

Complaint

89 F.T.C.

IN THE MATTER OF
BRYSON IMPLEMENT COMPANY, INC., ET AL.

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

Docket C-2874. Complaint, Mar. 22, 1977 — Decision, Mar. 22, 1977

Consent order requiring a Sampson, Ala., marketer of farming equipment, among other things, to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *H. Robert Ronick.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, as amended, and the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Acts, as amended, the Federal Trade Commission, having reason to believe that Bryson Implement Company, Inc., a corporation, and Herbert M. Bryson, Jr., individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation, as amended, 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 Bryson Implement Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at Main Street, Samson, Alabama.

Respondent Herbert M. Bryson, Jr., is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices 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 advertising, offering for sale and sale of farming implements and equipment to members of the public.

PAR. 3. In the regular course and conduct of their business as

aforesaid, respondents regularly extend and arrange for the extension of credit to be used for agricultural purposes as defined in Section 226.2(e) of Regulation Z and therefore extend consumer credit, as "consumer credit" is defined in Section 226.2(p) of Regulation Z, the implementing regulation of the Truth in Lending Act, as amended, duly promulgated by the Board of Governors of the Federal Reserve Board.

PAR. 4. Subsequent to July 1, 1969, respondents, in the regular course of business as aforesaid and in connection with their credit sales, as "credit sale" is defined in Section 226.2(t) of Regulation Z, have caused, and are causing, customers to execute a binding document entitled as either "Installment Note," "Investment Note Agreement," "Note and Security Agreement" and/or "Retail Installment Contract," which documents are hereinafter referred to as the "contract." Respondents do not provide customers with any other credit cost disclosures.

PAR. 5. By and through the use of the contract, respondents, in many instances:

1. Fail to give to the customer all of the cost of credit information required by Section 226.8 of Regulation Z prior to the consummation of the sale, as required by Section 226.8(a) of Regulation Z;
2. Fail to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z;
3. Fail to disclose the sum of the payments scheduled to repay the indebtedness and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z;
4. 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, as required by Section 226.8(b)(4) of Regulation Z;
5. Fail, in conjunction with the description or identification of the type of any security interest held, retained or acquired, to clearly set forth such description on the same side of the page and above or adjacent to the place for the customer's signature on the contract or on one side of a separate statement which identifies the transaction, as required by Section 226.8(a)(1) and (2) of Regulation Z;
6. Fail, in conjunction with the description or identification of the type of any security interest held or to be retained or acquired, to clearly set forth that future indebtedness is secured by the property in which the security interest is retained, as required by Section 226.8(b)(5) of Regulation Z;
7. Fail to identify 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;

8. Fail to use the term "cash price" to describe the price at which respondents offer, in their regular course of business, to sell for cash the equipment which is the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z;

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

10. Fail to use the term "trade-in" to describe any downpayment in property made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z;

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

12. 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;

13. Fail to disclose all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(4) of Regulation Z;

14. Fail to disclose the sum of the "unpaid balance of the cash price" and all other charges individually itemized which are included in the amount financed but which are not part of the finance charge, and to describe that sum as the "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z;

15. 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;

16. Fail to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z;

17. Fail to disclose the sum of the cash price, all other 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)(ii) of Regulation Z;

18. Fail to include in the finance charge charges or premiums for credit life, accident, health or loss of income insurance, written in connection with any credit transaction unless

(i) the insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

(ii) any customer desiring such insurance coverage gives specifically dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance, as required by Section 226.4(a)(5) of Regulation Z; and

19. Fail to include in the finance charge charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, unless a clear, conspicuous and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance is to be obtained, as required by Section 226.4(a)(6) of Regulation Z.

