

Order

87 F.T.C.

IN THE MATTER OF  
FISHER FOODS, INC.

*Docket 9062. Order, Mar. 17, 1976*

Motion by complaint counsel to amend the complaint remanded to the administrative law judge.

*Appearances*

For the Commission: *Vivian L. Solganik, Aaron H. Bulloff and Melvin H. Wolovits.*

For the respondent: *John F. McClatchey, Thompson, Hine & Flory, Cleveland, Ohio.*

ORDER REMANDING MOTION TO AMEND COMPLAINT

The administrative law judge has certified to the Commission complaint counsel's motion to amend the complaint in this matter by substituting the phrase "in or affecting commerce" for the phrase "in commerce" in Paragraphs Three, Four, and Ten of said complaint.

The Commission believes that the instant motion is within the authority of the law judge to decide since it apparently only seeks "to add examples of practices [already alleged in the complaint] to be unlawful." *Cavanagh Communities Corp.*, Order Granting in Part and Remanding in Part Motion to Serve Supplemental Pleading, January 27, 1976, p. 3, n. 3;\* *Capitol Records Distributing Corp.*, 58 F.T.C. 1170, 1173 (1961).

The Commission notes that respondent has argued that the expansion by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, Pub. L. 93-637 (January 4, 1975), of the Commission's jurisdiction to acts "affecting commerce" is not retroactive to alleged violations that occurred prior to the effective date of the statute. However, it may well be that complaint counsel do not intend to introduce evidence of acts, affecting, but not in, commerce that occurred prior to January 4, 1975. In case they do, the law judge is in the best position to decide the issue in the context of a specific offer of proof. Accordingly,

*It is ordered*, That the aforesaid motion be, and it hereby is, remanded to the administrative law judge.

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\* Reported in this Volume.

IN THE MATTER OF  
KIRBY OF NORTH PROVIDENCE, INC., ET AL.

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

*Docket C-2590. Decision, Nov. 1, 1974—Modifying Order, Mar. 22, 1976*

Order modifying previous order dated Nov. 1, 1974, 40 F.R. 7088, 84 F.T.C. 1218, by substituting, for the notice requirement of Paragraph I (7), the notice required by the Preservation of Consumers' Claims and Defenses Trade Regulation Rule, 16 C.F.R. Part 433, effective May 14, 1976. Unless modified, the respondents would be required to include both disclosure notices on their instruments of indebtedness.

*Appearances*

For the Commission: *Lois M. Woocher.*

For the respondents: *William C. Hillman, Strauss, Factor, Chernick & Hillman, Providence, R.I.*

ORDER GRANTING PETITION TO REOPEN THE PROCEEDING  
AND TO MODIFY THE ORDER

Respondents have petitioned the Commission to reopen the final order in the above-styled matter for the purpose of substituting, for the notice required therein, the notice required by the Preservation of Consumers' Claims and Defenses Trade Regulation Rule, 16 C.F.R. §433, which becomes effective May 14, 1976. Unless modified, respondents' instruments of indebtedness would be required to include both the order notice and the trade regulation rule notice.

The Commission, having considered respondents' petition and complaint counsel's answer, which does not oppose the modification, is of the opinion that the public interest would be best served by granting the petition and modifying the order so that it comports with the notice required by the trade regulation rule. Accordingly,

*It is ordered*, That Paragraph I(7) of the order entered on November 1, 1974, be, and it hereby is, modified to read as follows:

"7. Failing to include the following statement clearly and conspicuously on the face of any note, contract, or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR