

Complaint

87 F.T.C.

IN THE MATTER OF
VIRGINIA MORTGAGE EXCHANGE, INC., ET AL.

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

Docket 9007. Complaint, Jan. 28, 1975—Final Order, Feb. 10, 1976

Order requiring an Annandale, Va., loan broker, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Bernard Rowitz, Thomas J. Keary and Alan L. Cohen.*

For the respondents: *William L. Warfield, Annandale, Va.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Virginia Mortgage Exchange, Inc., a corporation, and William L. Warfield, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Virginia Mortgage Exchange, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its principal office and place of business located at 7616 Little River Turnpike, Annandale, Virginia.

Respondent William L. Warfield is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent including the acts and practices herein-after set forth. His address is the same as that of the corporate respondent.

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

engaged as brokers in the arranging and securing of loans for the general public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of business as aforesaid, respondents' customers are provided with consumer credit cost disclosure statements.

By and through the use of these consumer credit cost disclosures respondents:

1. Fail to identify each creditor, as "creditor" is defined by Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.
2. Fail to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.
3. Fail to disclose the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.
4. Fail to make full consumer credit cost disclosures before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of the Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY LEWIS F. PARKER, ADMINISTRATIVE
LAW JUDGE

AUGUST 18, 1975

PRELIMINARY STATEMENT

[1] The Federal Trade Commission's complaint in this proceeding was issued on January 28, 1975, and charges respondents with violating the Truth in Lending Act, the implementing regulation issued thereunder, and the Federal Trade Commission Act.

The complaint specifically alleges that respondents, by and through the use of consumer credit cost disclosure statements provided to their customers:

1. Fail to identify each creditor as required by Section 226.6(d) of Regulation Z.¹

[2] 2. Fail to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

3. Fail to disclose the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

4. Fail to make full consumer credit cost disclosures before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

Respondents filed their answer to the complaint on March 28, 1975, denying the first, third and fourth allegations. They neither admitted nor denied the second allegation.

A prehearing conference was held on April 11, 1975, and a hearing was held on June 2, 1975.

The parties filed proposed findings on June 30 and July 1, 1975 and replies on July 14 and 15, 1975. This decision is based on the record as a whole. The parties' proposed findings and replies have been carefully considered and to the extent they have not been adopted either verbatim or in substance, they are rejected as not supported by the evidence or as irrelevant to any issue in this proceeding.

FINDINGS OF FACT

1. Respondent Virginia Mortgage Exchange, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 7616 Little River Turnpike, Annandale, Virginia. (Prehearing Conference, Tr. 11).²

[3] 2. Respondent William L. Warfield is president of the corporate respondent and owns all of its stock. He formulates, directs, and controls the acts and practices of the corporation, including those set forth in the complaint. His address is the same as that of the corporate respondent (Prehearing Conference, Tr. 11; Tr. 43-44).

3. Virginia Mortgage Exchange was incorporated in 1952 and is a broker whose business consists of arranging loans between borrowers and lenders, including consumer loans for personal debts or home improvements. The company began arranging consumer loans in 1968

¹ 12 C.F.R. §226, *et seq.* (1974).

² Abbreviations used in this decision are:

Tr. - Transcript of testimony.

CX - Commission exhibits.

RX - Respondents' exhibits.

Admiss. - Respondents' answers to complaint counsel's request for admissions.

or 1969 (Tr. 44-48). Another corporation, Second Virginia Mortgage Exchange (which also arranged consumer loans), was started by Mr. Warfield and a silent partner in June or July of 1971. It was dissolved after about one year. Mr. Warfield formulated, directed and controlled the acts and practices of this company while it was in existence (Tr. 44-46).

4. In 1971 approximately \$184,500 worth of consumer loans were brokered by Virginia Mortgage Exchange, Inc. and Second Virginia Mortgage Exchange. In 1972 these companies brokered approximately \$198,502 worth of consumer loans (Admiss. 15 and 16). Approximately 90 percent of these loans were arranged with Security Industrial Loan Association as the lender (Admiss. 19). The remainder were placed with Residential Industrial Association (Tr. 48).

5. In a typical transaction involving respondents' brokerage services, the borrower signs an "origination fee agreement" and respondents furnish the prospective lender with credit information including, in some cases, credit reports, mortgage verifications and property appraisals. The lender, usually some three to four days later, informs respondents by letter that the application has been approved (see CX 40; Tr. 49-53; Admiss. 22 and 25). Respondents then inform the borrower of approval of his application for a loan and of the closing attorney's name (CX 41). Respondents also notify the closing attorney of the loan approval, ask him to arrange settlement, furnish him with the necessary papers and request him to collect their commission (CX 42). Respondents' commission is usually 10 percent of the loan amount up to \$5,000 and 5 percent above that (Tr. 72).

6. The loans which respondents arranged were subject to a finance charge and were payable in more than four installments (CX's 105-155).

[4] 7. Respondents do not give their disclosure statements directly to borrowers; instead, respondents forward the statements to the attorney who will be handling the closing with a request that they be given to the borrowers at settlement (Tr. 66-67). Two attorneys involved in loans arranged by respondents testified that they furnished respondents' statements as well as the lenders' statements to borrowers at the time of settlement, before any papers were signed (Tr. 28-29, 89-90, 99).

8. From May 1, 1971 (when respondents began giving disclosure statements to borrowers) to September 21, 1973, respondents' disclosure statements did not reveal the names of the lenders (Tr. 60; CX's 105 to 155), although at the time these disclosure statements were prepared, respondents knew the identity of the lenders (Tr. 67-68).

9. Inspection of the disclosure statements given to borrowers by respondents until September 21, 1973 reveals that while the term

"finance charge" is capitalized and underlined, other terms such as "amount of credit extended," "payments," etc., are also capitalized and are underlined. And while the term "annual percentage rate" is capitalized, it is less conspicuous than other terms which are both capitalized and underlined (CX's 105 to 155). Thus, the terms "finance charge" and "annual percentage rate" are not printed more conspicuously than other terms on the statements.

