

Complaint

87 F.T.C.

IN THE MATTER OF

ALL SEASONS AIR CONDITIONING CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket 9015. Complaint, Feb. 11, 1975—Decision, June 8, 1976*

Consent order requiring two affiliated North Miami, Fla., home improvement firms, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act. Further, respondents are required to cease failing to notify consumers of their right to a three-day cooling-off period and to cease initiating work on customers' homes prior to the end of said cooling-off period.

Appearances

For the Commission: *H. Marshall Korschun, Albert Posnick, and Edward J. Carnot.*

For the respondents: *Taylor, Brion, Baker & Breene, Miami, Fla.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that All Seasons Air Conditioning Corp., Mastercraft Industries, Inc., corporations, and Murray Weintraub, Raymond Swier, and Saul Wolf, individually and as officers and/or managers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and regulation, 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. Corporate respondent All Seasons Air Conditioning Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 17140 N.W. 2nd Court, North Miami, Florida.

Corporate respondent Mastercraft Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 17162 N.W. 2nd Court, North Miami, Florida.

Respondent Murray Weintraub is the sales and advertising manager of corporate respondent All Seasons Air Conditioning Corp. and an

officer of corporate respondent Mastercraft Industries, Inc. Respondents Raymond Swier and Saul Wolf are officers of both corporate respondents. The three individual respondents formulate, direct and control the acts and practices of the corporate respondents, including those hereinafter set forth. Their address is 17140 N.W. 2nd Court, North Miami, Florida.

PAR. 2. Corporate respondent All Seasons Air Conditioning Corp. and the individual respondents are now, and for some time last past have been, engaged in the sale and offering for sale to the public, and installation of air conditioning systems at private residences.

Corporate respondent Mastercraft Industries, Inc. and the individual respondents are now, and for some time last past have been, engaged in the sale and offering for sale to the public, and installation of kitchen cabinets and equipment at private residences.

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of business and in connection with their credit sales, as "credit sale" is defined in the aforesaid Regulation Z, have caused and are causing customers to execute sales agreement contracts for the sale of respondents' goods and services. On these sales agreement contracts, respondents provide certain consumer credit information. Respondents do not furnish their customers prior to consummation of the transaction any separate statement containing all disclosures required in connection with a credit sale.

In most instances after the credit sale is consummated, respondents arrange for the extension of credit by local financial institutions whereby a loan, note, or other document is substituted for the sales agreement.

PAR. 5. By and through the use of the sale agreements, respondents:

1. Fail to print the term "finance charge," required by Section 226.8(c)(i) of Regulation Z and the term "annual percentage rate," required by Section 226.8(b)(2) of Regulation Z, more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

2. Fail to disclose the amount, or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, required by Section 226.8(b)(4), clearly, conspicuously,

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

3. Fail to provide a description of the type of any security interest held or to be retained or acquired by the creditor in connection with the transaction, as required by Section 226.8(b)(5) of Regulation Z.

4. Fail to use the term “cash price” as defined in Section 226.2(i) to describe the purchase price as required by Section 226.8(c)(1) of Regulation Z.

5. Fail to use the term “cash downpayment” to describe the downpayment in money in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

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

7. 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.

PAR. 6. By and through the use of respondents’ sales agreements, a security interest, as “security interest” is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of respondents’ customers. The retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind that transaction until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

Respondents have in certain instances failed to give their credit customers the right to rescind until midnight of the third business day following the consummation of the transaction or the date of delivery of all disclosures, whichever is later, and have failed to set forth the “Effect of Rescission” in the rescission notice to their customers, as required by Sections 226.9(a) and (b).

Further, respondents have made physical changes in customers’ property, and performed work or services on such property before expiration of the three-day rescission period. Respondents’ failure to refrain from commencing work pursuant to rescindable contracts before the rescission period has expired is in violation of Section 226.9(c) of Regulation Z.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondents’ failures to comply with the provisions of Regulation Z as alleged in Paragraphs Five and Six herein constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges the respondents named in the caption hereto with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission of the proposed findings of fact and conclusions of law submitted simultaneously with the agreement by the Commission's staff, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter provisionally 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 3.25(d) of its Rules, the Commission hereby makes the following findings of facts and conclusions of law, as admitted by respondents in the aforesaid consent agreement, and enters the following order:

1. Corporate respondent All Seasons Air Conditioning Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 17140 N.W. Second Court, North Miami, Florida.

2. Corporate respondent Mastercraft Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 17162 N.W. Second Court, North Miami, Florida.

