

FEDERAL TRADE COMMISSION DECISIONS

Complaint

87 F.T.C.

IN THE MATTER OF

J. KURTZ & SONS, INC., ET AL.

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

Docket C-2822. Complaint, May 24, 1976—Decision, May 24, 1976

Consent order requiring a Brooklyn, N.Y. furniture and appliance retailer, among other things to cease advertising falsely and misleadingly; violating the Truth in Lending Act; failing to make material disclosures regarding products' warranties, composition, condition and content; delivery and assembly terms, procedures and limitations of sales, repairs, replacement, and refund policies; arbitration and other rights of customers as set out in the *Guides for the Household Furniture Industry*; and failing to make, in both English and Spanish, pertinent disclosure of customers' rights on prominently displayed signs, in sales contracts, invoices, and in booklets provided to purchasers. Further the order requires respondents to honor warranties, investigate complaints and make satisfactory adjustments within a specified time; advise customers when credit insurance is optional and that it may be declined; and establish an arbitration program, submitting, without cost and at customers' option, unresolved grievances to binding arbitration.

Appearances

For the Commission: *Carol H. Katz* and *Shirley F. Sarna*.

For the respondents: *Stroock, Stroock & Lavan*, New York City.

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 J. Kurtz & Sons, Inc., a corporation, and John Kurtz, individually and as an officer of said corporation, hereinafter 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 J. Kurtz & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 773 Broadway, Brooklyn, New York.

Respondent John Kurtz is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of said corporate

1300

Complaint

respondent including the acts and practices hereinafter 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 in the purchasing, advertising, offering for sale, sale and distribution of furniture, appliances and related products to the public at retail.

COUNT I

Alleging violation 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 have purchased, and continue to regularly purchase, furniture, appliances and other merchandise from suppliers, distributors and manufacturers in States other than New York for the purposes of offering said merchandise for sale, maintaining an available inventory for sale and to fill special purchase orders received from their customers.

PAR. 4. In the further course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, furniture, appliances and other merchandise, when sold, to be shipped from their place of business within the State of New York and have caused, and are now causing, such merchandise to be delivered to purchasers residing in the State of New York and in other States.

PAR. 5. In the course and conduct of their business, respondents have ordered appliances from out-of-State manufacturers pursuant to their customers' orders with the intention of having, and actually having, such manufacturers ship said appliances directly to the customers' residences.

PAR. 6. In the course and conduct of their business and pursuant to special customer orders for furniture, respondents have delivered said furniture directly to their customers in an unopened and crated condition as received by respondents from the aforesaid out-of-State manufacturers.

PAR. 7. In the course and conduct of their business, as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning their products and services by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, including, but not limited to, advertisements inserted in newspapers of interstate circulation and by means of commercial announcements transmitted by television and radio stations in New York State, having sufficient power to carry and carrying such broadcasts across State lines, for the purpose of

inducing, and which are likely to induce, directly or indirectly, the purchase of said merchandise.

PAR. 8. Respondents, through their advertising as set forth in Paragraph Seven, induce or are likely to induce, directly or indirectly, residents of other States, including New Jersey and Connecticut, to come into the State of New York for the purpose of purchasing furniture, appliances and other merchandise from respondents to be delivered to their residences outside the State of New York.

PAR. 9. By virtue of the aforesaid acts and practices, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 10. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their merchandise, respondents, in their salesrooms, have maintained, and are now maintaining, floor models and displays of furniture and displays of appliances and other merchandise being offered for sale, on the basis of which their customers select and order such merchandise.

In this connection, respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the quality and durability of the furniture, appliances and other merchandise being offered for sale, the terms and conditions under which merchandise will be sold and delivered, and the services that will be provided by the respondents.

Moreover, subsequent to making sales and deliveries, respondents and their employees have made, and are now making, numerous oral statements, representations and promises to their customers regarding the time and the manner in which respondents will perform various adjustments, replacements and repairs.

PAR. 11. In the course and conduct of their business and for the purpose of inducing the sale of their merchandise, respondents, by way of newspaper, radio and television advertisements, advertising circulars, showroom floor models, and various catalogs, brochures, pamphlets and other publications and sales presentations, represent, directly or by implication, that:

1. Furniture and appliances sold by respondents will be delivered to the purchaser free from damages or defects.
2. Furniture and appliances which are delivered to purchasers with damages or defects will be repaired or replaced within a reasonable time.
3. Furniture and appliances which are delivered to purchasers with

damages or defects will be repaired or replaced to the satisfaction of the purchaser.

PAR. 12. In truth and in fact, in many instances:

1. Furniture and appliances sold by respondents are delivered to purchasers with damages and/or defects.
2. Furniture and appliances which are delivered to purchasers with damages and/or defects are not repaired or replaced within a reasonable time.
3. Furniture and appliances which are delivered to purchasers with damages and/or defects are not repaired or replaced to the satisfaction of the purchasers.

PAR. 13. Therefore, the aforesaid statements, representations, acts and practices regarding respondents' products and services were, and are, false, misleading and deceptive, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Twelve are incorporated herein by reference as if fully set forth verbatim.

PAR. 14. In the further course and conduct of their business, respondents, through the representations and practices set forth in Count I and others of similar import and meaning, but not expressly set out herein, separately and in conjunction with their failure to disclose material facts, have represented, and are now representing, directly and by implication, that:

1. Merchandise delivered to purchasers will be new and unused and will not be from the showroom floor where it has been used as a model or sample.
2. The sales price is for fully assembled merchandise and respondents or their representatives will assemble any merchandise in need thereof upon delivery.

PAR. 15. In truth and in fact, in some instances:

1. Respondents have delivered showroom floor samples to their customers without disclosing, either prior to the sale or at delivery, that it was such.
2. Respondents have delivered unassembled merchandise to customers without disclosing, prior to sale, that such merchandise would be delivered in crates and would not be assembled either upon or after delivery.

PAR. 16. The failure of the respondents and their representatives to disclose material facts, separately and in connection with their

aforesaid representations and practices, has the tendency and capacity to mislead prospective purchasers and to induce a number of purchasers into the understanding and belief that the purchaser will be receiving new, unused and completely assembled merchandise for a specified price and that the purchaser will not be required to expend additional funds or labor in order to make merchandise usable. Thus respondents have failed to disclose material facts, which, if known to certain customers, would likely affect their consideration of whether or not to respond to respondents' advertisements and to purchase merchandise being offered for sale.

PAR. 17. Therefore respondents' aforesaid representations and practices were and are false, misleading and deceptive and respondents' failure to disclose such material facts, both orally and in writing prior to the time of sale, was and is unfair, misleading and deceptive and said acts and practices constituted and now constitute unfair and deceptive acts or practices, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Seventeen are incorporated herein by reference as if fully set forth verbatim.

PAR. 18. By virtue of respondents' false, misleading and deceptive representations, acts and practices set forth in Counts I and II, customers have been induced to pay substantial sums of money to respondents for furniture, appliances and other merchandise. Respondents have received such sums and have failed to offer or agree to refund payments to purchasers or cancel contractual obligations in regard thereto when merchandise has been, or is, delivered in a nonconforming, damaged or defective condition or when such merchandise has not been assembled, repaired or replaced by respondents within a reasonable period of time.

PAR. 19. Respondents have failed, and continue to refuse, to repair or replace, or make refunds for nonconforming, damaged and/or defective merchandise and thereby to honor the implied warranties imposed by law upon such sales.

PAR. 20. Therefore, the use by the respondents of the aforesaid practices and their continued retention of the said sums under the circumstances described herein is an unfair act or practice, in violation of Section 5 of the Federal Trade Commission Act, as amended.

1300

Complaint

COUNT IV

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Twenty are incorporated herein by reference as if fully set forth verbatim.

PAR. 21. In the further course and conduct of their business, as aforesaid, respondents on numerous occasions have utilized various dunning procedures and practices, including dunning letters, letters to employers, and threats of repossession and wage assignments, in order to collect debts allegedly due and owing to J. Kurtz & Sons, Inc. from customers who purchased furniture on credit, where the customers temporarily discontinued payment because respondents failed satisfactorily to repair or replace defective or damaged furniture or investigate complaints from such customers within a reasonable time.

PAR. 22. As a result of respondents' aforesaid debt collection practices, customers have been coerced into paying monies for merchandise which has not been satisfactorily repaired or replaced, in order to avoid harassment, extra interest and late penalty charges and threatened wage attachments, repossession and legal action.

PAR. 23. Therefore, respondents' use of the aforesaid collection practices, against those purchasers who failed to make timely payments because of respondents' failure to investigate complaints or satisfactorily repair or replace defective or damaged furniture within a reasonable period of time, is an unfair act or practice within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Ten are incorporated herein by reference as if fully set forth verbatim.

PAR. 24. In the further course and conduct of their aforesaid business, and for the purpose of inducing the sale of their furniture, respondents have made certain statements and representations in various newspaper advertisements, and are now making certain statements with respect to carved-like designs which accent the styling of the furniture and the grades of fabric available for sale with certain furniture.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

FEDERAL TRADE COMMISSION DECISIONS

Complaint

87 F.T.C.

FLAWLESS DETAIL, WARM WOOD TONES AND CARVED MOLDED OVERLAYS ACCENT THE BEAUTIFUL STYLING OF THIS LUXURIOUS SUITE

RICH CARVED MOLDED OVERLAYS ON SELECTED HARDWOODS ACCENTED BY SOFT WOOD TONES AND BRASSED HARDWARE

RICHLY CRAFTED SUITE - FEATURING BEAUTIFUL CARVED MOLDED OVERLAYS IN WARM WOOD TONES

SELECT GROUP OF GRADE A FABRICS, TRULY A FANTASTIC BUY

ALL AVAILABLE IN A SPECIAL GROUP OF GRADE A FABRICS

PAR. 25. By and through the use of the aforesaid quoted statements and representations, and others of similar import and meaning but not expressly set forth herein, the respondents have represented and are now representing, directly or by implication, that:

1. Furniture has been styled by the process of carving or cutting wood into shape.

2. A purchaser will be getting the top grade of fabric, as is the customary understanding of the term "Grade A."

PAR. 26. In truth and in fact:

1. The molded overlays are not carved like wood, but are formed from plastic by the use of a mold.

2. Fabrics are graded in the furniture industry from A to F with "Grade A" being the least expensive and of the lowest quality.

PAR. 27. The failure of respondents to disclose material facts regarding the composition of furniture and quality of fabric, separately and in connection with their aforesaid representations, has the tendency and capacity to mislead prospective purchasers into the mistaken belief that they are being offered merchandise of a different quality, durability, composition or construction than is actually being sold. Thus respondents have failed to disclose material facts, which, if known to certain customers, would likely affect their consideration of whether or not to respond to respondents' advertisements and to purchase merchandise being offered for sale.

PAR. 28. Therefore respondents' aforesaid statements and representations set forth in Paragraphs Twenty-Four and Twenty-Five were and are false, misleading and deceptive and respondents' failure to disclose such material facts prior to the time of sale, was and is unfair, misleading and deceptive and constituted and now constitutes an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VI

Alleging violation by respondents of Section 5 of the Federal Trade

Commission Act, as amended, the allegations of Paragraphs One through Twenty-Eight are incorporated herein by reference as if fully set forth verbatim.

PAR. 29. In the further course and conduct of their business, respondents engage in the sale of merchandise, and have sold merchandise, to customers who speak, read, write and understand only the Spanish language. An oral sales presentation in the Spanish language is given to these customers which does not include all the terms and conditions of the contract. The contract which is written only in the English language is not read and translated into Spanish for these customers and said customers do not understand all the terms and conditions of the contract.

PAR. 30. Therefore the practice by respondents of providing customers, who understand only Spanish, with a partial disclosure in Spanish of the terms and conditions of the contract, without translating all the terms and conditions of the contract into Spanish, is deceptive, misleading and confusing to Spanish speaking customers and constitutes an unfair and deceptive act and practice in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VII

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Thirty are incorporated herein by reference as if fully set forth verbatim.

PAR. 31. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

PAR. 32. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, directly or by implication, 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' products and services by reason of said erroneous and mistaken belief.

PAR. 33. 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 in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VIII

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 VIII as if fully set forth verbatim.

PAR. 34. 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. 35. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are now causing, customers to execute binding "retail installment credit agreements," hereinafter referred to as the "credit agreement," for the purchase of respondents' goods and services. Said agreements constitute the only disclosure of consumer credit terms made to the customer before a transaction is consummated.

PAR. 36. In connection with their extensions of credit, respondents make disclosures to their customers describing the credit terms of their agreements and customer accounts. Said disclosures include, but are not limited to, disclosure that the finance charges will be computed by a periodic rate and disclosure of the annual percentage rate of such charges. Furthermore, in connection with their extensions of credit, respondents have caused to be delivered, and are delivering, to their customers, periodic billing statements. Based upon the foregoing, respondents profess to be extending open end credit.

PAR. 37. However, in further connection with their extensions of credit, respondents also require that customers execute a new retail credit agreement for subsequent purchases and consolidate the old balance, the balance due on the new sale, and credit life insurance charges on the new agreement. In addition, in many instances, respondents reverify credit information when new retail credit agreements are executed.

PAR. 38. For the reasons, set forth in Paragraph Thirty-Seven, and for other reasons not specifically set forth herein, respondents are not extending consumer credit on an account pursuant to a plan under which the respondents permit customers to make repetitive transac-

tions on a revolving basis, and are, therefore extending other than open end credit.

PAR. 39. By and through the use of the aforementioned credit agreement, respondents:

1. Fail to make the required disclosures clearly, conspicuously, and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.
2. Fail to make all the required disclosures in one of the following three ways, in accordance with Section 226.8(a) of Regulation Z.
 - (a) together on either the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or
 - (b) on one side of a separate statement which identifies the transaction; or
 - (c) on both sides of a single document, provided that the amount of the finance charge and the annual percentage rate appear on the face thereof, both sides contain the statement "Notice: see other side for important information," and the place for the customer's signature follows the full content of the document.
3. Fail to use the term "cash price" to describe the cash price of the property purchased, as prescribed by Section 226.8(c)(1) of Regulation Z.
4. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.
5. Fail to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed but which are not a part of the finance charge, as prescribed by Section 226.8(c)(5) of Regulation Z.
6. Fail to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.
7. Fail to determine the sum of all charges incident to or as a condition of the extension of credit as required by Section 226.4 of Regulation Z and to disclose that sum, with a description of each amount included, using the term "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z and also fail to print this term more conspicuously than other terminology as required by Section 226.6(a) 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 annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8 (b)(2) of Regulation Z and to print that term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

10. Fail to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as prescribed 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 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.