10. Respondents' disclosure statements do not reveal the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation; instead, most of respondents' statements refer the borrower to the lenders' statements for this information (CX's 107-112, 114, 116-120, 122-124, 128-143, 145-154; Tr. 62). A few of respondents' statements neither disclose the computation nor refer the borrower to the lenders' statements, a failure attributed by Mr. Warfield to clerical error (CX's 105-106, 113, 115, 121, 125-127, 144; Tr. 62-63).

11. Under Virginia law (Title 6.1, Chapter 5, Section 234), industrial loan associations are required to grant to natural persons borrowing from them the right to anticipate payment of their debt at any time and to receive a rebate computed in accordance with the Standard Rule of 78. Mr. Warfield testified that he was aware of Security Industrial Loan Association's obligations under [5] Virginia law in the event of prepayment (Tr. 64-65). Security Industrial is the lender with whom some 90 percent of the loans arranged by respondents were placed (Finding 4, *supra*).

12. Although respondents neither disclosed the names of the lenders nor revealed the lenders' method of computing any unearned portion of the finance charge in the event of prepayment, their customers were given this information at settlement when the closing attorneys turned over the lenders' disclosure statements (Tr. 28, 32-33, 93-94, 96; RX 1).

13. As a result of discussions with the Federal Trade Commission, respondents changed their disclosure statements on or about September 21, 1973 in two respects. The disclosure statements now reveal the names of both creditors (lender and broker), and the terms "finance charge" and "annual percentage rate" are now more conspicuous than other terms used (RX 4; Tr. 68-69). Only one consumer loan has been arranged by respondents since their disclosure statements were changed (Tr. 69).

14. Respondents' origination fee agreements state:

We hereby authorize you to negotiate and act as our sole and independent agent on our behalf for the placement of a ——— mortgage loan on our property as described above.

It is understood that if you obtain a commitment in the amount of ———— you will be entitled to, and we agree to pay, an origination fee of ————. The closing attorney is hereby authorized to disburse said fee from our loan proceeds. (CX's 1-39)

However, there is no evidence that respondents or any other Virginia brokers have ever collected or sued for their brokerage fee from a borrower in the event that the loan transaction, although approved by the lender, was not consummated. [6]

DISCUSSION

Failure To Identify Each Creditor

Section 226.6(d) of Regulation Z³ provides that:

If there is more than one creditor in a transaction, each creditor shall be clearly identified and shall be responsible for making only those disclosures required by this Part which are within his knowledge and the purview of his relationship with the customer.

Respondents regularly arrange for the extension of consumer credit.⁴ They are therefore creditors for purposes of the Truth in Lending Act and Regulation Z, including the disclosure requirements of Section 226.6(d), as are the lenders with whom respondents have arranged loans, Security Industrial Loan Association and Residential Industrial Association.⁵

[7] Although the borrowers are given separate disclosure statements of the lender and respondents at settlement and are therefore aware that there are two creditors involved in the loan which is about to be extended, complaint counsel argue that respondents have nevertheless violated Section 226.6(d) because they have not revealed the name of the lender in their disclosure statements.

This follows, say complaint counsel, because each creditor must make disclosures "required by this Part which are within his knowledge and the purview of his relationship with the customer." (Section 226.6(d))

Respondents know who the potential lenders are before settlement, but is this knowledge within the purview of their relationship with their customers?

³ Regulation Z was issued by the Board of Governors of the Federal Reserve System pursuant to Title I of the Truth in Lending Act (15 U.S.C. §1601, *et seq.* (1970)), 12 C.F.R. §226.1(a).

⁴ Section 226.2(f) of Regulation Z states:

" 'Arrange for the extension of credit' means to provide or offer to provide consumer credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit receives or will receive a fee, compensation, or other consideration for such service * * *."

⁵ Section 226.2(m) of Regulation Z states:

" 'Creditor' means a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit."

See Federal Reserve Board Letter No. 677 (Mar. 8, 1973):

"In view of the fact that the 'loan finder' receives a fee for obtaining the loan, he becomes an arranger for the extension of credit under §226.2(f). As such, he is a creditor in the transaction, along with the bank, and the provisions of §226.6(d) apply with regard to multiple creditors."

There is apparently no judicial interpretation of this phrase — at least neither party has brought any to my attention. The word “purview” refers, among other things, to the “range, sphere, or field of a person’s labour or occupation.” *The Oxford Universal Dictionary* (3d Ed. 1955).

Since respondents necessarily know who the potential lender is by virtue of their occupation, which is to find lenders for their customers, complaint counsel argue that this knowledge is within the purview of their relationship with their customers and must be disclosed.

I do not agree. Since respondents meet their obligation to their customers when they arrange a loan with *any* [8] lender, the name of the lender is of no legal significance insofar as the relationship between respondents and their customers is concerned and is thus not within the sphere of that relationship.

I concede that complaint counsel’s position finds some support in Federal Reserve Board Letter No. 699 (July 19, 1973) which commented on a similar situation. There, the Board’s counsel advised that a loan broker’s fee should be revealed on the lender’s disclosure statement if the lender was aware of the amount of the fee. However, while such interpretations of Regulation Z are persuasive, they are not binding on me. See *Stefanski v. Mainway Budget Plan, Inc.*, 326 F. Supp. 138, 142 (S.D. Fla. 1971), *rev’d on other grounds*, 456 F.2d 211 (5th Cir. 1972).

I find that both the Board’s and complaint counsel’s interpretations of Section 226.6(d) are inconsistent with its plain language. Section 226.6(d) does not require only proof of knowledge, it demands more — proof that the knowledge is within the purview of the creditor’s relationship with his customer. If one were to accept complaint counsel’s interpretation which equates “knowledge” with “purview,” that would be equivalent to striking everything in Section 226.6(d) after the word “knowledge.” I prefer to believe that the drafters of Regulation Z deliberately adopted the “purview” language as an additional requirement. Since complaint counsel have established nothing beyond respondents’ knowledge of the lender’s name, they have not demonstrated that respondents are required by Section 226.6(d) to disclose that name on their statements.

