

Complaint

87 F.T.C.

IN THE MATTER OF
MUTUAL HOME EQUIPMENT COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2813. Complaint, Mar. 25, 1976—Decision, Mar. 25, 1976

Consent order requiring a Philadelphia, Pa., door-to-door seller of household goods, and other consumer goods and products, among other things to cease misrepresenting retail installment sales contracts as rental agreements; accepting obligations from consumers which unfairly authorize it to enter buyers' homes without legal process and retake encumbered property without the buyer's permission, with the buyer waiving any action for trespass or damage and provide that the buyer forfeit all previously made payments in the event of default in payment of the obligation; failing to disclose to customers their right to a three-day cooling-off period during which they may cancel their contract with a full refund of monies paid; and in connection with the extension of consumer credit, failing to make such disclosures as required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Bernard Rowitz.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 Mutual Home Equipment Company, Inc., a corporation, and Samuel H. Alessi and Irving Gaeman, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have engaged in acts and practices contrary to the Commission's Trade Regulation Rule Concerning a Cooling-Off Period for Door-To-Door Sales (16 C.F.R. §429), as amended, in violation of the Federal Trade Commission Act, as amended, and have also engaged in acts and practices in violation of the provisions of the above-mentioned 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 Mutual Home Equipment Company, Inc. is a corporation organized, existing and doing business under and by

virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 4610 North 15th St., Philadelphia, Pennsylvania.

Respondents Samuel H. Alessi and Irving Gaeman are 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.

All of the aforementioned respondents cooperate and act together in the carrying out of the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the door-to-door offering for sale, sale, and distribution of household goods, including cookware, dishes, blankets and other consumer goods and products to the public at retail.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One and Two, hereof, are incorporated by reference in Count I as if fully set forth verbatim.

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 located in the Commonwealth of Pennsylvania to purchasers thereof located in various other States of the United States, 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, and in connection with their door-to-door sales, respondents now cause, and for some time last past have caused, their credit customers to enter into binding contracts, which respondents represent and identify as being "rental agreements," when in truth and in fact, such "agreements" when entered into by customers of respondents are retail installment sales contracts for the purchase of respondents' goods and merchandise. Such representations by respondents are therefore false, misleading and deceptive.

PAR. 5. In the course and conduct of their business, as aforesaid, and in connection with their door-to-door sales, respondents now cause, and for some time last past have caused, their credit customers to enter into binding contracts, which contain, among other things, the following language and provisions:

* * *[Mutual's] agents are hereby authorized to enter my premises and take and

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remove said property without legal process [*name of consumer*] hereby waiving any action for trespass or damage therefor and disclaiming any right of resistance thereto* * *.

The conditions imposed upon credit customers of respondents through the use of the above language and contract provisions are adhesive; are to the disadvantage of said customers; are not offset by any reasonable value received; and are included without regard to the actual risk of nonrepayment borne by respondents. Furthermore, said language and contract provisions are contrary to public policy and the law of the State in which respondents reside and do business. Thus, the use of said language and contract provisions was and is unfair, misleading and deceptive.

PAR. 6. In the course and conduct of their business, as aforesaid, and in connection with their door-to-door sales, respondents now cause, and for some time last past have caused, their credit customers to enter into binding contracts, which provide for, among other things, that title to said property remains with respondents until the "rental" has been paid in full, and in the event of default, all payments previously made by the customer are forfeited, and the unpaid balance of the "rental" may become due and payable at once to respondents. Such provision annuls and fails to take into account previously made payments, and fails to provide that if respondents should retake encumbered or secured property, the fair market retail value of the property so taken will be credited toward the balance due under the obligation.

The conditions imposed upon credit customers of respondents through the use of the above contract provisions are adhesive; are to the disadvantage of said customers; are not offset by any reasonable value received; and are included without regard to the actual risk of nonrepayment borne by respondents. Furthermore, said contract provisions are contrary to public policy and the law of the State in which respondents reside and do business. Thus, the use of said language and contract provisions was and is unfair, misleading and deceptive.

PAR. 7. In the course and conduct of their business, as aforesaid, and in connection with their door-to-door sales, respondents have been able to induce customers into signing binding contracts upon initial contact without giving the customers sufficient time to carefully consider the purchase and consequences thereof and without affirmatively stating and affording such customers the right to cancel any resulting purchase or contract.