PAR. 40. In connection with their extensions of credit, respondents have included, and are now including, in their credit agreement a provision regarding the purchase of credit life insurance by the customer. On the credit agreement said insurance is disclosed as voluntary and not required for credit, and the agreement purportedly requires the customer to choose whether or not such insurance is desired by signing and dating the appropriate space beneath the insurance disclosure. Respondents do not include premiums for such insurance in the finance charge.

PAR. 41. In truth and in fact, respondents' representatives fill in the provision regarding credit life insurance and present it to the customer for his signature as though it was an integral part of the entire agreement, not necessitating a separate decision. If the customer still declines to purchase the insurance, respondents' representatives state to him, directly or by implication, that in such a case his application for credit might not then be approved.

PAR. 42. By and through the aforesaid acts and practices, and others of similar import, meaning and consequence, but not expressly set forth herein, the respondents have defeated, and continue to defeat and circumvent, the elective language of the credit insurance provisions. Respondents thereby prevent consumers from exercising their own independent voluntary choice whether to obtain credit life insurance and, in effect, make such insurance a requirement for credit. Therefore, the respondents have violated, and continue to violate, Sections 226.4(a)(5) and 226.8(c)(8) of Regulation Z, by failing to include the premium for said credit life insurance in the finance charge.

PAR. 43. By and through respondents' failure to include the premium for credit life insurance in the finance charge as described in Paragraphs Forty through Forty-Two, respondents have failed to compute and disclose the "annual percentage rate" accurately to the nearest quarter of one percent in accordance with Sections 226.5(b) and 226.8 of Regulation Z.

PAR. 44. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure 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.

COUNT IX

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, Two and Thirty-Four through Forty-Four hereof are incorporated by reference in Count IX as if fully set forth verbatim.

PAR. 45. In order to promote the sale of their goods and services, respondents have caused advertisements, as "advertisement" is defined in Regulation Z, to appear in various media. Such advertisements aid, promote, or assist, directly or indirectly, the aforesaid extensions of consumer credit, in connection with the sale of goods, which respondents arrange. By and through the use of the advertisements, respondents state that there is no credit charge in certain credit transactions, without also clearly and conspicuously stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) of Regulation Z:

- (1) The cash price;
- (2) The amount of the downpayment required or that no downpayment is required, as applicable;
- (3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (4) The amount of the finance charge expressed as an annual percentage rate; and
- (5) The deferred payment price.

PAR. 46. 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent J. Kurtz & Sons, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 773 Broadway, Brooklyn, New York.

Respondent John Kurtz is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his 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

I

A. *It is ordered*, That respondents J. Kurtz and Sons, Inc., a corporation, its successors and assigns, and its officers, and John Kurtz, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with

the purchasing, advertising, offering for sale, sale and distribution of furniture and appliances, or any other products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

(1) Using the term "carved" to describe any part of furniture that has not been cut into shape.

(2) Failing to disclose either (a) the true composition, construction or styling of furniture or its parts or (b) that material is not what it appears to be, whenever any statement, depiction or representation is made, through advertising, which may otherwise be misleading as to the true composition or construction of the furniture or its parts without such disclosure. In regard to styling of furniture, disclosure must be made only if an affirmative oral or written statement is made. Such disclosures shall be made clearly and conspicuously, and in close conjunction with any representations, statements or depictions used; *provided, however*, that this paragraph does not apply to outer coverings, as the term "outer coverings" is referred to in the *Guides for the Household Furniture Industry*.

(3) Failing to clearly and conspicuously disclose, through the use of tags sufficiently attached to furniture so as not to be easily removed and which can be understood by purchasers, either the true composition or construction of furniture or its parts or that material is not what it appears to be, whenever the appearance of such furniture or its parts may otherwise be misleading as to its true composition without such disclosure; *provided, however*, that this paragraph does not apply to outer coverings, as the term "outer coverings" is referred to in the *Guides for the Household Furniture Industry*.

(4) Failing, whenever any reference is made in advertising to a constituent fiber of an outer covering made of a mixture of different fibers, to disclose each constituent fiber present as follows:

(a) Each constituent fiber present in quantities of at least 5 percent should be designated in the order of its predominance by weight.

(b) Each designated constituent fiber which is present in quantities of less than 5 percent shall be stated as a percentage of the total weight.

(c) All disclosures shall be made clearly and conspicuously and in close conjunction with any representations made.

(5) Failing, whenever any identifying reference is made on a tag or label of an outer covering made of a mixture of different kinds of fibers, to disclose each constituent fiber present by percentage and in order of its predominance by weight.

(6) Representing that merchandise will be sold in Grade "A" fabrics, or in Grade "1" fabrics, without including in such representation, or

any advertisement thereof, a clear and conspicuous disclosure, that Grade "A" or Grade "1" refers to the least expensive and lowest quality grade of fabric, if that is the fact, and without disclosing that the price will be higher for the same merchandise in a better fabric.

(7) Failing to disclose orally and in writing, conspicuously on the face of all sales contracts, invoices and receipts in close proximity to the description and price of the merchandise being sold, whenever merchandise to be sold will be other than in mint or unmarred condition, the material facts regarding the condition of such merchandise and the terms of sale, such as whether the merchandise is being sold a) "as is" that is, without warranties, or b) with a patent defect, irregularity or damage, but subject to warranties implied by law as well as the rights set forth in Paragraph B of this Order I.

(8) Failing to disclose orally and in writing, on the face of all sales contracts, invoices, and receipts, and on tags attached to displayed furniture, that such furniture is to be sold and delivered in an unassembled condition and that respondents will not assemble the furniture, if that is the fact.

(9) Failing to disclose, clearly and conspicuously, on tags attached to displayed furniture and in the booklet as provided in Paragraph A, subpart (16), if furniture is to be delivered in an unassembled condition, the manner and terms under which respondents will assemble the furniture at the customer's premises.

(10) Failing to disclose, conspicuously on all sales contracts, invoices and receipts, that respondents regularly and in the normal course of their business, sell and deliver furniture off of the showroom floor.

(11) Failing to post and maintain signs prominently displayed on the walls of all showroom floors, in English and in Spanish, and of sufficient size and clarity and in sufficient quantity so as to be readily seen and understood by consumers, which state that respondents regularly and in the normal course of their business, sell and deliver furniture off of the showroom floors.

(12) Failing to disclose clearly and conspicuously on tags attached to soft goods, that such merchandise has been on display for at least a total of three months whenever such is the fact.

(13) Delivering furniture from the showroom floor to customers who order furniture other than from the showroom floor.

(14) Failing to provide customers with contracts, booklets, credit cost disclosures and other mandated written disclosures printed in English and Spanish when the sales presentation was made substantially in the Spanish language.

(15) Failing to provide conspicuously on all sales contracts, invoices and receipts, in addition to the requirements of Paragraph C, subpart

(2), that respondents will submit all disputes with customers to arbitration at the customer's option, in clear language in substantially the following form:

Any dispute or claim you have involving this contract or the merchandise you purchased may be settled by arbitration, if you choose.

(16) Failing to provide customers with other disclosures and material information regarding, but not limited to: (a) warranties and guarantees; (b) delivery terms; (c) assembly terms and procedures; (d) respondents' refund policies; (e) the repair or replacement of nonconforming, defective or damaged merchandise; (f) the availability of arbitration of disputes; and (g) the other rights provided for in this order. These disclosures shall be set forth in a booklet which shall be furnished to each customer who purchases any merchandise exceeding \$5 in cost, and to each customer upon the opening of a credit or charge account.