Complaint counsel’s alternative argument warrants little discussion because it is based on a faulty premise. They claim that respondents’ failure to disclose the name of the lender on their disclosure statements violates the requirement of Section 226.8(a)(1) and (2) that all disclosures be made together on either the note or the instrument evidencing the obligation, or on one side of a separate statement.

But Section 226.8 refers only to “disclosures required by this

section." If respondents are required by other parts of Regulation Z to disclose the names of multiple creditors, [9] then they must comply with Section 226.8(a)(1) and (2); however, if the names of other creditors are not within the knowledge of respondents and the purview of their relationship with their customers, they need not disclose those names on *any* instrument or statement.

The purpose of the Truth in Lending Act is to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 15 U.S.C. §1601 (1970).

Requiring the broker to reveal the lender's name when the lender will do so in his disclosure statement does nothing to further congressional intent. The Board, I believe, realized this and deliberately adopted language in Section 226.6(d) which would avoid unnecessary disclosures by multiple creditors. Therefore, respondents need not reveal the other creditor, the lender, in their disclosure statements and have complied with Section 226.6(d) of Regulation Z.

Failure To Print Certain Terms More Conspicuously Than Others

Section 226.6(a) of Regulation Z states:

The disclosures required to be given by this Part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections. Except with respect to the requirement of §226.10, where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this Part * * *

Respondents' present disclosure statement form complies with this section (RX 4). However, it has only been in use since September 1973; prior statements clearly fell short of the demands of Section 226.6(a).

Respondents point out that in one sample form accompanying Regulation Z when it was promulgated, at least two other headings were as conspicuous as the terms "finance charge" and "annual percentage rate."

[10] Respondents apparently do not claim that they relied on this form in preparing theirs; they seem to be saying instead that if the agency responsible for the promulgation of Regulation Z can make mistakes, they should be allowed some too. I cannot accept this argument, for respondents are bound to comply with Regulation Z regardless of what mistakes others may make, especially when particular requirements, such as those of Section 226.6(a), are incapable of misinterpretation.

Respondents have, therefore, failed to comply with the requirements of Section 226.6(a) of Regulation Z.

Failure To Disclose Method of Computing Unearned Portion of Finance Charge in Event of Prepayment

Section 226.8(b)(7) requires any creditor when extending credit other than open end to identify "the method of computing any unearned portion of the finance charge in the event of prepayment in full of an obligation * * *."

The lenders reveal this information on their disclosure statements (see RX 1),⁶ and respondents refer their customers to these statements, but complaint counsel urge that respondents' disclosure statement must duplicate the language recited in the footnote because pursuant to the general disclosure requirements of Regulation Z (Section 226.6), the specific disclosure required by Section 226.8(b)(7) is within respondents' knowledge and the purview of their relationship with their customers (see Section 226.6(d)).

Respondents reply that the only fee they charge is a placement fee which they fully earn upon closing of the loan, but this misconceives complaint counsel's argument, for they claim that respondents, because of Section 226.6(d), must reveal the lender's method of computing any unearned portion of the finance charge.

[11] Respondents also argue that since they are not creditors extending credit other than open end credit,⁷ they need not make the disclosure required in Section 226.8(b)(7).

"Credit" is defined in Section 226.2(1) as the "right granted by a creditor to a customer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor."

According to this definition, respondents are not creditors extending credit, for payment of their placement fee is not deferred.

However, while respondents are not creditors extending credit, they are "creditors" for purposes of other parts of Regulation Z because they arrange for the extension of consumer credit (see Section 226.2(m)).

Thus, even though Section 226.8(a) is not applicable to respondents, disclosure of the information referred to in Section 226.8(b)(7) could be required by Section 226.6(d).

⁶ "Borrower shall have the right to anticipate payment of this debt at any time and shall receive a rebate for any unearned interest, which rebate shall be computed in accordance with the Standard Rule of 78 and shall be reduced by an anticipation premium equal to that portion of the contract interest allocable under such Rule to the next six payments."

⁷ See Section 226.8(a): "Any creditor when extending credit other than open end credit shall, in accordance with §226.6 and to the extent applicable, make the disclosures required by this section * * *"

Nevertheless, respondents are not required by that section to disclose Section 226.8(b)(7) information. Lenders must comply with Virginia law concerning prepayment, and respondents are aware of this, but for the reasons I gave in discussing the allegation of failure to identify each creditor, the knowledge which respondents have of the lender's prepayment obligation is not within the purview of their relationship with their customers, because that information is not an essential aspect of their relationship. The purview of the broker-customer relationship does not depend upon how the lender computes the unearned portion of his finance charge. The broker's only obligation is to obtain a lender willing to extend credit.

As I did with respect to the claim that respondents must disclose the names of all creditors, I reject the argument that the words "knowledge" and "purview" are essentially similar, for according to this argument, each creditor would have to disclose everything he knew [12] about a credit transaction. This interpretation clearly contravenes the intent of the drafters of Section 226.6(d) which makes multiple creditors "responsible for making *only* those disclosures * * *," which are within his knowledge *and* the purview of his relationship with his customer. (Emphasis added.)

Respondents are not required by Section 226.6(d) of Regulation Z to disclose the lender's method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

Failure To Make Full Consumer Credit Cost Disclosures

Section 226.8(a) of Regulation Z states:

Any creditor when extending credit other than open end credit shall, in accordance with §226.6 and to the extent applicable, make the disclosures required by this section with respect to any transaction consummated on or after July 1, 1969. Except as provided in paragraphs (g) and (h) of this section, such disclosures shall be made before the transaction is consummated.

