

Complaint

90 F.T.C.

IN THE MATTER OF

NEW RAPIDS CARPET CENTER, INC., ET AL.

ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket 9052. Complaint, Aug. 26, 1975 — Order, July 26, 1977*

This order, among other things, requires Lee Kantor, a/k/a Lee Woods, a Bronx, N.Y. retailer of carpets, furniture and major appliances, to cease using bait and switch tactics, and other unfair or deceptive techniques in the advertising and sale of its products; to cease failing to make relevant disclosures in contracts regarding quantity/unit cost data; and customers' right to cancellation and refund. Additionally, the firm must advise delinquent customers of impending collection suits and bring such suits only in the county where the customer resides or signed the contract. The order also requires the firm to provide consumers, in connection with the extension of credit, such material and disclosures as are required by Federal Reserve System regulations.

Appearances

For the Commission: *Irving C. Koch* and *Diana Kirigin*, Consumer Protection Specialist, assisting.

For the respondents: *Sol S. Perlou*, New York City.

COMPLAINT

[1] Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts and regulation, the Federal Trade Commission having reason to believe that New Rapids Carpet Center, Inc., Charge Account Factors, Inc. and Charge Account Credit Corp., corporations, and Lee Kantor, a/k/a Lee Woods (hereinafter sometimes referred to as Lee Kantor), individually and as General Manager of New Rapids Carpet Center, Inc., as an officer [2] of Charge Account Factors, Inc. and Charge Account Credit Corp., and as an individual doing business as New Rapids Furniture Warehouses, Inc. [formerly a New York corporation dissolved by proclamation of the Secretary of State on December 15, 1970], hereinafter referred to as respondents, have violated the provisions of said Acts 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. Respondents New Rapids Carpet Center, Inc. and Charge Account Factors, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of

New York; respondent Charge Account Credit Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey; and respondent Lee Kantor is an individual doing business as New Rapids Furniture Warehouses, Inc. [formerly a New York corporation dissolved by proclamation of the Secretary of State on December 15, 1970] and is also General Manager of respondent New Rapids Carpet Center, Inc. and an officer of respondents Charge Account Factors, Inc. and Charge Account Credit Corp.

The corporate and individual respondents named in Paragraph One maintain their principal place of business and offices at 4195 Third Ave., Bronx, New York. In addition, respondent Charge Account Factors, Inc. maintains a mail address at 1746 Andrews Ave., c/o Abe Kantor, Bronx, New York, and respondent Charge Account Credit Corp. maintains a mail address at 330 Windsor Road, Englewood, New Jersey.

PAR. 2. Respondent Lee Kantor is General Manager of respondent New Rapids Carpet Center, Inc., an officer of respondents Charge Account Factors, Inc. and Charge Account Credit Corp. and does business as New Rapids Furniture Warehouses, Inc. and during the time of its corporate existence was general manager [3] of New Rapids Furniture Warehouses, Inc. He formulates, directs and controls the policies of the corporate respondents named in Paragraphs One and Two, including the acts and practices hereinafter set forth.

PAR. 3. The corporate and individual respondents named in Paragraphs One and Two do not operate as separate independent corporate or individual business entities, but are components of one business entity which respondent Lee Kantor dominates and controls. He shifts and assigns the personnel of each corporate and individual respondent to function and perform duties for the other corporate and individual respondents so that as a consequence a nexus of such degree exists between and among each of the corporate and individual respondents that they have lost their individual identities. Thus, the acts and practices of each of the corporate and individual respondents named in Paragraphs One and Two may be deemed the acts and practices of all of the other corporate and individual respondents named in said Paragraphs One and Two.

PAR. 4. Respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc., are now, and have been for some time last past, engaged in business as a retailer of carpets, and respondent Lee Kantor, both individually and doing business as New Rapids Furniture Warehouses,

es, Inc., is now, and has been for some time last past, engaged in business as a retailer of furniture, major appliances and carpets, all of the said respondents offering for sale and selling their respective products to the consuming public on a cash or credit basis. Respondents sell and ship their products from New York State to purchasers located in other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce as "commerce" is defined in the Federal Trade Commission Act. [4]

In the course and conduct of their business in connection with sales made on credit, respondents New Rapids Carpet Center, Inc. and Lee Kantor assign or transfer their installment sales contract paper, which each of said respondents secure from purchasers of their respective products, to their two affiliated companies, respondents Charge Account Credit Corp. and Charge Account Factors, Inc., for collection purposes only.