(17) Failing to disclose orally and in writing, conspicuously on the face of all sales contracts, invoices and receipts for merchandise exceeding \$5 in value, that essential contract terms are set forth in a booklet which shall be given to each customer before signing the sales contract, in substantially the following form:

NOTICE TO CUSTOMER:

Important information on warranties, delivery terms, assembly terms and procedures, refunds, repairs, replacements and the availability of arbitration of disputes is contained in the booklet which you have received or may obtain from the merchant. Read this booklet carefully and keep it for future information.

(18) Failing to provide in such booklet that customers may have other legal rights concerning their contracts in addition to those set out in the contract and booklet.

(19) Failing to provide in such booklet that customers may seek court redress of any grievances which might arise concerning their contracts or may use the arbitration rights provided for in this order.

(20) Failing to comply with all requirements, or to fulfill all of the obligations to customers, which are set forth in Paragraph B of this Order I and to comply with all of the procedures and rights set forth in the booklet.

B. *It is further ordered*, That beginning the effective date of this order, respondents shall cease and desist from failing to act in accordance with the following procedures:

(1) As to complaints, written or oral, of damaged, defective,

unassembled or nonconforming merchandise, made within ten (10) days of actual delivery of such merchandise:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall assemble, within a reasonable time not to exceed ten (10) days after such investigation, merchandise which respondents have agreed to assemble in the customer's home.

(c) Respondents shall repair to mint condition or make replacement of damaged, defective or nonconforming merchandise within a reasonable time not to exceed thirty-one (31) days from the date of complaint, except when merchandise has been specially ordered by the customer, such merchandise shall be repaired or replaced within ninety (90) days from the date of complaint.

(d) If the repair or replacement of such damaged, defective or nonconforming merchandise is unsatisfactory, respondents shall cancel all applicable contract provisions with a full refund within seven (7) business days from receipt of the customer's notice of cancellation, subject to the provisions of Paragraph B, subpart (17) of this Order I. In the event, however, that the repair is made in the customer's home and such repair is unsatisfactory, respondents shall have the option of replacing such merchandise within thirty-one (31) days from the date of the original complaint as provided in Paragraph B, subpart 1(c).

(e) If the investigation, repair, assembly, or replacement cannot be completed within the time specified by Paragraph B, subparts 1(a), 1(b) and 1(c) of this Order I, respondents shall make diligent efforts to notify the customer orally and shall notify the customer in writing immediately upon ascertaining that respondents are unable to make timely performance, and shall, at the customer's option, cancel all applicable contract provisions with a full refund within seven (7) business days from the date set for completion. In no event shall respondents' notice of inability to make timely performance be given to the customer after the last day set out for performance in Paragraph B, subparts 1(a), 1(b) and 1(c) of this Order I.

(f) Respondents may refund in full the actual purchase price of the merchandise if repair is not commercially practicable and respondents are unable to provide replacement.

(2) As to complaints, written or oral, of defective merchandise other than carpeting, made after ten (10) days as provided in Paragraph B, subpart (1), and within three (3) months from the actual date of delivery of such merchandise:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall satisfactorily repair or, at respondents' option, replace such defective merchandise at no additional cost to the customer within a reasonable time not to exceed sixty (60) days after the inspection of the merchandise, except when merchandise has been specially ordered by the customer, such merchandise shall be repaired or, at the respondents' option, replaced within ninety (90) days after the inspection of the merchandise. In instances where respondents are unable to obtain an identical replacement item, replacement with suitable merchandise may be made only with the customer's consent, and such replacement must be satisfactory to the customer.

(c) In instances where it appears upon investigation that repair or replacement of case goods or major appliances may take longer than thirty (30) days or where thirty (30) days have already elapsed from the time of the investigation, respondents shall offer to the customer a suitable interim replacement at no extra cost.

(3) As to complaints, written or oral, of defective merchandise, other than outer coverings and carpeting, made after three (3) months as provided in Paragraph B, subpart (2), and within one (1) year from the actual date of delivery of such merchandise:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall satisfactorily repair or, at their option, replace with like merchandise such defective merchandise at no additional cost within a reasonable time not to exceed ninety (90) days after the inspection of the merchandise.

(c) In instances where it appears upon investigation that repair or replacement of case goods or major appliances may take longer than thirty (30) days, or where thirty (30) days have already elapsed, respondents shall offer to the customer a suitable interim replacement at no extra cost.

(4) With respect to complaints, written or oral, of defective outer coverings, respondents shall act in accordance with the procedures set forth in Paragraph B, subparts 3(a) and 3(b) above when a written or oral complaint of a defect has been made after three (3) months and within six (6) months from the actual date of delivery, or if plastic

coverings have been used by the customer on such merchandise, within nine (9) months from such date.

(5) With respect to outer coverings, Paragraph B, subparts (2), (3) and (4) shall be applicable only to manufacturing defects and shall not be applicable to fading and reasonable wear and tear of fabrics.

(6) Respondents shall clearly and conspicuously disclose, orally and in writing, to customers, all terms and limitations of sale regarding outer coverings as set forth in Paragraph B, subparts (4) and (5).

(7) With respect to complaints, written or oral, of defective carpeting, made after ten (10) days as provided in Paragraph B, subpart (1), and within six (6) months from the actual date of delivery:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the carpeting for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall satisfactorily repair or replace such defective carpeting at no additional cost to the customer within a reasonable time not to exceed sixty (60) days after the inspection of the carpeting.

(8) With respect to complaints, written or oral, of defective carpeting, made after six (6) months, as provided in Paragraph B, subpart (7), and within one (1) year from the actual date of delivery:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall satisfactorily repair defects to the extent only of reinserting missing tufts and clipping sprouted loops within sixty (60) days after the inspection of the carpeting.

(9) Paragraph B, subparts (7) and (8) shall be applicable only to manufacturing defects and shall not be applicable to crushing or matting of pile carpeting, fading, reasonable wear and tear, and instances where the carpeting has not been used with a pad.

(10) Respondents shall clearly and conspicuously disclose, orally and in writing, to customers all terms and limitations of sale regarding carpeting as set forth in Paragraph B, subparts (7), (8) and (9) of this Order I.

(11) For purposes of the time limitations contained in Paragraph B of this Order I, customers may at any time give their written consent for an extension of respondents' time for performance. Such written consent shall set forth a date certain which shall be a date by which respondents actually expect to complete performance. No rights

accruing from the provisions contained in this Order I shall be affected by such extension.

(12) If a repair, investigation, or replacement cannot be completed within the time specified by Paragraph B, subparts (2), (3), (4), (7) and (8) of this Order I, respondents shall make diligent efforts to notify the customer orally and shall notify the customer in writing, at least seven (7) days prior to the scheduled completion date, of respondents' inability to complete repairs or replacement by such date and shall advise the customer of the customer's right to submit the grievance to arbitration, where an arbitrator may award appropriate remedies or damages under the circumstances.

(13) The provisions of Paragraph B of this Order I shall not apply in instances where the damage or defect in the merchandise was caused by the customer or another while the merchandise was in the customer's possession or control.

(14) The provisions of Paragraph B of this Order I shall not apply to merchandise sold "as is" nor to the specific patent damages, defects or irregularities (including worn outer coverings) disclosed in accordance with the requirements of Paragraph A, subpart (7) of this Order I.