Respondents' disclosure statements are not given to their customers until settlement, that is, when the loan transaction is consummated. Although Section 226.8(a) seems to refer only to loan transactions, complaint counsel claim that another transaction is consummated within the meaning of Section 226.8(a) when the lender commits itself to making a loan, because respondents earn their brokerage fee at that time. It is thus argued that because the brokerage transaction is "consummated" *before* settlement, and respondents furnish their disclosure statement *at* settlement, they have violated this disclosure requirement.

Respondents argue that since their fee is paid out of the loan

proceeds at settlement, the transaction is not consummated until that time.

Under the origination fee agreement signed by their customers, respondents are entitled to their commission if they obtain a loan commitment (see *e.g.*, CX 1). Complaint counsel urge that by analogy with Virginia real estate law, respondents must therefore make the [13] disclosures required by Section 226.8(a) when they are informed by the lender of its approval of the loan application.⁸ However, one of their witnesses, a settlement attorney, gave his opinion that respondents would not be entitled to their placement fee until the loan papers were signed because that is the intent of the origination fee agreement (Tr. 102).

It is not clear, in my opinion, what the intent of broker and customer is when the origination fee agreement is signed. The agreement does state: "It is understood that if you obtain a commitment in the amount of ———— you will be entitled to, and we agree to pay, an origination fee of ————," and this language lends support to complaint counsel's argument.

However, respondents' customers could argue that the agreement's further language "The closing attorney is hereby authorized to disburse said fee from our loan proceeds" reveals the intent that the fee will be earned only when the loan is obtained. Further support for this argument is found in the third paragraph of the agreement:

In the event that you obtain a loan satisfactory to us in a lesser amount than shown above, it is understood that you shall be entitled to an origination fee equaling ten percent of the first five thousand dollars of the proceeds of the loan, plus five percent of any amount over five thousand dollars. (CX 1)

[14] Why should the borrower condition payment of the placement fee on obtaining a loan for a lesser amount only if it were satisfactory to him, but commit himself to pay the fee if mere approval for the full amount is obtained? It is at least arguable that it was the intention of the parties, as revealed in this language, that the placement fee would be payable, regardless of the amount of the loan, only if the loan were satisfactory to the borrower. The point is that the language of the agreement leaves room for doubt, and complaint counsel have not furnished any evidence which would assist in interpreting it. There are apparently no court cases on this point and there is no evidence that any Virginia loan broker has ever collected or attempted to collect his

⁸ See, *e.g.*, *Reiber v. J. M. Duncan*, 206 Va. 657, 145 S.E. 2d 157, 160 (Va. 1965).

"Generally, when a real estate broker, pursuant to a valid listing agreement, procures a purchaser for a listed property ready, willing and able to buy upon the terms defined by the owner, then the agent is entitled to his commission. The fact that the sale is not consummated does not deprive the broker of the right to receive his commission unless the failure to consummate is due to some fault of the broker."

fee even though the lender has failed to consummate the loan. Under the circumstances, I cannot find as a matter of law that the transaction between broker and borrower is consummated prior to settlement.

Furthermore, it hardly seems logical to require the broker to make disclosures prior to the time the lender must. Although complaint counsel argue that early disclosure is essential so that borrowers can shop for credit, it is apparent to me, and complaint counsel make no contrary claim, that the lenders complied with Regulation Z when they made the required disclosures at settlement. See *Stavrides v. Mellon National Bank & Trust Co.* 353 F. Supp. 1072, 1078 (W.D. Pa.), *aff'd*, 487 F.2d 953 (3d Cir. 1973):

We think it would be very unusual that a mortgagor would be called upon to execute a mortgage and bond without some prior notice of its terms. But even if this were to occur we think disclosure of the terms of the loan in the mortgage papers just before closing would be adequate disclosure under §1639.

See also *Foster v. Maryland State Savings & Loan Ass'n.*, 369 F. Supp. 843, 846 (D.D.C. 1974); *Ljepava v. M.L.S.C. Properties, Inc.*, CCH Consumer Credit Guide ¶ 98,639 at pp. 88,175-176 (9th Cir. 1975):

[Plaintiffs] argue that shopping for credit requires that the disclosure statement be provided sufficiently in advance so that a borrower would have the opportunity to go to another lender to see if he could obtain [15] better terms. While we find that this argument is logically persuasive, it has been rejected by virtually every court that has considered it.

Thus, even if it were clear that respondents' fee is earned prior to settlement, it would seem ludicrous to require them to disclose credit information which the lender need not disclose until settlement.⁹

Since complaint counsel have failed to establish that the transaction is consummated prior to settlement, respondents are not required to make Truth in Lending disclosures prior to settlement.

Liability of Mr. Warfield

Respondents have failed to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terms on their disclosure statements.

The corporate respondent's president, Mr. Warfield, is responsible for this violation of Regulation Z in the sense that he is responsible for all of the activities of the corporate respondent, and complaint counsel claim that he should therefore be subject to any cease and desist order which I might enter.

⁹ Complaint counsel point out that a recent amendment to Section 121 of the Truth in Lending Act, 15 U.S.C. §1631 (1970), requires disclosures at the time the creditor makes a commitment to extend credit. My interpretation of Section 226.8(a) must, however, be based upon the Act as it existed when the challenged transactions occurred.

There is no question that an individual can be held accountable for the acts of a corporation and can be brought within the ambit of Commission cease and desist orders. See, e.g., *John A. Guziak v. Federal Trade Commission*, 361 F.2d 700, 704 (8th Cir. 1966), cert. denied, 385 U.S. 1007 (1967); *Standard Distributors, Inc. v. Federal Trade Commission*, 211 F.2d 7, 14-15 (2d Cir. 1954). The reason for extending the prohibition of a cease and desist order to individuals is the fear that [16] they might avoid the order by continuing the proscribed activity in their individual capacity.

It is not enough, however, that Mr. Warfield controls the acts and practices of the corporation. If that were the basis of individual responsibility, every corporate officer whose responsibilities encompassed acts and practices challenged by a complaint would be individually liable.¹⁰

If it had been shown that Mr. Warfield had deliberately engaged in consumer deception, or that there is reason to believe that he would attempt to evade an order, individual liability would be appropriate. But the single violation which I have found was not intentionally devised to deceive borrowers and it does not justify an order directed against Mr. Warfield in his individual capacity.