In furtherance of their collection objectives, respondents Charge Account Credit Corp. and Charge Account Factors, Inc. currently and for some time last past have issued coupon payment books to the aforesaid purchasers, many of whom are residents of the State of New Jersey, have used the facilities of the United States mail to solicit and obtain payments from said purchasers, and have used the facilities of the courts of the State of New York to sue residents of the State of New Jersey. In connection with the foregoing activities, respondents Charge Account Credit Corp. and Charge Account Factors, Inc. maintain and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

As an integrated operation, all of said respondents referred to in this Paragraph Four, in the course and conduct of their aforesaid business, and at all times mentioned herein, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the offering for sale, and sale, of furniture, major appliances and carpets and other products of the same general kind and nature as that sold by said respondents and in the collection of monies allegedly due in connection therewith.

PAR. 5. Respondent New Rapids Carpet Center, Inc. for a period of time last past entered [5] into and maintained a limited business relationship with another firm with which it otherwise had no legal or official corporate connection, and which firm is unnamed as a corporate respondent or party herein, and hereinafter will be referred to as "The Advertiser" for the purpose of identity. The Advertiser was, during the period of time in question, similarly

engaged in business as a retailer of carpets and floor coverings which it offered for sale and sold to the consuming public.

In the course and conduct of its business The Advertiser caused the dissemination of certain advertisements for carpeting, including but not limited to, advertisements on radio and television broadcasts transmitted by radio and television stations having sufficient power to carry such broadcasts across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of its merchandise.

In addition, The Advertiser, directly or indirectly, assigned, transferred or sold to respondent New Rapids Carpet Center, Inc. the names and addresses of residents of the State of New Jersey who responded in the State of New Jersey to the advertisements disseminated as aforesaid by The Advertiser.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act by respondents New Rapids Carpet Center, Inc., and Lee Kantor individually and as General Manager of New Rapids Carpet Center, Inc., the allegations of Paragraphs One, Two, Three, Four and Five hereof are incorporated by reference in Count I, as if fully set forth verbatim.

PAR. 6. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its products, The Advertiser made certain representations in its aforesaid radio and television advertisements to purchasers and [6] potential purchasers residing in the States of New York and New Jersey with respect to the identity of the vendor and the nature and terms and conditions of its offers.

PAR. 7. Typical but not all inclusive of the statements appearing in the television commercials disseminated as aforesaid are the following:

SLIDE I

NEED LUXURY CARPETING? NOW [THE ADVERTISER] IS RUNNING, THEIR GREATEST CARPET SPECIAL EVER. . .

SLIDE II

[THE ADVERTISER] DESIGNS CUTS CARPET PRICES. . . NOW! GET ENOUGH BROADLOOM TO CARPET ANY AREA OF YOUR HOME OR APARTMENT, UP TO 150 SQUARE FEET, CUT, MEASURED,

AND READY FOR INSTALLATION FOR
ONLY \$77 _____

SLIDE III

GET A REAL CARPET BUY. . .GET 100%
DUPONT CONTINUOUS FILAMENT NY-
LON PILE BROADLOOM, FOR ONLY \$77

SLIDE IV

ENOUGH BROADLOOM TO CARPET A
LIVINGROOM, OR BEDROOM, OR DIN-
ING AREA, DURING THIS SPECIAL OF-
FER, FOR ONLY \$77 ONLY \$77 CALL NOW

SLIDE V

CALL NOW. . .GET INCLUDED WITH
YOUR ORDER, AN UPRIGHT LEWYT
VACUUM CLEANER, OR A 9X12 RUG . . .
CALL NOW MURRAYHILL [X XXXX]

SLIDE VI

FOR FREE INFORMATION, IN NEW
YORK, L.I.L. WEST CHESTER CALL MUR-
RAYHILL [X XXXX] MU[X XXXX] THATS
MURRAYHILL [X XXXX] IN N.J. CALL
ESSEX [X XXXX] _____THATS ESSEX
[X XXXX] OUT OF TOWN, PLEASE CALL
COLLECT. . .

[7] PAR. 8. By and through the use of the aforesaid advertisements and others of similar import and meaning not specifically set out herein, The Advertiser represented, directly or by implication that:

The offers set forth in said advertisements were bona fide offers by The Advertiser to sell to residents of the State of New Jersey the advertised carpeting on the terms and conditions set forth in the advertisement, to wit:

1. The carpet would be "continuous filament nylon pile broadloom."

2. Before installation, the floor area would be accurately measured and the carpeting would be properly cut to fit the area to be covered.