(15) For purposes of this order, nonconforming merchandise shall include, but not be limited to, merchandise which is worn in appearance when such wear has not been specifically designated as a condition of sale as provided in Paragraph A, subpart (7) of this Order I.

(16) For the purposes of this order, the term "special order" shall refer to merchandise ordered specifically at a customer's request rather than that merchandise which is ordered for respondents' regular inventory or usual stock of goods.

(17) For purposes of this order, the term "satisfactorily" may be a subject of an arbitration held pursuant to this order.

(18) For purposes of Paragraph B, subparts 1(a), 2(a), 3(a), 7(a) and 8(a) of this Order I, the circumstances surrounding respondents' failure to conduct an investigation within twenty-one (21) days as provided may be considered by the Arbitrator in any arbitration held pursuant to this order.

(19) Respondents shall not sell merchandise without any implied warranties, or with any disclaimer or limitation of implied warranties, except that respondents may sell merchandise "as is."

(20) Disputes arising with respect to implied warranties conferred by State or local statutory law or by the common law may be a subject of an arbitration held pursuant to this order.

(21) *Provided*, that there is clear and conspicuous disclosure, orally and in writing, of the terms and limitations of the sale, prior to its

consummation, the provisions of Paragraph B, subparts (2), (3) and (4) shall not apply to the following:

(a) any defects in the outer covering of mattresses or mattress handles not visible upon delivery, beyond the obligation to patch any such defects visible within one (1) year from the date of the actual delivery, *provided*, that the mattress is in a sanitary condition;

(b) any defects in a mattress when used with an incompatible box spring or foundation;

(c) any mattresses not kept in a sanitary condition.

(22) *Provided*, that there is clear and conspicuous disclosure, orally and in writing, of the terms and limitations of the sale, prior to its consummation, the provisions of Paragraph B, subpart (3) shall not apply to television and audio equipment whenever the manufacturer of such equipment limits its express warranties to less than one year, and in that event the durational provision of Paragraph B, subpart (3) shall be coextensive with such warranties.

(23) The investigation, pick-up and delivery of repair or replacement merchandise shall be at no additional cost to the customer unless made to a location, other than the point of original delivery, which is outside of respondents' normal delivery areas.

(24) No rights conferred by State or local statutory law or by the common law shall be affected by the provisions and rights contained herein.

C. *It is further ordered*, That respondents shall cease and desist from failing to act in accordance with the following procedures:

(1) If the respondents and a customer are unable to agree upon a settlement of any controversy involving the sale of merchandise, including the failure to deliver merchandise, the delivery or repair of any damaged, defective, or nonconforming furniture, appliances, or other merchandise, the failure to assemble merchandise when respondents are obligated to assemble, the failure satisfactorily to replace or repair damaged, defective or nonconforming merchandise, or the failure to make refunds to which a customer is entitled pursuant to this order or otherwise, then, at the option of the customer, such customer shall have the right to submit the issues to an impartial arbitration procedure entailing no mandatory administrative cost or filing fee to the consumer, which shall be conducted in accordance with the arbitration procedures annexed to this order, as Appendix "A," (Arbitration Rules, J. Kurtz and Sons, Inc.), and the procedures for arbitration adopted in Appendix "A" are to be considered as incorporated within the terms of this order.

(2) That respondents shall provide adequate notification to customers of their right to submit such controversies to arbitration and the

binding nature of an arbitration award in the booklet referred to in Paragraph A of this Order I and in all sales contracts which shall set forth the name, address and telephone number of the arbitration tribunal and the manner in which arbitration can be obtained. Respondents are authorized and directed to change the instructions as to how to secure arbitration if circumstances require.

(3) Such arbitration shall be conducted in accordance with the Arbitration Rules of the Consumer-Business Arbitration Tribunal of the Better Business Bureau of Metropolitan New York, Inc., as amended and contained in attached Appendix "A" (Arbitration Rules, J. Kurtz and Sons, Inc.), whose offices are presently located at 110 Fifth Ave., New York, New York, telephone (212) 989-6150. In the event that the Better Business Bureau should discontinue its arbitration tribunal, or modify the tribunal to impose filing fees, respondents may petition the Commission for appropriate relief. Respondents' failure to utilize arbitration during any such period shall not constitute a violation of this order, *provided, however*, that during this interim period respondents adopt an informal dispute settlement mechanism which complies with Title I, Section 110 of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. §2301, and the rules and regulations promulgated thereunder.

(4) That respondents comply with and abide by any award or decision rendered pursuant to the aforesaid arbitration, subject to respondents' rights under the arbitration provisions of the New York Civil Practice Law and Rules or other applicable law.

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

D. *It is further ordered*, That whenever a customer has sought the relief contained in Paragraph B of this Order I, or has advised respondents of the discontinuance of payment on the ground that respondents failed to deliver or assemble merchandise, to replace nonconforming merchandise, to repair or replace defective or damaged merchandise, or to make any refund to which a customer is entitled by reason of this order, or otherwise, that respondents desist from any action to collect the amount owed or any part thereof other than mailing a routine statement of account in regard to such merchandise and desist from giving any adverse information to any credit reporting agency, unless respondents have conducted a thorough investigation of such complaint and made a written reply to the customer, stating whether respondents have concluded that such grievance is justified or unjustified, with reasons in support thereof, and what action will be

taken. Such written reply shall be sent to each customer, along with a notice advising the customer of his right to refer grievances to arbitration.

E. *It is further ordered*, That before any action is taken to collect an amount due from a customer, other than the mailing of a routine statement of account, or before any adverse information is sent to a credit reporting agency, respondents shall make their best efforts to ascertain that respondents are not engaged in a dispute with said customer relating to the quality of the merchandise, or its replacement, condition, repair or assembly, and, if so involved, verify that respondents have investigated and found the grievance to be unjustified and have so advised the customer, in accordance with the provisions of Paragraph D of this Order I.

F. *It is further ordered*, That the corporate respondent shall, at all times subsequent to the effective date of this order, maintain complete business records relating to the manner and form of its continuing compliance with this order during the immediately preceding three-year period, such records to include: (1) all refund, repair or replacement requests sent to respondents by customers; (2) all other grievance letters and documents received from customers; (3) adequate records to disclose the facts pertaining to the receipt, handling and disposition of each and every communication from a customer, oral or written, requesting cancellation, refund, assembly, replacement, repair or arbitration; (4) all investigation reports concerning such grievances; and (5) all records pertaining to those customers to whom any collection or dunning notices have been sent.

ORDER

II

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

A. In regard to consumer credit cost disclosures and procedures of other than open end credit:

(1) Failing to make the required disclosures clearly, conspicuously,

and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

(2) Failing to make all the required disclosures prior to the consummation of the transaction in one of the following three ways, in accordance with Section 226.8(a) and Interpretation Section 226.801 of Regulation Z:

(a) together on the contract or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or

(b) on one side of a separate statement which identifies the transaction; or

(c) when the contract, security agreement and evidence of the transaction are combined in a single document designed for processing by mechanical or electronic equipment, on both sides of a single document, *provided*, that the amount of the finance charge and the annual percentage rate appear on the face thereof, both sides contain the statement "Notice: see other side for important information," and the place for the customer's signature follows the full content of the document.

(3) Failing to use the term "cash price" to describe the cash price of the property purchased, as prescribed by Section 226.8(c)(1) of Regulation Z.

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

(5) Failing to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed, but which are not part of the finance charge, as prescribed by Section 226.8(c)(5) of Regulation Z.