3. Respondents Murray Weintraub, Raymond Swier and Saul Wolf are officers of both corporate respondents All Seasons Air Conditioning Corp. and Mastercraft Industries, Inc. The three individual respondents formulate, direct and control the acts and practices of the corporate respondents, including those hereinafter set forth. Their address is 17140 N.W. Second Court, North Miami, Florida.

4. Corporate respondent All Seasons Air Conditioning Corp. and the individual respondents are now, and for some time last past have been, engaged in the sale and offering for sale to the public, and installation of air conditioning systems at private residences.

5. Corporate respondent Mastercraft Industries, Inc. and the individual respondents are now, and for some time last past have been, engaged in the sale and offering for sale to the public, and installation of kitchen cabinets and equipment at private residences.

6. In the ordinary course of their aforesaid business respondents regularly extend and have extended consumer credit and arrange and have arranged for the extension of consumer credit, as "consumer

credit" and "arrange for the extension of credit" are 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.

7. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of business and in connection with their credit sales, as "credit sale" is defined in the aforesaid Regulation Z, have caused customers to execute sales agreement contracts for the sale of respondents' goods and services. On these sales agreement contracts, respondents provided certain consumer credit information. Respondents did not furnish their customers prior to consummation of the transaction any separate statement containing all disclosures required in connection with a credit sale. In most instances after the credit sale was consummated, respondents arranged for the extension of credit by local financial institutions whereby a loan, note, or other document was substituted for the sales agreement.

8. By and through the use of the sales agreements, respondents:

a. have failed to print the term "finance charge," required by Section 226.8(c)(8)(i) of Regulation Z and the term "annual percentage rate," required by Section 226.8(b)(2) of Regulation Z, more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z;

b. have failed to disclose the amount, or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, required by Section 226.8(b)(4), clearly, conspicuously, in meaningful sequence, as required by Section 226.6 (a) of Regulation Z;

c. have failed to provide a description of the type of any security interest held or to be retained or acquired by the creditor in connection with the transaction, as required by Section 226.8(b) (5) of Regulation Z;

d. have failed to use the term "cash price" as defined in Section 226.2(i) to describe the purchase price as required by Section 226.8(c)(1) of Regulation Z;

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

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

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

9. By and through the use of respondents' sales agreements, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of respondents' customers. The retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind that transaction until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

10. Respondents have in certain instances failed to give their credit customers the right to rescind until midnight of the third business day following the consummation of the transaction or the date of delivery of all disclosures, whichever is later, and have failed to set forth the "Effect of Rescission" in a rescission notice to their customers, as required by Sections 226.9(a) and (b).

11. Respondents have made physical changes in customers' property, and performed work or services on such property before expiration of the three-day rescission period. Respondents' failure to refrain from commencing work pursuant to rescindable contracts before the rescission period has expired is in violation of Section 226.9(c) of Regulation Z.

12. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' 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.

ORDER

It is ordered, That respondents All Seasons Air Conditioning Corp., and Mastercraft Industries, Inc., corporations, their successors and assigns and their officers, and Murray Weintraub, Raymond Swier, and Saul Wolf, individually, and as officers and/or managers of said corporations, 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 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. § 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to print the term "finance charge," required by Section 226.8(c)(8)(i) of Regulation Z and the term "annual percentage rate," required by Section 226.8(b)(2) of Regulation Z, more conspicuously

than other terminology, as required by Section 226.6(a) of Regulation Z.

2. Failing to disclose the amount, or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, required by Section 226.8(b)(4), clearly, conspicuously, in meaningful sequence, as required by Section 226.6(a) of Regulation Z.

3. Failing to provide a description of the type of each security interest held or to be retained or acquired by the creditor in connection with the transaction, as required by Section 226.8(b)(5) of Regulation Z, and with respect to a description of a security interest which is provided, failing to provide the description clearly and conspicuously as required by Section 226.6(a) of Regulation Z.

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

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

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

7. 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.

8. Failing, in any transaction in which a security interest or the future right to a security interest is retained or acquired in real property which is used or expected to be used as the principal residence of the customer, to comply with all requirements regarding the right of rescission set forth in Section 226.9 of Regulation Z.

9. Making any physical changes in a customer's property or performing any work or services on such property before expiration of the three-day rescission period provided for in Section 226.9(a) of Regulation Z, in any transaction in which a security interest or the future right to a security interest is retained or acquired in real property which is used or is expected to be used as the principal residence of the customer, as provided in Section 226.9(c) of Regulation Z.