3. The carpeting was being offered by The Advertiser at a "special" or sale price.

4. By placing an order for carpeting with The Advertiser the purchaser would receive from said firm a *free gift* of either a vacuum cleaner or a 9 x 12 rug.

PAR. 9. In truth and in fact:

The offer set forth in the aforesaid advertising, and in similar advertising, was not a bona fide offer by The Advertiser to sell to residents of the State of New Jersey the advertised carpeting on the terms and conditions set forth in the advertisement. [8]

To the contrary, The Advertiser never intended to sell the advertised carpeting under any terms or conditions to residents of the State of New Jersey.

PAR. 10. In the course and conduct of its business as aforesaid, The Advertiser transferred the names and addresses of New Jersey residents who responded to the aforesaid advertisements to respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as general manager of New Rapids Carpet Center, Inc. who then sent salesmen to the homes of said New Jersey residents for the purpose of selling carpeting.

PAR. 11. In the course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their carpeting, respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc., through their salesmen and representatives, have engaged in the following unfair, false, misleading and deceptive acts and practices:

1. In a substantial number of cases the salesmen did not accurately measure the area to be covered and the carpeting was not cut to fit the area measured.

2. In a substantial number of cases the respondents did not supply "continuous filament nylon pile broadloom" but pieced the broadloom to simulate "continuous filament nylon pile broadloom" with the result that there was excessive seaming. [9]

3. The carpeting was not sold at a "special" or sales price but at the usual and customary retail price for respondents' merchandise.

4. In a substantial number of cases persons who purchased carpeting from the respondents did not receive a gift and some were told the gift was not available to purchasers of more expensive carpeting.

Therefore, the statements, representations and practices as set forth in Paragraph Seven were, and are, false, misleading and deceptive.

PAR. 12. In the course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their carpeting, respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc., through their salesmen and representatives, have

engaged in the following unfair, false, misleading and deceptive acts and practices:

1. Prospective purchasers who questioned respondents' salesmen were told they worked for New Rapids Carpet Center, Inc. and The Advertiser.

2. In a substantial number of cases the salesmen had no samples of the advertised carpet and told the prospect it was unavailable or out of stock, or disparaged the advertised carpet and used the opportunity to sell carpeting at a higher price, and prospects who insisted on purchasing the lower-priced carpet as advertised were permitted by the salesmen to sign the contract at the lower price, as advertised, but carpeting was never delivered as per the agreed contract.

Therefore, the statements, representations and practices as set forth above were, and are, false, misleading and deceptive. [10]

PAR. 13. The promotional activities of The Advertiser as described in Paragraphs Six, Seven, Eight, Nine, Ten and Twelve above and the resulting leads sold, transferred and assigned to New Rapids Carpet Center, Inc. were exploited by respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc. by their misleading the purchasing public as to the identity of the vendor, the nature of the offer and all the terms and conditions of the offer.

PAR. 14. The use by respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc. of the aforesaid false, misleading and deceptive statements, representations and practices has had 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 into the purchase of products of the aforesaid respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc. by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging further violation of Section 5 of the Federal Trade Commission Act by respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids

Carpet Center, Inc. and as an individual doing business as New Rapids Furniture Warehouses, Inc., the allegations of Paragraphs One, Two and Four are incorporated by reference in Count II as if fully set forth verbatim. [11]

PAR. 16. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of carpeting by the general public, respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc. and as an individual doing business as New Rapids Furniture Warehouses, Inc. and their representatives, directly or indirectly, have engaged in the following additional acts and practices:

1. In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Eleven and Twelve above, respondents or their representatives have been able to induce customers to sign a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

2. At the time of the sale of carpeting, respondents' salesmen write across the face of the sales contract, "Eight (or Ten or Twelve) year wear guarantee." By the use of such representations, respondents and their representatives have implied that the carpeting is guaranteed to wear for eight (or ten or twelve) years without adequately disclosing: (1) the nature and extent of the guarantee; (2) the conditions and limitations on the guarantee and (3) the manner in which the guarantor will perform. In a substantial number of instances, the respondents have not performed under the implied terms and conditions of the guarantee.

3. In a substantial number of instances, the respondents have substituted or have attempted to substitute carpeting which was used or soiled or of a different quality and color from that ordered by the purchaser and such purchaser was informed that he must accept the substituted item. [12]

4. In the circumstances set forth in subparagraph 3 above, where the purchaser refused delivery, respondents have instituted lawsuits to effect payment.

5. When writing up sales contracts, respondents' salesmen did not state the yardage nor the price per yard but merely stated carpeting and the total cost. Thus, customers were unable to check the amount of carpeting actually used against the amount for which they were charged and were deprived of the opportunity to compare unit costs with those charged by respondents' competitors.