Therefore, respondents' acts and practices as set forth herein were, and are, unfair, false, misleading and deceptive acts and practices.

PAR. 8. By and through the use of the aforesaid acts and practices,

respondents control and place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public, in the manner and as to the things hereinabove alleged.

PAR. 9. 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 the 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). A copy of the rule, marked Appendix A*, is attached hereto and made a part of this pleading.

PAR. 10. In the ordinary course and conduct of their business, as aforesaid, respondents engage in door-to-door sales of consumer goods, as the terms "door-to-door sales" and "consumer goods" are defined in the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales 16 C.F.R. §429 (1974) (hereinafter referred to as the "Commission Rule"), duly promulgated by the Federal Trade Commission.

PAR. 11. Subsequent to June 7, 1974, respondents, in the ordinary course and conduct of their business, as aforesaid, and in connection with their door-to-door sales of consumer goods:

* For reasons of economy, not reproduced herein.

1. Fail to furnish the buyers with a fully completed receipt of the sale in accordance with Section (a) of the Commission Rule.

2. Fail to provide a NOTICE OF CANCELLATION in the form and manner provided by Sections (b) and (c) of the Commission Rule.

3. Fail to inform each buyer orally of his right to cancel, in accordance with Section (e) of the Commission Rule.

4. Misrepresent the buyer's right to cancel the transaction, in violation of Section (f) of the Commission Rule.

PAR. 12. Respondents' aforesaid failure to comply with Sections (a), (b), (c), (e) and (f) of the Commission Trade Regulation Rule Concerning a Cooling-Off Period For Door-to-Door Sales constitutes unfair and deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 13. 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 or affecting commerce, with corporations, partnerships, firms and individuals engaged in the sale of merchandise of the same general kind and nature as those sold by respondents.

PAR. 14. 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 complete and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 15. 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.

COUNT II

Alleging violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One and Two, hereof, are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 16. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend 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. 17. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" 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, have caused, and are causing customers to execute binding retail installment contracts, hereinafter referred to as the contracts. Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of these retail installment contracts, respondents:

1. Fail to make the consumer credit cost disclosures required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.
2. Fail to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the goods, as required by Section 226.8(c)(1) of Regulation Z.
3. Fail to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.
4. Fail to use the term "total downpayment" to describe the sum of the "cash downpayment" and "trade-in," as required by Section 226.8(c)(2) of Regulation Z.
5. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.
6. Fail to use the term "amount financed" to describe the amount of credit of which the customer will have actual use, as required by Section 226.8(c)(7) of Regulation Z.
7. Fail to use the term "finance charge" to describe the cost of credit determined in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z.
8. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
9. Fail to disclose the finance charge as an annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, using the term "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z.
10. Fail to disclose the number, amount, due dates or periods of

payments scheduled to repay the indebtedness, and the sum of such payments using the term, "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

11. Fail to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

12. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment in full of the obligation, to state the amount or method of computing any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to an obligation or refunded to the customer, or that no rebate of unearned finance charges will be made upon prepayment in full, as required by Section 226.8(b)(7) of Regulation Z.

PAR. 18. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act, 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, as amended, and the Truth in Lending Act and the regulations promulgated thereunder; 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 Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for

a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mutual Home Equipment Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its offices and principal place of business located at 4610 No. 15th St., Philadelphia, Pennsylvania.

Respondents Samuel H. Alessi and Irving Gaeman are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above-stated address.

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

It is ordered, That respondents Mutual Home Equipment Company, Inc., a corporation, its successors and assigns, and its officers, and Samuel H. Alessi and Irving Gaeman, 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, offering for sale, sale and distribution of household goods, cookware, dishes, blankets or any other consumer goods or products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing directly or by implication, orally or in writing, that retail installment sales contracts are rental agreements.

2. Taking or receiving from a customer an obligation in which the customer waives any right of action against respondents, or their agents for trespass, damage, or any other torts.

3. Taking or receiving from a customer an obligation which fails to provide that, if the creditor retakes encumbered or secured property, the fair market retail value of property so taken and previous payments made by the customer, will be credited toward the balance due under the obligation.

4. Taking or receiving from a customer an obligation in which the customer waives any right of action against respondents or holder of the obligation or any other person acting on respondents' behalf, for any illegal act committed in the collection of payments under an obligation or in the repossession of goods.

