by customers, that:

In the course of collecting a debt, Walker-Thomas Furniture Company will not communicate with or threaten to communicate with a customer's employer or any agent of the employer or any other person not liable for the debt other than a customer's spouse or attorney, except as permitted by order of a court.

Provided, however, That should the Federal Trade Commission promulgate a Trade Regulation Rule or Industry Guide concerning Unfair Credit or Debt Collection Practices, then any pertinent less comprehensive or less restrictive provisions of such Rule or Guide shall automatically replace any comparable provisions of Paragraph II (17) of this order when that rule or guide becomes final and effective.

18. Communicating, in the course and conduct of debt collection, with any of respondents' customers before 7:30 a.m. or after 9:00 p.m., or making any visits or phone calls of a harassing nature including, but not limited to, repeated visits or phone calls over unreasonably short periods of time.

III

A. *It is further ordered*, That in addition to other rights given to a customer pursuant to this order, if respondents and a customer are unable to agree upon a settlement of any controversy involving the delivery or repair of any damaged or defective merchandise, or the failure to replace or repair damaged or defective merchandise, then, at the option of the customer, such customer shall have the right to submit that controversy to an impartial arbitration procedure entailing no mandatory administrative cost or filing fee to the customer, which shall be conducted in accordance with the arbitration procedures annexed to this order, as Appendix "A," and the procedures for arbitration adopted in Appendix "A" are to be considered as incorporated within the terms of this order.

B. *It is further ordered*, That respondents comply with and abide by any award or decision rendered pursuant to the arbitration procedures of Paragraph III (A) of this order.

Furthermore, respondents shall not be entitled to prevent arbitration pursuant to any provision of this order by reason of having obtained a default judgment against any customer in any action for money or property allegedly due the respondents or their assignees.

C. *It is further ordered*, That at the time a controversy arises involving the delivery or repair of any damaged or defective merchandise, or the failure to replace or repair damaged or defective merchandise, respondents shall provide adequate notification to customers of their right to submit such controversy to arbitration and that respondents also incorporate the following statement on the face of all retail installment contracts with such conspicuousness and clarity as is likely to be read and understood by customers:

Any right or claim which you may have involving damaged or defective merchandise you have bought from Walker-Thomas Furniture Company may be settled, at your option, by arbitration conducted by the Better Business Bureau and monitored by the Federal Trade Commission. YOU HAVE THIS RIGHT TO ARBITRATION ONLY IF YOU REQUEST ARBITRATION WITHIN ONE YEAR FROM THE DATE THE MERCHANDISE IS DELIVERED TO YOU. If you have any claims which you want to be arbitrated or any questions about arbitration, call the Better Business Bureau, 1111 E Street, N.W., Washington, D.C. at 393-8017.

D. *It is further ordered*, That whenever respondents are required pursuant to the terms of this order to give Notice of a customer's right to arbitration, the notice must set forth the name, address and telephone number of the arbitration tribunal and the manner in which

arbitration can be obtained. Respondents are authorized and directed to change the instructions, contained in the Notice set forth above in Paragraph III(C) of this order, as to how to secure arbitration if circumstances require.

E. *It is further ordered*, That one year after the service of this order upon respondents, respondents may petition the Federal Trade Commission to reopen these proceedings, pursuant to Section 3.72 of the Commission's Rules of Practice, for the purpose of reviewing the effectiveness and/or fairness of the operation of Part III of this order.

F. *It is further ordered*, That Part III of this order shall not apply to sales made by respondents prior to the date this order becomes final and effective.

IV

A. *It is further ordered*, That respondents deliver a copy of this order to cease and desist to all present and future employees or other persons engaged in the debt collection of respondents' accounts and the offering for sale, or sale, of respondents' products, and secure from each such employee or other person a signed statement acknowledging receipt of said order.