Therefore, respondents' statements, representations, acts and practices as set forth in Paragraph Sixteen herein were, and are, unfair, false, misleading and deceptive acts and practices.

PAR. 17. By and through the use of the aforesaid acts and practices, respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc. and as an individual doing business as New Rapids Furniture Warehouses, Inc. have misled and deceived the purchasing public in the manner and as to the matters herein alleged.

PAR. 18. 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 commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

Alleging further violations of Section 5 of the Federal Trade Commission Act by respondents New Rapids Carpet Center, Inc., Charge Account Factors, Inc., and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc., and as an officer of Charge Account Factors, Inc., and Charge Account Credit Corp. and as an individual doing business as New Rapids Furniture Warehouses, Inc., the [13] allegations of Paragraphs One, Two and Four are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 19. In the further course and conduct of their business, respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc. permitted and are permitting customers to purchase carpeting on a deferred payment plan. Respondent New Rapids Carpet Center, Inc. assigns retail installment contracts executed by purchasers of carpeting to respondent Charge Account Factors, Inc. Charge Account Factors, Inc. transferred the retail installment contracts signed by customers who did not receive the carpeting to New Rapids Furniture Warehouses, Inc. during the time of its corporate existence, and after its dissolution to Lee Kantor doing business as New Rapids Furniture Warehouses, Inc.

In the further course and conduct of his business, respondent Lee Kantor doing business as New Rapids Furniture Warehouses, Inc. permitted and is permitting customers to purchase carpeting and furniture on a deferred payment plan. Respondent at times assigns

retail installment contracts executed by purchasers of carpeting and furniture to respondent Charge Account Credit Corp.

In furtherance of their purpose to collect allegedly delinquent debts and to induce payment by allegedly delinquent debtors, respondents and their agents have engaged in the following additional unfair acts and practices:

1. Respondents New Rapids Carpet Center, Inc., Charge Account Factors, Inc., Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc. and as an individual doing business as New Rapids Furniture Warehouses, Inc. have instituted suits in the Civil Court of the City of New York against allegedly delinquent New Jersey residents, and thus have utilized a forum for lawsuit which has made it inconvenient and expensive for the New Jersey residents to appear and defend. In most such lawsuits default judgments have been entered against the New Jersey residents. [14]

2. Respondents New Rapids Carpet Center, Inc., Charge Account Factors, Inc., Charge Account Credit Corp., and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc., and as an officer of Charge Account Factors, Inc. and Charge Account Credit Corp. and as an individual doing business as New Rapids Furniture Warehouses, Inc., have failed to serve allegedly delinquent debtors with notice of suit. In a substantial number of cases, respondents utilized a process server who was also an employee of respondents and who failed to serve process on persons sued as required by law and thereafter filed with the court false affidavits of service.

3. The respondents named in subparagraph 2 above, entered default judgments against debtors who had no knowledge of suits against them and in a substantial number of cases, failed to inform judgment debtors who remitted payment after the entry of the default judgment that judgments have been entered against them.

4. The respondents named in subparagraph 2 above, failed to credit against the default judgments payments made subsequent to the entry of such default judgments.

5. The respondents named in subparagraph 2 above, sued for amounts in excess of the amounts actually due.

6. In some instances, said respondents sued for the total amount of the contract despite failure to deliver the merchandise ordered.

7. In some instances, said respondents secured income executions on the basis of default judgments against debtors who had not been served with process and thereby obtained payment of alleged debts, thus depriving such debtors of the opportunity to defend themselves in court.

8. Respondents in a substantial number of instances have failed to file satisfactions or partial satisfactions of judgments when judgments have been paid in full or partially satisfied. [15]

The use by respondents of the aforesaid practices has had the tendency and capacity to mislead and deceive many persons into thinking that valid judgments have been obtained against them and that binding obligations to pay have been received as a result thereof and to pay substantial sums on alleged debts or obligations which they might otherwise not have paid, or has tended to deny debtors a reasonable opportunity to appear, answer and defend lawsuits instituted against them. Therefore, the practices set forth in Paragraph Nineteen were and are unfair, false, misleading and deceptive acts and practices.

PAR. 20. 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 constiuted, and now constitute unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT IV

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, on the part of respondents, New Rapids Carpet Center, Inc., Lee Kantor, individually and as general manager of New Rapids Carpet Center, Inc. and as an individual doing business as New Rapids Furniture Warehouses, Inc., the allegations of Paragraphs One, Two and Four are incorporated by reference in Count IV as if fully set forth verbatim.