Discontinuance

Respondents argue that if they violated the Truth in Lending and Federal Trade Commission Acts by failing to comply with certain provisions of Regulation Z, such violations were discontinued in September 1973, before the Commission's complaint was issued, and that entry of an order is therefore unnecessary and inappropriate.

Discontinuance is seldom a defense in Commission proceedings, especially when it is, or may have been, prompted by the knowledge that the Commission is investigating one's activities. *Oregon-Washington Plywood Co. v. Federal Trade Commission*, 194 F.2d 48, 51 (9th Cir. 1952); *Automobile Owners Safety Insurance Co. v. Federal Trade Commission*, 255 F.2d 295, 298 (8th Cir.), cert. denied, 358 U.S. 875 (1958).

[17] Respondents began using a new disclosure statement only after discussions were held with Commission representatives. The discontinuance was thus not voluntary; it was apparently prompted by knowledge of the Commission's interest in respondents' activities. See

¹⁰ See *The Lovable Company*, 67 F.T.C. 1326, 1336-37 (1965): "To justify naming an officer as an individual there must be something in the record suggesting that he would be likely to engage in these practices in the future as an individual. To argue otherwise would be to hold that in every order running against a corporation the officers who control its policies, acts and practices should be named." (Emphasis in original).

Beneficial Corp., F.T.C. Dkt. 8922, p. 12 (July 15, 1975) [86 F.T.C. 119 at 165].

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over respondents and the practices described herein.

2. Respondents are not required to identify each creditor, as "creditor" is defined by Section 226.2(m) of Regulation Z.

3. Respondents are not required to disclose the lender's method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

4. Respondents have not failed to make full consumer credit cost disclosures before the transaction is consummated.

5. Respondents have failed to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z, and have therefore violated the Truth in Lending Act, and pursuant to Section 108(c) of that Act, 15 U.S.C. §1607(c)(1970), the Federal Trade Commission Act.

Because of the very narrow violation of the Truth in Lending Act, the order should be limited to enjoining further identical violations. This is not a case in which entry of a broad order outlawing other possible violations of the Truth in Lending Act is appropriate.

ORDER

It is ordered, That respondent Virginia Mortgage Exchange, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives [18] and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of credit or advertisement to aid, promote or assist, directly or indirectly, any extension or arrangement for the 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.* (1970)), do forthwith cease and desist from:

Failing to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

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

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the

emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

[19] *It is further ordered*, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the arranging for the extension of consumer credit and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

OPINION OF THE COMMISSION

BY DIXON, *Commissioner*

[1] The complaint in this matter was issued on January 28, 1975, charging respondents with violations of the Truth in Lending Act (15 U.S.C. §1601, *et seq.*), "Regulation Z" promulgated thereunder (12 C.F.R. §226, *et seq.*), and Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), in connection with their arrangement, as loan brokers, of transactions between lenders and borrowers. Hearings before an administrative law judge (hereinafter sometimes ALJ) led to an initial decision on August 18, 1975, holding that Virginia Mortgage Exchange had breached the law by failing to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z. The judge recommended an order correcting this violation, and recommended that in all other respects the complaint be dismissed.

Complaint counsel have appealed, arguing that the law judge erred in failing to find that respondents, as loan brokers, are obliged to disclose the name of the lender with whom a loan is arranged, and the method by which any unearned portion of the finance charge is computed in the event of [2] prepayment of a loan. Complaint counsel further urge the Commission to extend liability to the individual respondent, and to expand the order to forbid related violations of Regulation Z not alleged in the complaint. Respondents have taken no appeal from the ALJ's conclusions and urge that no further findings of violation be made.

BACKGROUND

The facts of this matter are simple and neither side has objected to

the ALJ's concise accounting of them. The following summary borrows repeatedly (without quotation marks) from the judge's own prose:

Respondent Virginia Mortgage Exchange is a broker whose business consists of arranging loans between borrowers and lenders, including consumer loans for personal debts or home improvements. (I.D. 3)¹ The bulk of the company's consumer loans were arranged with Security Industrial Loan Association as the lender. (I.D. 4) Mr. William Warfield is the president of Virginia Mortgage Exchange. (I.D. 2)

In a typical transaction arranged by respondents, the borrower signs an "origination fee agreement" and respondents furnish the prospective lender with credit information, including, in some cases, credit reports, mortgage verifications and property appraisals. The lender, usually some three to four days later, informs respondents by letter that the application has been approved. Respondents then inform the borrower that his loan application has been approved, and of the closing attorney's name. Respondents also notify the closing attorney of the loan approval, ask him to arrange settlement, furnish him with the necessary papers and request him to collect their commission, which is usually 10 percent of the loan amount up to \$5000 and 5 percent above that. (I.D. 5)

Respondents do not give their Truth in Lending disclosure statement directly to the borrower. Instead they forward the statement to the closing attorney with a request that it be provided at settlement. Attorneys involved in loans arranged by respondents testified that they furnished respondents' statements as well as the lenders' statements to borrowers at the time of settlement before any papers were signed. (I.D. 7) [3]

I. Failure to Disclose Name of Lender and Method of Computing Unearned Finance Charge

The complaint alleged that respondents had contravened the law by failing to disclose the name of the lender and the method of computing any unearned portion of the finance charge in the event of prepayment. The fact of nondisclosure is not denied. The ALJ found that prior to September 21, 1973, respondents did not disclose the name of the lender in their disclosure statement. Thereafter, following investigation by Commission staff, they began to disclose the lender's name. (I.D. 9) The ALJ further found that respondents' disclosure statements did not at any time reveal the method of computing the unearned portion of the finance charge. (I.D. 10)

¹ The following abbreviations are used herein:

I.D. - Initial Decision (Finding No.)

I.D. p. - Initial Decision (Page No.)

Respondents acknowledge their obligation, as a broker, to provide consumers with a Truth in Lending disclosure statement of some sort.² At issue in this proceeding is the nature of those disclosures which a loan broker must provide. Section 226.6(d) of Regulation Z establishes the disclosure obligations of each creditor when there is more than one: [4]

(d) *Multiple creditors; joint disclosure.* If there is more than one creditor in a transaction, each creditor shall be clearly identified and shall be responsible for making only those disclosures required by this part which are within his knowledge and the purview of his relationship with the customer. If two or more creditors make a joint disclosure, each creditor shall be clearly identified. * * *

Section 226.8 requires, *inter alia*:

Identification of the method of computing any unearned portion of the finance charge in the event of prepayment in full of an obligation which includes precomputed finance charges * * *.

In the instant case the identity of the lender and the method of computing the unearned finance charge were clearly within the knowledge of respondents at the time their disclosure statement was furnished (I.D. 9, 11), and the crucial question, therefore, is whether or not these terms were within the "purview" of respondents' relationship with their customers.

The ALJ reasoned that:

Since respondents meet their obligation to their customers when they arrange a loan with *any* lender, the name of the lender is of no legal significance insofar as the relationship between respondents and their customers is concerned and is thus not within the sphere of that relationship. (I.D. pp. 7-8)

We cannot agree. In our view, all terms of a given loan fall within the "purview" or "scope" of the relationship between a customer and the broker who arranges that loan. It is respondents' responsibility as broker to provide their customers with the loan they desire, and this necessarily includes a particular lender, a particular formula for computing unearned interest in the event of prepayment, as well as those other particular details of loan transactions which respondents have disclosed routinely in the course of their business.

² Regulation Z, promulgated by the Federal Reserve Board to implement the Truth in Lending Act, defines a "creditor" (who must provide a disclosure statement) as "* * * a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit." [12 CFR §226.2(m)] (emphasis added)

Section 226.2(f) defines "arrange for the extension of credit" as "* * * to provide or offer to provide consumer credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit received or will receive a fee, compensation, or other consideration for such service or has knowledge of the credit terms and participates in the preparation of the contract documents required in connection with the extension of credit" * * *.

[5] The origination agreement which respondents' customers sign represents that the broker, for a given fee, will obtain a loan commitment in a stated amount. (I.D. 14) No other loan terms are specified, but the contract indicates that the broker's commission will be deducted from the loan proceeds. Under these circumstances the ALJ concluded that it was highly questionable whether respondents could collect their commission from a customer who was not willing to consummate a loan for which they had obtained a commitment. (I.D. pp. 13-14)³ What is unquestionable, in any event, is that a borrower is under no obligation to contract for the loan which respondents present. After reviewing relevant Truth in Lending disclosures the borrower may conclude that the terms are inadequate. Surely there is no warrant for concluding that the name of the lender and the formula for determining the cost of prepayment are any less relevant to the borrower's review of the deal his or her broker has arranged than are any other terms.

The foregoing construction of Section 226.6(d) is evidently favored by such precedent as exists, though it would appear that this issue is (understandably perhaps) not one which has engaged the sustained interest or even the careful attention of authorities who have expressly or impliedly dealt with it. In *Pedro v. Pacific Plan*, 393 F. Supp. 315 (N.D. Cal. 1975), cited by complaint counsel, the court concluded:

* * * the requirement of 12 C.F.R. §226.6(d), namely, that the broker disclose the identity of the prospective borrower, is one with which the broker is required to comply. (at 320)

In *Ljepava v. M.L.S.C. Properties, Inc.*, 511 F.2d 935 (9th Cir. 1975), the court held, without discussing the "purview" question, that a mortgage broker's disclosure statement was inadequate because, among other things, he did not explain how charges for late payments were to be calculated (at p. 942). It is difficult to discern any relevant difference between the method of computing penalties for late payment of an installment and that for computing the penalty for prepayment of the entire loan balance. Both are [6] terms that come into play only after a loan has been consummated and the broker's role is complete, but both are also terms and conditions of the loan arranged by the broker. See also, *Palmer v. Wilson*, 359 F. Supp. 1099 (N.D. Cal. 1973), *aff'd as to liability but remanded for reconsideration of relief*, 502 F.2d 860 (9th Cir. 1974).

The assumption of the California courts regarding the "purview of the broker's relationship with his customer" is also reflected in a

³ The judge found that " * * * there is no evidence that respondents or any other Virginia brokers have ever collected or sued for their brokerage fee from a borrower in the event that the loan transaction, although approved by the lender, was not consummated." (I.D. 14)

Federal Reserve Board opinion letter cited by complaint counsel. [FRB Letter No. 699; CCH Consumers Credit Guide ¶30,996 (Special Releases—Correspondence Transfer Binder, July 19, 1973); see also FRB Letter No. 929 [CCH Consumers Credit Guide ¶31,268 (Special Releases—Correspondence, October 21, 1975)].] While recognizing the relevance of the Reserve Board letter, the law judge concluded that he was not bound to adhere to its reasoning. (I.D. 8) In an absolute sense this may be so, but clearly the views of Federal Reserve Board staff as to the meaning of the Board's own regulation are to be accorded great deference, *Philbeck v. Timmers Chevrolet, Inc.*, 499 F.2d 971, 976-77 (5th Cir. 1974), and especially so where, as here, they coincide entirely with such limited judicial authority as exists.

We believe that our construction of Section 226.6(d) of Regulation Z is, furthermore, the one most consistent with the purpose of the Truth in Lending Act itself. As complaint counsel point out, the Act as originally proposed included no requirement that loan brokers provide disclosures. Thereafter the proposed legislation was amended to cover those who "arrange" for extensions of credit as well as those who extend it themselves. In describing the purposes of his amendment its author stated:

Another amendment would perfect Section 202. Under this section only those who actually extend credit are required to disclose credit costs. However, in terms of commercial reality, credit arrangements in mortgage transactions are generally arranged through brokers. These brokers usually extend no credit themselves, but rather pass upon the credit acceptability of applicants and place the application with lending institutions.