PAR. 6. Respondents, in many instances, have failed to maintain evidence of compliance with Regulation Z for two (2) years after the date of each disclosure, as required by Section 226.6(i) of Regulation Z.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitutes violations of that Act and, pursuant to Section 108(c) thereof, respondents have thereby violated the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to submit to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, as amended, and the Federal Trade Commission Act, as amended; 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 thereafter considered the matter and having determined that it had reason to believe that the respondents

have violated the said Acts, as amended, and the implementing regulation promulgated thereunder, as amended, 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 making the following jurisdictional findings, and enters the following order:

1. Respondent Bryson Implement Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at Main St., Samson, Alabama.

Respondent Herbert M. Bryson, Jr. is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

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 Bryson Implement Company, Inc., a corporation, its successors and assigns, and its officers, and Herbert M. Bryson, Jr., individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of, or arrangement to extend, consumer credit or any advertisement to aid, promote or assist, directly or indirectly, any extension of, or arrangement to extend, consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (15 U.S.C. 1601-65 (1970), as amended, 15 U.S.C. 1601-65(a), (Supp. IV, 1974)) do forthwith cease and desist from:

1. Failing to give to each customer all of the cost of credit information required by Section 226.8 of Regulation Z prior to the consummation of the sale, as required by Section 226.8(a) of Regulation Z;

2. Failing to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z;

3. Failing to disclose the sum of the payments scheduled to repay

the indebtedness and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z;

4. 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, as required by Section 226.8(b)(4) of Regulation Z;

5. Failing, in conjunction with the description or identification of the type of any security interest held, retained or acquired, to clearly set forth such description on the same side of the page and above or adjacent to the place for the customer's signature on the contract or on one side of a separate statement which identifies the transaction, as required by Section 226.8(a)(1) and (2) of Regulation Z;

6. Failing, in conjunction with the description or identification of the type of any security interest held or to be retained or acquired, to clearly set forth that future indebtedness is secured by the property in which the security interest is retained, as required by Section 226.8(b)(5) of Regulation Z;

7. Failing to identify 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;

8. Failing to use the term "cash price" to describe the price at which respondents offer, in their regular course of business, to sell for cash the equipment which is the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z;

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

10. Failing to use the term "trade-in" to describe any downpayment in property made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z;

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

12. 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;

13. Failing to disclose all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(4) of Regulation Z;

14. Failing to disclose the sum of the "unpaid balance of the cash price" and all other charges individually itemized which are included in the amount financed but which are not part of the finance charge

and to describe that sum as the "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z;

15. 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;

16. Failing to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z;

17. Failing to disclose the sum of the cash price, all other 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;

18. Failing to include in the finance charge charges or premiums for credit life, accident, health or loss of income insurance, written in connection with any credit transaction unless

(i) the insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

(ii) any customer desiring such insurance coverage gives specifically dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance, as required by Section 226.4(a)(5) of Regulation Z;

19. Failing to include in the finance charge charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, unless a clear, conspicuous and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance is to be obtained, as required by Section 226.4(a)(6) of Regulation Z;

20. Failing to maintain evidence of compliance with Regulation Z for two (2) years after the date of each disclosure, as required by Section 226.6(i) of Regulation Z; and

21. Failing in any consumer credit transaction or advertisement to make all disclosures that are required by Section 226.4, Section 226.5, Section 226.6, Section 226.8 and Section 226.10 of Regulation Z in the manner, form and amount specified therein.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present or future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation or placing of advertising

and that respondents secure from each such person a signed statement acknowledging receipt of said order.

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. In addition, for a period of ten (10) years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

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

Complaint

89 F.T.C.

IN THE MATTER OF

RICHARD D. JONES MORTGAGE SERVICES, INC., ET
AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS*Docket C-2785. Complaint, Mar. 25, 1977 — Decision, Mar. 25, 1977*

Consent order requiring a La Mesa, Calif., finance company, 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 disclosures as are required by Federal Reserve System regulations.

Appearances

For the Commission: *Paul R. Roark.*

For the respondents: *Michael M. Anello, Wingert, Grebing & Anello*, San Diego, Calif.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Richard D. Jones Mortgage Services, Inc., a corporation, and Richard D. Jones, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing 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. Respondent Richard D. Jones Mortgage Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 8580 La Mesa Boulevard, La Mesa, Calif.

Respondent Richard D. Jones is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.