PAR. 21. Respondents, in the ordinary course and conduct of their business, as aforesaid, and in connection with the extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, have caused and are causing their customers to enter into contracts for the sale of respondents' goods. On their contract, hereinafter referred to as "the contract," respondents provide certain consumer credit cost information. Respondents do not provide their customers with any other consumer credit cost disclosures.

By and through the use of the contract, respondents:

[16] 1. Failed to disclose, before the transaction was consummated as required by Section 226.8(a) of Regulation Z, the following:

(a) 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.

(b) Identification of 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.

(c) The amount of the finance charge, as required by Section 226.8(c)(8) of Regulation Z.

(d) 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. Where the annual percentage rate was disclosed, it was not stated within the nearest one quarter of one percent as required by Section 226.5(b)(1).

2. 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.

3. Failed 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 prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

4. Failed to make the required disclosures clearly, conspicuously and in meaningful sequence, as required by Section 226.6(c) of Regulation Z.

PAR. 22. 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 the Truth in Lending Act and pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY PAUL R. TEETOR, ADMINISTRATIVE LAW
JUDGE

JANUARY 19, 1977

[2] SUMMARY OF THE COMPLAINT

On August 26, 1975 this Commission issued its complaint and notice of proposed order against Lee Kantor, a/k/a Lee Woods (hereafter "Kantor"), a small Bronx retailer of carpets, furniture and major appliances, d/b/a New Rapids Furniture Warehouse, Inc., and certain corporate entities associated with his business. The complaint contained three counts charging violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 5, and one count charging violations of the Truth in Lending Act, Pub. Law 90-321 (1968).

Count I, while never using the phrase "bait and switch," charges an unusual kind of "bait and switch" operation. During an unstated

period (which the evidence showed to be about 1969-71) respondent Kantor purchased sales "leads"¹ elicited by another carpet seller's advertising commercial on a New York City TV/radio station. Because the other firm was located on Long Island, it could not economically make use of the New Jersey "leads" which the commercial generated. Hence the arrangement to sell these leads to respondents. (Paragraphs 5-10) The complaint further charges that respondents' salesmen, after confusing their identity, proceeded to disparage the TV offer and work the customers up to the purchase of much more costly alternative carpeting. (Paragraph 12)

There are also charges that the salesmen involved used other unfair tactics such as (1) failure to supply "continuous filament nylon pile broadloom"; (2) failure to measure carpeting accurately and cut properly; (3) wrongly calling the sale price a "special" and dishonestly promising a "free gift" with every sale. (Paragraphs 8, 11) The first two of these lesser charges were, however, abandoned by complaint counsel in their Trial Brief (at p. 8).

Count II deals with more miscellaneous sales practices alleged to characterize respondents' marketing of carpeting, apparently with particular reference to the New Jersey sales leads described in Count I. These include (1) high-pressure selling, (2) deceptively vague guarantees, (3 & 4) unsatisfactory substitutions for unsatisfactory carpeting and (5) use of contracts which omit to state the quantity purchased or the unit cost. (Paragraphs 16-18)

[3] *Count III* charges respondents with regular abuse of legal process to collect debts arising out of installment credit sales contracts (which were assigned by the carpeting businesses to their financing affiliates). This count is concerned primarily with respondents' default judgments against delinquent customer-debtors allegedly obtained by (1) bringing collection suits against New Jersey residents in an inconvenient form, the Civil Court of the City of New York (Paragraph 19-1) and by deliberately failing to serve notice of such suits on the customer debtors (*i.e.*, so-called "sewer service"). (Paragraph 19-2) A number of lesser abuses of legal process are also alleged.²

Count IV charges violations of the Truth in Lending Act by respondents by virtue of failure to disclose before consummation of the transaction, a number of things which by Regulation Z of the Federal Reserve Board must be disclosed before consummation. (Paragraph 21-

¹ Respondent Kantor during the hearing defined "lead" as a prospect". . . somebody who is interested in buying the product which you are selling (Kantor 221-222).

² *E.g.*, overclaiming; suing without delivering the goods; garnishing wages with knowledge that judgments had been obtained improperly; failure to credit post-judgment payments; and failure to file satisfactions when paid. (Paragraph 19, sub-paragraphs 3-8)

1) It charges also failure to use the term "unpaid balance of cash price" and to disclose the sum of certain other costs which should be described as the "deferred payment price". (Paragraph 21-3)

The complaint further appended a detailed proposed order against all respondents which the Commission thought likely to be issued if all charges were proven but it reserved the right to make changes needed to protect the public in light of all the facts developed during the adjudicative proceedings here.