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

C. *It is further ordered*, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

D. *It is further ordered*, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

E. *It is further ordered*, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

APPENDIX "A"

AGREEMENT OF PARTIES — The parties shall be deemed to have made these rules set

Appendix "A"

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forth herein in Appendix A a part of their arbitration agreement. These rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

INFORMAL MEDIATION PERIOD — At its discretion the Better Business Bureau of Metropolitan Washington, D.C. (hereinafter referred to as the BBB), may attempt to informally mediate any dispute between a customer and the respondents for a period of not more than 10 business days after the customer initially requests the BBB to arbitrate a dispute. If, after this 10 day period, the dispute has not been resolved to the satisfaction of both the respondents and the customer, the dispute will be submitted to arbitration at the option of the customer. The BBB is the tribunal which shall administer the arbitration process under these rules.

DEFINITIONS —

A. Arbitration is the process by which two or more parties authorize an impartial party or panel to resolve their dispute.

B. Consumer disputes ("dispute") are any disagreements between respondents and their customers involving the delivery or repair of any damaged or defective merchandise, or the failure to replace or repair damaged or defective merchandise. These disputes do not include fraud, criminal violations, demands for attorney fees, damages from personal injury or other claims which go beyond the actual product or service involved. Excluded also are disputes which may not be arbitrated under the law. If during the course of any proceeding conducted pursuant to these rules, it appears to the Arbitrator that the issues before him do not coincide with this definition, he is authorized to suspend the hearing permanently, narrow the issues to those which fall within this definition, or take whatever other action is deemed necessary.

C. Parties to arbitration are those persons necessary to resolve a dispute, usually the respondents and their customers.

D. Arbitrator is the individual or panel which makes the final decision or award.

APPLICABLE LAW — Rule 70I of the Civil Rules of the Superior Court of the District of Columbia and other applicable laws of the District of Columbia shall govern these rules.

INITIATING ARBITRATION — If a customer notifies the BBB of an intention to submit a dispute to arbitration, the BBB will send the customer a copy of these rules and will obtain the customer's signature on an agreement, designated as an "Arbitration Agreement," binding the customer to arbitration. The BBB will also obtain the respondents' signature (or the signature of their designated agent) on an agreement, designated as an "Arbitration Agreement," binding the respondents to arbitration. The customer's request for arbitration shall include a statement setting forth the nature of the dispute, the approximate amount involved, if any, and the remedy sought. The BBB will then transmit to the respondents the information summarizing the nature of the dispute, the amount involved and the remedy sought. The respondents will then have 5 days to file an answering statement with the BBB. Failure of respondents to file an answer or submit a signed "Arbitration Agreement" shall not operate to delay the arbitration. Upon receipt of a signed arbitration agreement from the customer, the BBB shall commence procedures to arbitrate the dispute pursuant to these Rules.

CHANGE OF CLAIM — After filing or making a request for arbitration, if either party desires to make any new or different claim, such claim shall be made in writing and filed with the BBB, and a copy thereof shall be mailed to the other party who shall have a period of seven days from the date of such mailing within which to file an answer with the BBB. However, after the Arbitrator is appointed no new or different claim may be submitted to him except with his consent.

APPOINTMENT OF ARBITRATOR — The BBB shall maintain a pool of volunteers from

which the Arbitrator shall be selected. This pool of volunteers should reflect membership of the total community. In all cases the Arbitrator or Arbitrators will be appointed directly by the BBB no later than 7 days after the date upon which the customer submits his signed Arbitration Agreement.

DISCLOSURE BY ARBITRATORS; FILLING VACANCIES — Any person selected to serve as an Arbitrator shall divulge, in his signed acceptance of appointment, any financial, competitive, professional, family, or social relationship, however remote, with the Parties to the dispute or disputes he is assigned to arbitrate. All doubts should be resolved in favor of disclosure. Any such disclosures shall be transmitted to the BBB which shall provide them to the Parties with a waiver/objection form. If a Party objects or if an Arbitrator is unable or unwilling to serve, the BBB may in its discretion select or appoint a replacement. In any event, no person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

NUMBER OF ARBITRATORS — In all cases there shall be one Arbitrator unless both parties or the BBB specify three Arbitrators. If the arbitration agreements submitted by both parties do not both specify three Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the BBB, in its discretion, directs that a greater number of Arbitrators be appointed, in which case, the BBB shall appoint the additional arbitrators.