10. Failing in any credit transaction to preserve evidence of compliance for a period of not less than two years as required by Section 226.6(i) of Regulation Z.

11. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and

226.5 of Regulation Z, in the manner, form, and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondents promptly refund to any credit customer who did not receive from respondents, contemporaneously with a sales agreement for respondents' goods and services, a notice of right of rescission as required by Section 226.9 (b) of Regulation Z, any monies received from that customer, directly or indirectly, pursuant to a liquidated damages provision within respondents' sales agreements.

It is further ordered, That respondents promptly refund to any credit customer who did not receive from respondents, contemporaneously with a sales agreement for respondents' goods and services, a notice of right of rescission as required by Section 226.9(b) of Regulation Z, any monies retained as a penalty under the Florida Home Solicitation Sales Act.

It is further ordered, That respondents promptly refund to any credit customer who did not receive from respondents, contemporaneously with a sales agreement for goods and services, a notice of right of rescission as required by Section 226.9(b) of Regulation Z, and who did not have any physical changes made on his property by respondents, any monies received, directly or indirectly, from that customer.

It is further ordered, That respondents discharge any acquired lien on any real property that has arisen by operation of law in connection with any credit transaction in which any credit customer did not receive, contemporaneously with a sales agreement for respondents' goods and services, a notice of right of rescission as required by Section 226.9(b) of Regulation Z. Respondents shall by certified mail, return receipt requested, notify any credit customer who has a lien affected by this provision that (1) the lien has been discharged; (2) the customer has no further legal obligation resulting from the lien; and (3) the reason for the discharge of the lien is that respondents failed to comply with Section 226.9(b) of Regulation Z.

It is further ordered, That the respondents compile and provide to the Commission a list of the last known name, address, telephone number and date of transaction of all credit customers who have entered into a sales agreement with either of the corporate respondents since July 1, 1969.

It is further ordered, That respondents provide to the Commission a copy of any notice of right to rescission as required by Section 226.9(b) of Regulation Z, which has been provided to any credit customer by either of the corporate respondents.

It is further ordered, That respondents retain until at least one year after the initial compliance report has been filed with the Commission

all documents concerning credit transactions entered into with credit customers by either of corporate respondents since July 1, 1969.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen and/or other persons engaged in the sale of respondents' products and/or services, and to all present and future personnel of respondents engaged in the consummation or arrangement of any extension of consumer credit, and shall secure from each such salesman and/or other person a signed statement acknowledging receipt of said order.

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

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

It is further ordered, That 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.

IN THE MATTER OF

HERBERT R. GIBSON, SR. T/A GIBSON PRODUCTS
COMPANY, ETC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 2 OF THE CLAYTON
ACT

Docket 9016. Complaint, Feb. 25, 1975—Decision, June 17, 1976

Consent order requiring Progressive Brokerage, Inc., and Barshell, Inc., two Dallas, Tex., brokerage firms and respondents in this case, among other things to cease collecting brokerage fees, commissions, or other compensations from sellers while acting for, or in behalf of, buyers.

Appearances

For the Commission: *André Trawick, Jr., Paul W. Turley, and Richard H. Gateley.*

For the respondents: *Bardwell D. Odum, Shannon Jones, Jr., Passman, Jones, Andrews, Coplin, Holley & Co., Robert E. Rader, Jr., John M. Gillis, Gillis, Rogers & Taylor, all of Dallas, Tex. and Akin, Gump, Strauss, Hauer & Feld, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated and are now violating Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. § 45) and Section 2(c) of the Clayton Act, as amended (15 U.S.C. § 13), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint, charging as follows:

I. RESPONDENTS

PARAGRAPH 1. Respondent Herbert R. Gibson, Sr., is an individual doing business under his own name and the registered trade names of Herbert R. Gibson, Sr., d/b/a Gibson Products Company, and Herbert R. Gibson, Sr., d/b/a The Gibson Trade Show, both unincorporated sole proprietorships. His principal place of business is 1228 East Ledbetter Dr., Dallas, Texas. His residence address is 1358 Bar Harbor Dr., Dallas, Texas.

PAR. 2. Respondents Herbert R. Gibson, Jr., Gerald P. Gibson, and Belva Gibson are individuals doing business under their own names or the registered trade names of Herbert R. Gibson, Sr., d/b/a Gibson Products Company and/or Herbert R. Gibson, Sr., d/b/a The Gibson