HISTORY OF THE CASE

Following issuance of the complaint and proposed order, on October 1, 1975, all respondents appeared by attorney Sol S. Perlow, Esquire of the New York bar and were granted an extension of time to answer the complaint until November 5, 1975. On October 30, 1975, respondents filed their joint Answer, denying most allegations, putting complaint counsel to their proof as to others and admitting only a handful of charges.

[4] On November 10, 1975, a prehearing conference was held in Washington and on November 11, 1975, a prehearing order issued, reporting on said conference³ and laying down a pre-trial preparation schedule to culminate in evidentiary hearings beginning March 8, 1976. On November 25, 1975, complaint counsel filed an informal request for certain discovery which elicited nothing from respondents. On December 16, 1975, complaint counsel also filed 26 Requests For Admissions, none of which evoked any response within the ten days provided by Rule Section 3.31.

Failing to obtain anything of significance by voluntary discovery, on December 17, 1975, complaint counsel sought and on December 24, 1975, the Administrative Law Judge issued a subpoena duces tecum to respondent Kantor, returnable in New York City on January 22, 1976. Further, on notice from complaint counsel that the voluntary discovery originally expected from respondent had not been received, the Administrative Law Judge on December 24, 1975 suspended indefinitely the requirement of Prehearing Order No. 1 that the Commission's case be turned over to respondents by December 29, 1975 (exhibits) and January 7, 1976 (testimonial summaries).

At a prehearing conference held in New York City on January 22, 1976 to receive respondents' return in response to the subpoena duces tecum issued December 24, 1976, respondent Kantor testified that he was producing nothing because some responsive material had been

³ Among other matters, the Court was advised that settlement negotiations had broken down largely because of failure to agree on the applicability of an order to respondent Lee Kantor individually. Whether or not to subject him to such individual liability has remained the practical issue throughout the history of this matter.

lost in recent break-ins at his store and as for other responsive materials he had not realized until the previous day that production for this subpoena would be required. Following examination as to what documents were or were not still available, Kantor was directed by the Administrative Law Judge to purge his default by producing all responsive documents not waived by complaint counsel at an adjourned prehearing conference to be held at the same place on February 19, 1976.

[5] At the same time, the Administrative Law Judge gave respondents a second chance to answer complaint counsel's Requests For Admissions by responding within 10 days, *i.e.*, by February 2, 1976. No such response was made, however, and on February 12, 1976, complaint counsel moved for summary decision under Rule Section 3.24 on the ground that respondents had failed to answer complaint counsel's Requests For Admissions by February 2, 1976 and by this second default had made the requested admissions, (which paralleled the complaint's allegations) automatically operative and a summary decision appropriate. At the adjourned prehearing conference held in New York City on February 19, 1976, the Administrative Law Judge again offered respondents a *locus penitentiae*, giving them a third chance to respond to the Requests For Admissions if they would actually file good faith answers within a few days. A sworn response by respondent Kantor, dated March 4, 1976, denying most requests and pleading ignorance as to others but admitting eight facts, was, in fact filed and over complaint counsel's strenuous objections (filed March 15, 1976) the Administrative Law Judge in an "Omnibus Order and Trial Setting" dated March 25, 1976, concluded that complaint counsel's examples of "bad faith" in respondents' answers did not quite prove "bad faith." He accordingly allowed the late filing of respondents' answers to complaint counsel's Requests For Admissions and simultaneously denied complaint counsel's motion for summary decision.

Meanwhile, at the adjourned prehearing conference in New York City on February 19, 1976 to receive the return on the subpoena duces tecum to respondent Kantor which had not been forthcoming on January 22, 1976, the effort was again in vain. Again, Kantor appeared without a single business record. Under examination he now supplemented his earlier explanation in terms of break-ins and fires (Kantor 54, 61, 99) with a speculation that other corporate books and records may have been lost somewhere between trips to the New York City Consumer Fraud Bureau and a prior lawyer (one Harris), who died suddenly of kidney trouble without ever returning Kantor his books (Kantor 100, 107, 108). More recent corporate records

"weren't stolen but, frankly, I don't even know where they are. They're all dispersed." (Kantor 101) All records of earlier lawsuits involved here were said to have been left with Kantor's attorney and Kantor did not get them to bring to the hearing because he allegedly did not know they were wanted (Kantor 137). [6] He had tried to locate his "deferred cash" contracts, he said but explained that this effort failed because "when we get into that other room (where they were kept) it's so cold that you can't do anything" (Kantor 136). When questioned as to how long this had been true, he estimated several months (which would extend the cold weather back to summertime). The most recent records had not been written up yet. (Kantor 101) So there was nothing to return. Interestingly, Kantor never invoked here, the explanation given the New York City Department of Consumer Affairs in 1972 was that he could produce none of his records because his file clerk was constantly misfiling them (CX 3 z45).