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

(7) Failing to determine the sum of all charges incident to or as a condition of the extension of credit as required by Section 226.4 of Regulation Z and to disclose that sum, with a description of each amount included, using the term "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z and also to print this term more conspicuously than other terminology as required by Section 226.6(a) 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 annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z and to print that term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

(10) Failing to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as prescribed 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 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.

B. Representing, directly or by implication, in any advertisement to promote or assist directly or indirectly any credit sale of other than open end credit, that no downpayment is required, the amount of the downpayment or the amount of any installment payment either in dollars or as a percentage, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

- (1) The cash price;
- (2) The amount of the downpayment required or that no downpayment is required, as applicable;
- (3) The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (4) The amount of the finance charge expressed as an annual percentage rate; and
- (5) The deferred payment price.

C. In regard to any extension of open end credit, as that term is defined in Section 226.2(r) of Regulation Z:

(1) Failing to disclose on a single written statement which the customer may retain before the first transaction is made on any open end credit account:

(a) The conditions under which a finance charge may be imposed, including an explanation of the time period, if any, within which any

credit extended may be paid without paying a finance charge, as required by Section 226.7(a)(1) of Regulation Z;

(b) The method of determining a balance upon which a finance charge may be imposed, as required by Section 226.7(a)(2) of Regulation Z;

(c) The method of determining the amount of the finance charge, including the method of determining any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge, as required by Section 226.7(a)(3) of Regulation Z;

(d) The conditions under which any other charges may be imposed, and the method by which they will be determined, as required by Section 226.7(a)(6) of Regulation Z and;

(e) The minimum periodic payment required, as required by Section 226.7(a)(8) of Regulation Z.

(2) Failing to make all of the disclosures required by Section 226.7(b) of Regulation Z on periodic statements sent to customers in accordance with Section 226.7(b) of Regulation Z in the manner and form prescribed by Sections 226.7(b) and (c) of Regulation Z.

(3) Representing, directly or by implication, in any advertisement to aid, promote, or assist directly or indirectly the extension of open end credit, any of the terms described in Section 226.7(a) of Regulation Z, the Comparative Index of Credit Cost, or that a specified downpayment, or periodic payment is required, the period of repayment or any of the following items, unless it also clearly and conspicuously sets forth all the following items in terminology prescribed under Section 226.7(b) of Regulation Z as required by Section 226.10(c) of Regulation Z:

(a) An explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(b) The method of determining the balance upon which a finance charge may be imposed.

(c) The method of determining the amount of the finance charge, including the determination of any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(d) Where one or more periodic rates may be used to compute the finance charge, each corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year and, where there is more than one corresponding annual percentage rate, the range of balances to which each is applicable.

(4) In regard to purchases by a customer on an existing open end credit account:

(a) Requiring the customer to execute a new credit agreement or note each time additional credit is extended.

(b) Consolidating old and new credit balances on sales contracts or documents.

(c) Conducting, at the time of any purchase made subsequent to the opening of an open end account, any third party or outside reverification of the customer's credit worthiness, marital status, reliability or place of employment, or requiring a customer to make any statements regarding his or her credit worthiness, marital status or reliability except to request information from the customer as to the customer's current address and present place of employment, unless respondents have determined, through their own internal records, that the customer has exceeded or will exceed his or her previously established credit limit or has not conformed to the terms of his or her account by failing to make timely payments in accordance with respondents' plan. *Provided, however*, that respondents shall be relieved of this provision of the order if the Board of Governors of the Federal Reserve Board promulgates a regulation, rule or interpretation amending Regulation Z which permits reverification in connection with any extension of open end credit, to the extent that any rule, regulation or interpretation of the Board permits reverification.

(5) Failing to mail or deliver any changes in the terms previously disclosed to the customer of an open end credit account, in the manner and form required by Section 226.7(e) of Regulation Z.

(6) Failing to disclose the credit limit for an open end credit account on the written statement required by Section 226.7(a) of Regulation Z and on all periodic statements required by Section 226.7(b) of Regulation Z.

(7) Requiring, in connection with the opening of any open end credit account or in connection with any purchases or extensions of credit under an open end account, a customer to secure a cosigner, surety or guarantor for payments on the account or for any purchases made by a customer under an existing open end account. Respondents may require a cosigner for purchases or extensions of credit in excess of a customer's established credit limit under an open end account, *provided*, that: (a) the liability of the cosigner, surety or guarantor is limited to the particular transaction for which the cosigner was required and (b) respondents provide the cosigner, surety or guarantor with a statement containing all of the disclosures required by Section 226.8 of Regulation Z in the manner and form prescribed by Sections 226.4, 226.6 and 226.8 of Regulation Z.

(8) Failing to disclose on the written statement required by Section

1300

Decision and Order

226.7(a) that downpayments may be required on subsequent transactions in an open end account for special orders, if such is the fact.

D. In regard to credit life insurance, or credit accident and health insurance:

(1) Failing to include the premium for credit life and/or credit accident and health insurance in the finance charge where such insurance is required for the extension of credit or when the customer is led to believe that such insurance is required in connection with the credit transaction, as required by Section 226.4(a)(5) of Regulation Z.

(2) Failing to advise the customer, if credit life insurance and/or credit accident and health insurance are not included in the finance charge, that such insurance is optional and that the customer may choose to decline either or both forms of insurance and still purchase on credit.

(3) Failing to give full disclosure of the monthly cost of such insurance to the customer.

(4) Making any marks or otherwise instructing a consumer where to sign or date the personal insurance authorization required by Section 226.4(a)(5)(ii) of Regulation Z in advance of the consumer's free and independent choice for such insurance.

(5) Misrepresenting, orally or otherwise, directly or by implication, that credit life and/or credit accident and health insurance are required as a condition of obtaining credit from respondents when such insurance costs are not included in the finance charge.

(6) Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of credit life and/or credit accident and health insurance.

(7) Failing to disclose to customers on all periodic statements sent to customers in accordance with Section 226.7(b) of Regulation Z, in connection with any extension of open end credit, that the credit life and/or credit accident and health insurance is optional and may be cancelled by the customer.

(8) Failing, in regard to charges for credit life and/or accident and health insurance of any open end credit account, to compute the premium for such insurance based on a declining balance owed by the customer.

E. Failing to tell every customer the purpose(s) of each signature requested by respondents on any document directly related to the consummation of the credit transaction.

F. 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.

Decision and Order

87 F.T.C.

ORDER

III

A. *It is further ordered*, That respondents prominently display the following notice in English and in Spanish in two or more locations in that portion of respondents' business premises most frequented by prospective customers, and in each location where customers normally sign consumer credit documents or other binding instruments. Such notice shall be considered prominently displayed only if so positioned as to be easily observed and read by the intended individuals:

NOTICE TO CREDIT CUSTOMERS

IF THE DEALER IS FINANCING OR ARRANGING THE FINANCING OF YOUR PURCHASE, YOU ARE ENTITLED TO CONSUMER CREDIT COST DISCLOSURES AS REQUIRED BY THE FEDERAL TRUTH IN LENDING ACT. THESE MUST BE PROVIDED TO YOU IN WRITING BEFORE YOU ARE ASKED TO SIGN ANY DOCUMENT OR OTHER PAPERS WHICH WOULD BIND YOU TO SUCH A PURCHASE.