VACANCIES — If any Arbitrators should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of his office, the BBB may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules and the matter shall be reheard unless the parties shall agree otherwise.

FACILITIES AND COSTS — Facilities for the holding of hearings and maintenance of records shall be provided by the BBB. All normal and reasonable costs of obtaining services of expert witnesses and testing laboratories are to be borne by the BBB, with extraordinary costs, as determined by the Arbitrator, assessed equitably between the Parties. Costs of stenographic services, record of proceedings, and individual witnesses shall be borne by the requesting Party.

COMMUNICATION AND SERVING OF NOTICES — All correspondence should be sent by certified mail to the BBB. There shall be no direct communication between the Parties and the Arbitrator regarding the dispute, except at the hearing and in the presence of the other Party, or with the other Party's written permission. All correspondence from the Parties to the Arbitrator and vice-versa shall be sent through the BBB. Any Party agreeing to arbitration pursuant to these rules shall be deemed to have consented that any notices or other communication relevant to arbitration proceedings may be served by registered mail addressed to the Party or his attorney at his last known address.

NOTICE OF APPOINTMENT — Notice of Appointment shall be mailed to the Arbitrator by the BBB along with a copy of these rules. The signed appointment form together with disclosures of any relationships to Parties shall be filed with the BBB prior to the opening of the first hearing.

REPRESENTATION BY COUNSEL — A Party may represent himself or name any person, not necessarily an attorney, to act as his spokesman at an arbitration hearing. Choosing a non-lawyer does not constitute waiver of right to legal counsel. If an attorney is selected, however, the BBB should be furnished his name and address at least 5 days prior to the date of the proceeding so that this information can be forwarded to the opposing Party.

HEARING DATES; NOTICE; WAIVER OF NOTICE — Upon appointment of an Arbitrator, the BBB shall, within three days, establish a date, time and place for the oral hearing, with due regard for the convenience of the Parties and with the agreement of the Arbitrator. This hearing, if at all possible, shall be held within ten (10) days of the

appointment of the arbitrator. Once determined, this information shall be communicated to the Parties by registered mail at least seven (7) days in advance of the date set for the hearing, utilizing the Notice of Hearing Form. Parties objecting to the date, time or location designated shall within three (3) days of receipt of notice, notify the BBB orally or in writing or otherwise be deemed to have waived such objections. Appearance of the Party at hearings shall automatically constitute waiver of notice.

INSPECTION BY ARBITRATOR — At any time prior to the close of the hearing, the Arbitrator shall, if at all possible, arrange for the inspection of the merchandise involved at the request of either party. If the inspection is to be conducted separately from the hearing, the BBB shall provide notice to the Parties and invite their presence. If a Party cannot attend the inspection, the Arbitrator shall make a written or verbal report to the parties and shall afford them the opportunity to comment upon the observations made therein. The BBB shall also arrange for the presence of a technical expert at the inspection at the discretion of the Arbitrator. If possible, inspections should be conducted prior to the hearing.

LABORATORY TESTS, EXPERT OPINIONS — The Arbitrator may require the submission of any article in dispute to an independent testing laboratory for examination and analysis or may engage the services of an independent, impartial expert to inspect and analyze the article or premises in question. The reasonable and ordinary costs, if any, of such services are to be borne by the BBB, which will transmit the opinions rendered by the laboratory or expert to the Arbitrator, with a copy to the parties, as soon as practicable. Such opinions shall be part of the evidence given at the hearing or provided to the Parties as soon as possible prior to the close of the hearing and prior to any Award.

ATTENDANCE AT PROCEEDINGS — Unless otherwise agreed by the Parties in writing, only those persons party to or having a direct interest in the dispute are entitled to attend hearings. The Arbitrator shall have the discretion to require any witness to absent himself from the hearing room when the Arbitrator deems his presence to be unnecessary or undesirable. Representatives of the Council of Better Business Bureaus, Inc., BBB of Metropolitan Washington, D.C., and of the Federal Trade Commission shall be permitted to attend selected arbitration proceedings for the purposes of monitoring the administration of the program set forth herein, provided that these representatives shall preserve the confidentiality of the proceedings.