The Administrative Law Judge noted in his "Omnibus Order and Trial Setting" of March 25, 1976 that Kantor's demeanor reinforced the inference of incredibility to be drawn from what he was saying in attempted explanation of his failure to produce a single business record. The Court concluded that a case had been made for application of sanctions under Rule Section 3.38 and proceeded to order that all documents called for but not produced would be deemed "adverse" to respondents' defense and that secondary evidence might be introduced at trial if necessary to make up for the loss of this primary evidence, in situations where such would be reasonable. The policy laid down was stated thus:

We do not intend to see this case tried primarily on secondary evidence. However, we shall not hesitate to apply either sanction (presumptions of adverseness and secondary evidence) on motion of complaint counsel whenever it seems fair and necessary to fill particular voids in their case, reasonably related to respondent's failure to produce his business records on subpoena.

On April 8, 1976, in anticipation of trial, complaint counsel requested that respondents admit the genuineness and authenticity of a number of proposed exhibits, copies of which had earlier been served on respondents. No response being forthcoming within 10 days, on motion of complaint counsel under Rule Section 3.31 the Administrative Law Judge on April 28, 1976 declared that said proposed exhibits would be deemed authentic copies of documents correctly described in complaint counsel's request of April 8, 1976.

[7] At a prehearing conference held in New York City on February 19, 1976, complaint counsel was given three weeks to turn over his prospective evidence to respondents, they were given one week

thereafter to request any discovery desired. (Tr. 160) However, no request for discovery was ever made by any respondent.

An "Omnibus Order" dated March 25, 1976, set the case down for trial in New York City on April 26, 1976. In view, however, of the serious illness of respondents' counsel during April, on April 14, 1976, the trial date was put over to May 3, 1976. A trial brief for the assistance of the Administrative Law Judge was filed by complaint counsel voluntarily on April 30, 1976, but none was filed on behalf of respondents.

The hearing of evidence in this matter began in New York City on May 3, 1976 and continued daily through May 10, 1976, on all workdays except May 5, 1976. Because the aid of the U.S. District Court for the Southern District of New York was required to compel the appearance of one of complaint counsel's witnesses (Marvin Fisher), the hearings were adjourned on May 10, 1976, and resumed for a single day on July 27, 1976 to take said Fisher's testimony, after which the hearing was adjourned *sine die* but the record was not closed, pending a ruling by the Administrative Law Judge on the admissibility of a large number of affidavits offered by complaint counsel to fill out voids in his case for, which respondents' refusal to turn over any records was said to be responsible, wholly or in part.

The witnesses who testified at the evidentiary hearings were all called by complaint counsel (including respondent Kantor, who was called as an adverse witness). Their names, addresses, businesses, the dates of their testimony and page references thereto are as follows:

<i>Name & Address</i>	<i>Business</i>	<i>Date of Transcript Testimony References</i>
1. Lee Kantor [*] a/k/a Lee Woods 4195 Third Avenue Bronx, New York	Retailer	5/3/76 205-246 5/4/76 249-279
[8] 2. Frank DiDonato	Business Reporter for Dunn & Bradstreet	5/4/76 283-336
3. Edith M. Novack	Asst. Counsel N.Y. State Banking Dept.	5/4/76 336-368

^{*} Respondent Kantor also testified extensively during pre-hearing proceedings on January 22, 1976 (pp. 59-108) and February 19, 1976 (pp. 121-145).

64

Initial Decision

- | | | | |
|--|--|------------------|-------------------------------|
| 4. Leonard S.
Cammalleri | Business
Reporter for
Dunn &
Bradstreet | 5/6/76 | 389-410 |
| 5. Moira P. McDer-
mott | Retired
Attorney FTC | 5/6/76 | 410-480 |
| 6. Abraham A. Karlin | Consumer
Specialist
FTC | 5/6/76
5/7/76 | 481-505
589-617
628-707 |
| 7. Joan Francis
Cipriani
263 Manning Ave.
North Plainfield,
New Jersey | Housewife | 5/6/76 | 505-528 |
| 8. Nadean Porter
184 Weequahic Ave.
Newark, New Jer-
sey | Not Stated | 5/6/76 | 532-554 |
| 9. Mildred Mary Crete
437 Carroll Street
Orange, New Jersey | Not Stated | 5/6/76 | 555-568 |
| 10. Roberta Beard
784 South 15th
Street
Newark, New Jer-
sey | Not Stated | 5/6/76 | 569-588 |
| 11. Jacqueline Burke
635 Castle Hill
Avenue
Bronx, New York | Not Stated | 5/7/76 | 709-726 |
| 12. Edwin Burks | Former FTC
Investigator | 5/7/76 | 728-772 |
| [9] 13. William Tomaro
430 62nd Street
West New York, | Retired
Construction
Worker | 5/10/76 | 776-809 |