B. *It is further ordered*, That respondents deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondents engaged in the consummation of any consumer credit transaction or in any aspect of preparation, creation, or placing of advertising, and to all personnel of respondents responsible for the sale or offering for sale of all products covered by this order, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

C. *It is further ordered*, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

D. *It is further ordered*, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized in the advertising, promotion or sale of merchandise.

E. *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 this order.

F. *It is further ordered*, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

APPENDIX "A"

ARBITRATION RULES

J. KURTZ & SONS, INC.

1. *AGREEMENT OF PARTIES* — The parties shall be deemed to have made these Rules a part of their arbitration agreement. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

2. *ADMINISTRATOR* — When parties agree to arbitrate under these Rules and an arbitration is initiated thereunder, they thereby constitute the Better Business Bureau (hereinafter BBB) the administrator of the arbitration. The authority and obligations of the administrator are prescribed in the agreement of the parties and in these Rules.

3. *PANEL OF ARBITRATORS* — The BBB shall establish and maintain a Panel of Arbitrators and shall appoint Arbitrators therefrom as hereinafter provided.

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

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

6. *FIXING OF LOCALE* — The parties may mutually agree on the time and place where the arbitration is to be held. If any party requests that the hearing be held at a specific time and place and the other party files no objection thereto within seven days after notice of the request, the time and place shall be the one requested.

If the time and place is not designated within seven days from the date of filing the Submission the BBB shall have power to determine the time and place. Its decision shall be final and binding.

7. *QUALIFICATIONS OF ARBITRATOR* — No person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

8. *APPOINTMENT FROM PANEL* — The Arbitrator shall be appointed in the following manner: Immediately after the filing of the Submission, the BBB shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the BBB. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the BBB shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the BBB shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

9. *NUMBER OF ARBITRATORS* — In disputes involving amounts of \$2,000 or less, there shall be one Arbitrator; *provided*, however that either party may specify three arbitrators for such disputes and in such instances the specifying party shall pay the tribunal a forty dollar (\$40.00) administrative fee. In all other cases there shall be one Arbitrator unless one or both of the parties specifies three Arbitrators. If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the BBB, in its discretion, directs that a greater number of Arbitrators be appointed.

10. *NOTICE TO ARBITRATOR OF HIS APPOINTMENT* — Notice of the appointment of the Arbitrator shall be mailed to the Arbitrator by the BBB, together with a copy of these Rules, and the signed acceptance of the Arbitrator shall be filed prior to the opening of the first hearing.

11. *DISCLOSURE BY ARBITRATORS* — Any person selected to serve as an Arbitrator shall divulge, in his signed acceptance of appointment, any financial, competitive, professional, family or social relationship, however remote, with the Parties to the dispute or disputes he is assigned to arbitrate. All doubts should be resolved in favor of disclosure. Any such disclosures shall be transmitted to the BBB which shall provide them to the Parties with a waiver/objection form. If a Party objects or if an Arbitrator is unable or unwilling to serve, the BBB may in its discretion select or appoint a replacement, unless one or both of the parties specifies that the new Arbitrator is to be selected in accordance with Paragraph Eight (8) of these Rules. In any event, no person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration unless both parties waive such disqualification.

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

13. *REPRESENTATION BY COUNSEL* — Any party may be so represented by counsel. A party intending to be so represented shall notify the other party and the BBB of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

14. *STENOGRAPHIC RECORD* — The BBB shall make the necessary arrangements for the taking of a stenographic or electronic record whenever such record is

requested by a party. The requesting party or parties shall pay the cost of such record, unless otherwise agreed.

15. *INTERPRETER* — The BBB shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, who shall assume the cost of such service if a volunteer interpreter cannot be secured.

16. *ATTENDANCE AT HEARINGS* — Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons. The Arbitrator shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. Representatives of the Better Business Bureau of Metropolitan New York and of the Federal Trade Commission shall be permitted to attend arbitration proceedings for the purposes of monitoring the administration of the program set forth herein.

17. *ADJOURNMENTS* — The Arbitrator may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

18. *OATHS* — Before proceeding with the first hearing or with the examination of the file, each Arbitrator may take an oath of his office, and if required by law, shall do so. The Arbitrator may, in his discretion, require witnesses to testify under oath administered by any duly qualified person, or if required by law or demanded by either party, shall do so.

19. *WITNESSES, SUBPOENAS, DEPOSITIONS* —

(a) The arbitrator may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the Court by a party or the Arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the Arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the Arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

20. *MAJORITY DECISION* — Whenever there is more than one Arbitrator, all decisions of the Arbitrators must be by at least a majority.

21. *ORDER OF PROCEEDINGS* — A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of the place, time and date of the hearing, the presence of the Arbitrator and parties, and counsel if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present his claim and proofs and his witnesses who shall submit to questions. The defending party shall then present his defense and proofs and his witnesses, who shall submit to questions. The Arbitrator may in his discretion vary this procedure but he shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

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

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

22. *ARBITRATION IN THE ABSENCE OF A PARTY* — Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. While an Arbitrator may make an *ex parte* award, such award shall not be made solely on the default of a party.

The Arbitrator shall require the party who is present to submit such evidence as he may require for the making of an award.

23. *EVIDENCE* — The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

24. *EVIDENCE BY AFFIDAVIT AND FILING OF DOCUMENTS* — The Arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the BBB for transmission to the Arbitrator. The tribunal shall forward copies to all parties who shall then be afforded the opportunity to examine such documents and to reply within seven days.

25. *INSPECTION OR INVESTIGATION* — Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall direct the BBB to advise the parties of his intention. The Arbitrator shall set the time and the BBB shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

26. *CONSERVATION OF PROPERTY* — The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

27. *CLOSING OF HEARINGS* — The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreement by the parties, upon the closing of the hearings.

28. *REOPENING OF HEARINGS* — The hearings may be reopened by the Arbitrator on his own motion, or upon application of a party at any time before the award is made. The Arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

29. *WAIVER OF ORAL HEARING* — The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the BBB shall specify a fair and equitable procedure.

30. *WAIVER OF RULES* — Any party who proceeds with the arbitration after knowledge that any procedure or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

31. *EXTENSION OF TIME* — The parties may modify any period of time by

mutual agreement. The BBB for good cause may extend any period of time established by these Rules, except the time for making the award. The BBB shall notify the parties of any such extension of time and its reason therefor.

32. *COMMUNICATION WITH ARBITRATORS AND SERVING OF NOTICES*

(a) There shall be no communication between the parties and the Arbitrator other than at oral hearings. Any other oral or written communications from the parties to the Arbitrator shall be directed to the BBB for transmittal to the Arbitrator.

(b) Each party to an agreement which provides for arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party by mail addressed to such party or his attorney at his last known address or by personal service, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

33. *TIME OF AWARD* — The award shall be made promptly by the Arbitrator and, unless otherwise agreed by the parties, or specified by law, no later than thirty days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the Arbitrator.

34. *FORM OF AWARD* — The award shall be in writing, shall be signed either by the sole Arbitrator or by at least a majority if there be more than one, and shall specify the date by which any performance is to be completed. It shall be executed in the manner required by law, and shall be a final and binding determination of the claim.

35. *SCOPE OF AWARD* — The Arbitrator may grant any remedy or relief, including consequential damages, which he deems just and equitable and within the scope of the agreement of the parties. The Arbitrator may not, however, grant punitive damages.

(a) The award may require specific performance of a contract; require the acceptance or replacement of merchandise; fix allowances for defective merchandise; declare a contract breached in whole or in part; and/or award money damages in the alternative or otherwise.