Further, fraudulent second mortgage schemes frequently involve mortgage brokers who offer to [7] consolidate all the homeowner's debts. Another amendment will make clear that brokers and others who arrange credit transactions between borrowers and creditors are included in the disclosure requirements of the bill. 114 Cong. Record 1611 (1968)

Any interpretation of Section 226.6(d) must take into account the manifest purpose of the law to ensure full disclosure of credit terms in situations involving brokered loans as well as those negotiated by a borrower directly with a lender.

Respondents argue that in terms of this statutory purpose there has been no abuse here because all borrowers were apprised of the lender's name and formula for computing unearned interest by the lender's disclosure statement. (See I.D. 12) The requirements imposed by Regulation Z upon a broker appear on their face, however, in no way dependent upon the nature of any separate disclosure provided by the lender, and we can find no warrant for so construing them. Thus, a holding in this case that particular credit terms are outside the purview of a broker's relationship with a borrower would unavoidably apply

with equal force to those situations in which a broker arranges loans with individual lenders not in the business of making loans and thus not subject to Truth in Lending requirements. In such cases the commercial broker would be the only possible source of Truth in Lending disclosures, but under the interpretation espoused by respondents and the ALJ the broker would have no obligation to make them. Such a construction would entirely defeat the purpose of the law.⁴

[8] While respondents argue that given their manner of operation at the time of the complaint, our holding here could lead to the wasteful result of consumers being furnished with identical statements by both broker and lender, this result is hardly required. As Section 226.6(d) makes clear, where there is more than one creditor in a transaction, all creditors together may provide a single joint disclosure statement, listing the names of each creditor and including a single recitation of all necessary credit terms. This alternative has much to commend it in terms of clarity and economy. Absent joint disclosure, however, we think that furnishing identical separate disclosures is clearly preferable to furnishing separate disclosures with random omissions. A consumer given a single complete disclosure statement will, it is to be hoped, read, reflect upon, and retain it. Given two statements, however, similar or identical to the casual eye and each purporting to describe the same loan, even the most devoted comparison shopper may reasonably conclude that life is too short to study them both. The result of such a determination is effective nondisclosure of any items omitted from the statement which the borrower does choose to review and retain.

For all of the foregoing reasons we conclude that the lender's name and the formula for computing the unearned finance charge in the event of prepayment, are, like all other terms of a loan, matters within the purview of a loan broker's relationship with his customer, within the meaning of Section 226.6(d) of Regulation Z. Given respondents' knowledge of these terms it was incumbent upon them to disclose them in their own disclosure statements, and the failure to do so was a violation of the Truth in Lending Act, and, pursuant to Section 108(c) of that Act, 15 U.S.C. §1607(c)(1970), the Federal Trade Commission Act. [9]

⁴ While we conclude that the "purview" requirement of Section 226.6(d) does not operate to exempt a loan broker from disclosing terms of a loan he arranges, we must reject the ALJ's conclusion that such an interpretation effectively robs the "purview" requirement of any meaning. One can readily envision situations in which two or more lenders are involved in a transaction, one providing a first mortgage, for instance, and the other a second trust. In such cases each lender would be obliged to disclose the terms of his own credit extension, but the purview requirement might, depending upon the circumstances, operate to relieve each from any obligation to account for the other's terms, even given knowledge of them. We believe it was for such situations that the purview requirement was designed.

II. *Scope of the Order*

Complaint counsel urge that the Commission adopt order provisions requiring respondents to make all disclosures required by Section 226 of Regulation Z in the manner required by the Section.

It is well established that the Commission "is not limited to prohibiting 'the illegal practice in the precise form' existing in the past. *FTC v. Ruberoid*, 343 U.S. 470, 473 (1952). This agency, like others, may fashion its relief to restrain 'other like or related unlawful acts.' *Labor Board v. Express Pub. Co.*, 312 U.S. 426, 436 (1941)"; *FTC v. Mandel Bros. Inc.*, 359 U.S. 385, 392; *see also Jacob Siegel Co. v. FTC*, 327 U.S. 608, 611 (1946); *Fedders Corp. v. Federal Trade Commission* (Docket No. 75-4151; 2d Cir., January 21, 1975)."

Here the violations involve failure to make certain disclosures required by Section 226 of Regulation Z, and failure to make certain disclosures in the manner required by the Regulation. We believe that an appropriate order should prohibit in the future the withholding of other Section 226 disclosures, as well as ensuring that all disclosures are made in the manner required. These are practices closely related to those involved in the complaint. The purpose of a proceeding of this sort is to ensure that the full panoply of Truth in Lending disclosures are made in the uniform manner required by Congress and the Federal Reserve Board. That purpose can best be served by an order which prohibits in the future violations kindred to those which have been shown on the record. The provision proposed by complaint counsel is further in accord with prior Commission practice in litigated cases, *e.g.*, *Zale Corp., et al. v. FTC*, 473 F. 2d 1317 (5th Cir. 1973), *affg* 78 F.T.C. 1195 (1971), and numerous consent order proceedings, *e.g.*, *Commercial Investors, Inc., et al.*, Dkt. No. C-2668 (May 12, 1975 [85 F.T.C. 858]); *Julian L. Levinson, et al.*, Dkt. No. C-2667 (May 12, 1975 [85 F.T.C. 854]); *Ted P. Simopoulos, et al.*, Dkt. No. 2666 (May 13, 1975 [85 F.T.C. 873]); *Valley Acceptance Corporation, et al.*, Dkt. No. C-2655 (May 13, 1975 [85 F.T.C. 142]); *Roy D. Hanson, et al.*, Dkt. No. 2664 (May 13, 1975 [85 F.T.C. 865]), and we shall include it in the order of the Commission (Par. 4). [10]