ABSENCE OF A PARTY — Arbitration hearings may proceed in the absence of any Party who, after due notice of the hearing, fails to appear, but such absence shall not be the basis for a default judgment. Rather, the attending Party shall submit evidence and the Arbitrator may render an Award based thereon. The non-attending Party shall have the right to submit evidence in writing within a reasonable time, to be set by the Arbitrator.

TRANSCRIPT OF HEARING — The BBB shall provide stenographic services or otherwise record the proceedings upon the request of any Party; *provided, however*, that the cost of such services be borne by the requesting Party and that all Parties be provided access to such record. A tape recording of the hearing or any portion thereof may be required by the Arbitrator and any cost thereof shall be borne by the BBB. If any Party brings his own means of recording the proceedings to the hearing, the BBB shall record the proceedings for its files. In all cases, the Arbitrator shall see that a Record of Hearing Form is completed at the close of each hearing.

INTERPRETERS — The BBB shall provide without cost an interpreter when any Party expresses the need for such and when the Arbitrator deems its necessary.

OATHS — The Arbitrator, the Parties, and any witnesses at a hearing shall be placed under oath.

ORDER OF PROCEEDINGS AT THE HEARING —

A. After the oaths are administered, the customer shall summarize his position of the

dispute, stating briefly what relief he is seeking. The respondents shall then present a summary of their position and relief sought.

B. The customer shall next present his claim, evidence and witnesses, if any, and submit to questions from the Arbitrator. The respondents shall then do likewise. Parties may cross-examine.

C. Following the presentation of evidence, each Party shall briefly summarize his position, relating his claims to the proofs and testimony presented.

D. The order of proceedings may vary at the discretion of the Arbitrator in order to assure that full opportunity is given each Party to present all evidence necessary for a decision.

E. The Arbitrator shall declare the hearings closed if no Party has further evidence to offer or witnesses to present. However, before closing the hearing the Arbitrator shall specifically inquire of all the parties whether they have further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrators shall declare the hearings closed.

F. Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

G. The names and addresses of all witnesses and exhibits in order received shall be entered into a "Record of Hearing" form and thereby made a part of the record.

ADMISSION OF EVIDENCE — The Arbitrator shall judge the relevancy of the evidence and may request additional evidence from either Party. He may refuse to admit evidence deemed irrelevant, stating reasons therefor. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the Arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

ADDITIONAL PARTIES — In resolving any consumer dispute where someone other than the respondents and customer is necessary to resolve all issues, and where such person has agreed to the issues presented and to be bound by arbitration, the Arbitrator shall name him a Party to the dispute and have complete discretion to include such Party in the proceedings.

ADJOURNMENTS — The Arbitrator may adjourn the proceedings upon the request of a Party or his own motion.

METHOD OF DECISION — All matters of concern submitted to an arbitration panel shall be settled by a majority vote, including procedural questions and issues relating to the Award. The decision of the majority shall be deemed to be the decision of all members of the panel, and no dissenting opinion shall be issued.

REOPENING OF HEARING — At the discretion of the Arbitrator, a hearing may be reopened upon his motion or the motion of a Party. If a hearing is reopened, the time within which an Award must be made is measured from the closing of the last hearing. No hearing shall be reopened after an Award has been made except as provided by law.

CONSERVATION OF PROPERTY — The Arbitrator may issue such orders as necessary to safeguard property which is the subject matter of arbitration or the position of the Parties.

SUBPOENA POWERS; DEPOSITIONS — The Arbitrator may compel the attendance of witnesses and the production of relevant documents according to procedures established by law. The Arbitrator may authorize the taking of depositions of witnesses who are unable to attend the hearing.

AFFIDAVITS — Written affidavits if properly sworn to and notarized will be admissible in lieu of oral testimony, at the discretion of the Arbitrator. The Arbitrator may give such evidence by affidavit only such weight as he deems it is entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing, but arranged for at the