(b) The Arbitrator shall take into consideration the provisions of the Federal Trade Commission Order in *J. Kurtz & Sons, Inc.* in rendering an award.

36. *AWARD UPON SETTLEMENT* — If the parties settle their disputes during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

37. *DELIVERY OF AWARDS TO PARTIES* — Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the BBB, addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

38. *RELEASE OF DOCUMENTS FOR JUDICIAL PROCEEDINGS* — The BBB shall, upon the written request of a party, furnish to such party, at his expense, certified facsimiles of any papers in the BBB's possession that may be required by judicial proceedings relating to the arbitration.

39. *EXPENSES* — The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic or electronic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall

otherwise agree and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required travelling and other expenses of the Arbitrator and of BBB representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the Arbitrator in his Award assesses such expenses or any part thereof against any specified party or parties.

40. *ARBITRATOR'S FEE* — Members of the Panel of Arbitrators serve without fee in arbitrations. In prolonged or in special cases the parties may agree to the payment of a fee. Any arrangements for the compensation of an Arbitrator shall be made through the BBB and not directly by him with the parties.

41. *INTERPRETATION AND APPLICATION OF RULES* — The Arbitrator shall interpret and apply these Rules insofar as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an Arbitrator or a party may refer the question to the BBB for final decision. All other Rules shall be interpreted and applied by the BBB.

IN THE MATTER OF

SILTON BROTHERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND WOOL PRODUCTS LABELING ACTS

Docket C-2823. Complaint, May 24, 1976—Decision, May 24, 1976

Consent order requiring a Los Angeles, Calif., importer and manufacturer of wool products, among other things to cease misbranding wool products; furnishing false guaranties that their products are not misbranded; and, for a five-year period, importing wool products into the United States without posting a bond with the Secretary of the Treasury, conditioned upon compliance with the Wool Products Labeling Act. Further, respondents are required to notify each customer which purchased the products giving rise to the complaint that said products were misbranded.

Appearances

For the Commission: *David G. Cameron.*

For the respondents: *Albert Berg*, Encino, Calif.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Silton Brothers, Inc., a corporation trading and doing business under its own name, as Brigham Sportswear, and as Brigham Sportswear Corporation, and Fred S. Silton, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Silton Brothers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, trading and doing business under its own name, as Brigham Sportswear, and as Brigham Sportswear Corporation, with its principal office and place of business located at 3535 South Broadway, Los Angeles, California.

Respondent Fred S. Silton is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are engaged in the manufacture, importation and sale of men's and boys' garments. They ship and distribute such products to various customers in the United States.

PAR. 2. Respondents, now and for some time last past, have imported and manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain boys' jackets stamped, tagged, labeled, or otherwise identified as containing 40 percent reprocessed wool, 23 percent linen, and 37 percent man made fibers, whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers from those represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain boys' jackets with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers.

PAR. 5. Respondents' wool products described in Paragraphs Three and Four, above, were imported by respondents into the United States and, as particularized in said paragraphs, were not stamped, tagged, labeled, or otherwise identified in accordance with the provisions of the Wool Products Labeling Act of 1939.

The invoices of said imported wool products required under the Tariff Act of 1930 failed to set forth the information with respect to said wool products required under the provisions of the Wool Products Labeling Act of 1939, to wit, the percentage of the total fiber weight of

the said wool products, exclusive of ornamentation not exceeding 5 per centum of fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers, and respondents falsified the consignee's declaration provided for in the Tariff Act of 1930 insofar as it related to said information, in violation of Section 8 of the Wool Products Labeling Act of 1939, and of Section 5 of the Federal Trade Commission Act.

PAR. 6. Respondents furnished false guaranties that certain of their said wool products were not misbranded under the provisions of the Wool Products Labeling Act of 1939, when respondents in furnishing such guaranties had reason to believe that the wool products so falsely guaranteed might be introduced, sold, transported, or distributed in commerce, in violation of Section 9(b) of said Act.

PAR. 7. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; 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 Silton Brothers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, trading and doing business under its own name, as Brigham Sportswear, and as Brigham Sportswear Corporation, with its principal office and place of business located at 3535 South Broadway, Los Angeles, California.

Respondent Fred S. Silton is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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 Silton Brothers, Inc., a corporation trading and doing business under its own name, as Brigham Sportswear, as Brigham Sportswear Corporation, or under any other name or names, and its officers, and Fred S. Silton, individually and as an officer of the said corporation, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division, or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contain therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Silton Brothers, Inc., a corporation trading and doing business under its own name, as Brigham Sportswear, as Brigham Sportswear Corporation, or under any other name or names, and its officers, and Fred S. Silton, individually and as an officer of the said corporation, and respondents' agents, representatives, employees, successors and assigns, directly or

through any corporation, subsidiary, division, or other device, do forthwith cease and desist from:

1. Importing, or participating in the importation of, any wool products into the United States for a period of five (5) years from the date on which this order becomes final except upon filing bond with the Secretary of Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of the Wool Products Labeling Act of 1939.

2. Furnishing a false guaranty that their wool products are not misbranded under the provisions of the Wool Products Labeling Act of 1939, when there is reason to believe that any wool product so falsely guaranteed may be introduced, sold, transported, or distributed in commerce, as "commerce" is defined in the said Act.

It is further ordered, That respondents forthwith notify, by delivery of a copy of this order by registered mail, each of their customers that purchased the products which gave rise to this complaint of the fact that such products were misbranded.

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

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

It is further ordered, That the individual respondent named herein shall promptly notify the Commission of each change in his business or employment status, including discontinuance of his present business or employment, and each affiliation with a new business or employment for a period of ten years following the effective date of this order. Such notice shall include the address of the business or employment with which respondent is newly affiliated and a description of the respondent's duties and responsibilities in that business or employment.

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

Complaint

87 F.T.C.

IN THE MATTER OF

RENTEX, INC. T/A HOMEFINDERS OF AMERICA, ETC.,
ET AL.

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

Docket 9024. Complaint, April 1, 1975—Decision, May 25, 1976

Consent order requiring a Denver, Colo., real estate listing agency, among other things, to cease misrepresenting the availability of rental housing and failing to disclose relevant facts concerning said housing. Respondent is required to verify every 72 hours (in advertising, verification must be made every 24 hours) if rental housing is still available or remove listing; post and present to customers, prior to purchase of service, a statement containing a description and limitations of the offered services and advise whether rental housing currently available suits their needs. Further, the order requires respondents to disclose to purchasers the availability date, monthly rent, landlord restrictions, deposit requirements and other pertinent information.

Appearances

For the Commission: *Barry E. Barnes.*

For the respondents: *Paul A. Goodin, Seattle, Wash., Myers, Woodford & Hopper, Denver, Colo.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Rentex, Inc., a corporation now or previously doing business as Homefinders of America, Homelocators of America, North American Homefinders, and various other names; Larry S. Glist and Larry Senderhauf, individually and as officers of said corporation; Homelocators, Inc., a corporation doing business as Rentex of Seattle and Rentex of Tacoma, and Rodney Molzahn, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated Section 5 of the Federal Trade Commission Act and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Rentex, Inc. is a Colorado corporation with its office and principal place of business located at 3321 East Colfax, Denver, Colorado.

Larry S. Glist and Larry Senderhauf are individuals, officers and directors of Rentex, Inc. Together they formulate, direct and control the policies, acts and practices of Rentex, Inc., including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporate respondent.