III. *Liability of Individual Respondent*

While recognizing that the individual respondent was responsible for the challenged practices of the corporation, the administrative law judge refused to impose individual liability because he concluded that there had been no showing that the individual "had deliberately

engaged in consumer deception” or “would attempt to evade an order.” (I.D. pp. 15-16)

The purpose of imposing individual liability is to ensure, in a case in which an individual has been responsible for prohibited activities, that those activities are not continued by the individual after entry of an order. Where the corporate respondent is small and under the control of one or a few individuals, it becomes more likely that prohibited activities may recur if an order enters only against the corporation. One reason may be the corporation’s relatively minimal exposure to civil penalty actions. Where a company is thinly capitalized with profits being diverted quickly to the individuals in control, such individuals may be much less likely to fear the bite of enforcement action than if they could be held personally liable. A second reason, and one which is fully applicable here, is that where a corporation is basically no more than an extension of one or a few people who control it, it is relatively easier and more likely that at some point the individuals will choose to do business in a different corporate setting. In this case, for example, Virginia Mortgage Exchange is little more than the corporate embodiment of the individual respondent, employing only a secretary in addition to him. Under the ALJ’s approach, the individual would be perfectly free to establish a new company through which to extend consumer loans. Unless such a corporation could be shown to be a “successor” to Virginia Mortgage Exchange, the order proposed by the law judge would be of no effect.

We can readily accept the judge’s conclusion that there has been no hint of deception in this case. The record reveals no more than an honest disagreement by respondent over the meaning of a complex statute. While we thus have little doubt that respondent will abide by any order that binds him, the fact remains that were he to organize a new corporate entity, for legitimate business reasons wholly unrelated to this case, there might be no binding order left. Under these circumstances we believe that effective prohibition of the practices involved in the complaint requires provision for individual liability. *See: Standard Educators, Inc., [11] et al. v. Federal Trade Commission*, 475 F. 2d 401 (D.C. Cir. 1973); *Standard Distributors, Inc., et al. v. Federal Trade Commission*, 211 F. 2d 7, 14-15 (2d Cir. 1954); *Peacock Buick, Inc., et al.*, Dkt. No. 8976 (Slip op. pp. 18-19; Dec. 19, 1975 [86 F.T.C. 1532 at 1565]); *Coran Bros. Corp., et al.*, 72 F.T.C. 1, 24-25 (1957).

We have also included standard “notification” language requiring the individual respondent to report any changes of business involving the extension of consumer credit for a period following the effective date of the order. We do not agree with complaint counsel, however, that the record demonstrates any need for a provision requiring that respon-

dents post a sign on their premises alerting consumers to their right to receive a Truth in Lending disclosure statement. This provision of the notice order will, therefore, be omitted.

An appropriate order is appended.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of complaint counsel from the initial decision and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying opinion, having granted the appeal in part:

It is ordered, That pages 1-5; pages 9-10 (titled "Failure to Print Certain Terms More Conspicuously than Others"); and pages 15-16 (titled "Discontinuance") of the initial decision be, and they hereby are, adopted as the Findings of Fact and Conclusions of Law of the Commission.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying opinion.

It is further ordered, That the following order to cease and desist be, and it hereby is, entered:

ORDER

It is ordered, That respondents Virginia Mortgage Exchange, Inc., a corporation, its successors and assigns, and its officers, and William L. Warfield, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of credit or advertisement to aid, promote, or assist, directly or indirectly, any extension or arrangement for the extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. §1601, *et seq.*) do forthwith cease and desist from:

1. Failing to identify each creditor as "creditor" is defined in Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

2. Failing to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

3. Failing to disclose the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

4. 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, in the manner, form, and amount required by Sections 226.6, 226.8, 226.9, and 226.10 of Regulation Z.

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

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the arranging for the extension of consumer credit and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment, and, for a period of five years from the effective date of this order, of each affiliation with a new business or employment involving any extension or arrangement for the extension of credit or advertisement to aid, promote, or assist, directly or indirectly, any extension or arrangement for the 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.*). Such notice shall include the address of the business or employment with which respondent is newly affiliated and a description of the business or employment, as well as a description of the respondent's duties and responsibilities in that business or employment.

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

Complaint

87 F.T.C.

IN THE MATTER OF

JOHNSON PRODUCTS COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2788. Complaint, Feb. 10, 1976—Decision, Feb. 10, 1976*

Consent order requiring a Chicago, Ill., manufacturer and distributor of cosmetics and its Omaha, Neb., advertising agency, among other things to cease misrepresenting that Ultra Sheen Permanent Creme Relaxer is "gentle," "cool to the scalp," and "easy to use"; and failing to disclose in advertising certain material facts concerning health hazards associated with the use of its products. Further, respondents are required to place clear and specific warnings as to the safety of the product upon all packaging, displays and advertising.

Appearances

For the Commission: *Sharon S. Armstrong.*

For the respondents: *George M. Burditt, Burditt & Calkins, Chicago, Ill. Felix H. Kent, Hall, Dickler, Lawler, Kent & Howley, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Johnson Products Company, Inc., and Bozell & Jacobs, Inc., corporations, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Johnson Products Company, Inc. (Johnson Inc.) is a Delaware corporation with its office and principal place of business located at 8522 So. Lafayette Ave., Chicago, Illinois.

Respondent Bozell & Jacobs, Inc. is a Delaware corporation with its office and principal place of business located at 10250 Regency Circle, Omaha, Nebraska.

All allegations in this complaint stated in the present tense include the past tense.

PAR. 2. Respondent Johnson Inc. engages in the manufacturing, advertising, offering for sale, sale, and distribution of Ultra Sheen Permanent Creme Relaxer (hereinafter "Ultra Sheen relaxer"), a "cosmetic" as that term is defined in Section 15 of the Federal Trade Commission Act. The relaxer is an emulsion which contains as its active ingredient sodium hydroxide, commonly known as lye. The emulsion is applied to the hair, rinsed from the hair, and neutralized with a special