5. Contracting for any sale, whether in the form of trade acceptance, conditional sales contract, retail installment contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

6. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

7. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[enter date of transaction]

[Date]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE

INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO *[name of seller]* AT *[address of seller's place of business]* NOT LATER THAN MIDNIGHT OF *[Date]*

I HEREBY CANCEL THIS TRANSACTION.

[Date]

[Buyer's signature]

8. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

9. Including in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

10. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

11. Misrepresenting in any manner the buyer's right to cancel.

12. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

13. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

14. Failing, within 10 business days of receipt of the buyer's notice

of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

15. Engaging in any act or practice which constitutes an unfair or deceptive act or practice pursuant to the Commission's Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales, effective June 7, 1974, 16 C.F.R. §429 (a copy of which is attached hereto as Appendix A*), and any amendments thereto.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by Federal law, Trade Regulation Rule or the law of the State in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from the above Paragraphs (5) to (15) of this order with respect to contracts executed in the state in which such different obligations are required.

It is further ordered, That respondents Mutual Home Equipment Company, Inc., a corporation, its successors and assigns, and its officers, and Samuel H. Alessi and Irving Gaeman, 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 any extension of consumer credit or advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

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

2. Failing to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the goods, as required by Section 226.8(c)(1) of Regulation Z.

3. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

4. Failing to use the term "total downpayment" to describe the sum of the "cash downpayment" and "trade-in," as required by Section 226.8(c)(2) of Regulation Z.

5. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.

6. Failing to use the term "amount financed" to describe the amount

* For reasons of economy, not reproduced herein.

of credit of which the customer will have the actual use, as required by Section 226.8(c)(7) of Regulation Z.

7. Failing to use the term "finance charge" to describe the cost of credit determined in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z.

8. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

9. Failing to disclose the finance charge as an annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, using the term "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z.

10. Failing to disclose the number, amount, due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments using the term, "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

11. Failing to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

12. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment in full of the obligation, to state the amount or method of computing any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to an obligation or refunded to the customer, or to disclose that no rebate of unearned finance charges will be made upon prepayment in full, as required by Section 226.8 (b)(7) of Regulation Z.

13. 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, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

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 door-to-door offering for sale, sale of any product or service or consummation of any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

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.

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 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 the order to cease and desist contained herein.

IN THE MATTER OF
WARNER-LAMBERT COMPANY

Docket 8891. Order, Mar. 26, 1976

Denial of respondent's petition to reopen proceedings to receive evidence of *ex parte* communications and of FDA findings concerning Listerine, and to withdraw final order pending consideration of such evidence.

Appearances

For the Commission: *Wallace S. Snyder* and *William S. Busker*.

For the respondent: *Mudge, Rose, Guthrie & Alexander*, New York City and *Larry Sharp, Bergson, Borkland, Margolis & Adler*, Washington, D.C.

Respondent has petitioned the Commission to reopen the proceeding for the purpose of receiving "evidence of *ex parte* communications and of FDA findings concerning Listerine, and to withdraw [the] final order pending consideration of such evidence."

First, respondent contends that the Commission staff, through written memoranda dealing with the Commission's over-the-counter drug program, has "singl[ed] out Listerine by name, [and] made improper and damaging *ex parte* arguments to the Commission" while the above-styled matter was pending. This contention is plainly without merit. The Commission has based its determinations and order in this proceeding solely upon the record compiled in Dkt. 8891. See *Encyclopaedia Britannica, Inc.* (Order Denying Motion To Reopen Record And Proceedings) (March 2, 1976¹). We have examined the memoranda² attached to respondent's Petition, as well as the portions of the memoranda which were excised prior to FOIA release. The only mention of Listerine occurs in a few statements that a proceeding exists with respect to respondent, e.g., "* * *the Listerine case which is now before the Commission* * *." There are no arguments, as respondent contends, of the appropriateness of corrective advertising as a remedy in the Listerine proceeding. The references to Listerine are not *ex parte* communications since they are not statements "with respect to the merits," Rules of Practice Section 4.7.

Secondly, respondent contends that the record should be reopened since an FDA advisory panel, after issuance of the Commission's opinion and order, "found that combination products containing the

¹ Reported in this Volume.

² The memoranda, with one exception, consist of reports to the Commission or the Chairman as to the status of the Commission's Over-the-Counter Drug program. The exception is a report to the Director of the Bureau of Consumer Protection from the Division of National Advertising and was a wholly intra-Bureau communication.