FEDERAL TRADE COMMISSION DECISIONS

Initial Decision

90 F.T.C.

New Jersey

14. Aaron Weiss Attorney 5/10/76 810-846
Civil Court
of City of
N.Y.
15. Marvin Fisher Salesman, 7/27/76 881-909
1381 Jonathan Lane formerly
Wantaugh, N.Y. partner in
Ideal Design,
Inc.

Although afforded the usual opportunity to call any witnesses and offer any exhibits desired, respondents announced that they would offer neither witnesses nor exhibits in their own defense (Tr. 873).

On August 16, 1976, complaint counsel filed a lengthy brief in favor of his pending offer of certain hearsay evidence (a ruling on the admissibility of which had been deferred at the hearing).⁵ Respondents elected to rely on their oral argument and filed no brief (Tr. 909). By order dated October 12, 1976, the Administrative Law Judge, although doubting that he would ordinarily receive the hearsay evidence so offered, nevertheless held that in the circumstances of this case, where complaint counsel had plainly been precluded from finding updating consumer witnesses by respondents' contumacious refusal to turn over any business records on discovery, it was necessary to admit such hearsay testimony to adequately compensate for loss of such discovery opportunity.

On the same date (October 12, 1976), record corrections having meanwhile been accepted, the record in this matter was closed and the parties were given 40 days to file proposed findings of fact and conclusions of law. At respondents' request this deadline was extended on November 22, 1976 to November 29, 1976, and thereafter to December 1, 1976. On November 22, 1976, complaint counsel filed cited proposals for findings of fact and conclusions of law on all aspects of the case. On December 9, 1976, respondent filed a handful of proposed findings and conclusions, without transcript references, consisting [10] solely of conclusionary assertions that respondent Kantor was not individually involved in any offenses and should not be included individually in any cease and desist order.

⁵ In one case (CX 93a-z59) the evidence was actually excluded at the hearing and the request was therefore to reverse the exclusion.

FINDINGS OF FACT

Respondent Lee Kantor, d/b/a New Rapids Furniture Warehouses, Inc.

1. Respondent Lee Kantor, sometimes also known as Lee Woods, runs a retail establishment selling carpeting, furniture and appliances at 4195 Third Ave., Bronx, New York, doing business under the name "New Rapids Furniture Warehouses, Inc." (Kantor, 206, 207)

2. Until 1970 this business was carried on by a New York corporation of the same name (New Rapids Furniture Warehouses, Inc.) chartered on June 11, 1962, but on December 15, 1970, said corporation was dissolved by proclamation of the Secretary of State of New York. (CX 1g, Kantor 182) Since then the same business has been carried on by Kantor at the same location under the same name (Kantor, 142, 206, 206A). Kantor's testimony during discovery proceedings here (on January 22, 1976 and again on February 19, 1976) that he was even then unaware that this corporation has been dissolved and believed it was "still a going corporation" until he found out about it from complaint counsel, is not credited (Kantor 63, 142).

3. Kantor's wife owned 100 percent of the stock of New Rapids Furniture Warehouses, Inc. and was entitled to all its "earnings." (Kantor 215, 216, CX 3j)

4. Regardless of who had the beneficial ownership of the business known as New Rapids Furniture Warehouses, Inc., it appears that respondent Kantor's wife took no active part in the operation of the business (Kantor 216); that he had the responsibility for its day-to-day operations (Kantor 218) and that he has always been responsible for its policies (Kantor 72). Respondents do not deny that Kantor has formulated, directed and controlled the policies of New Rapids Furniture Warehouses, Inc., including the acts and practices set forth in this complaint. (Respondents' Answer, Paragraph 1) In particular, he has made the arrangements for the company's advertising, because he was the only one who could do it. (Kantor, 221)

Respondent New Rapids Carpet Center, Inc.

5. Respondent New Rapids Carpet Center, Inc., a New York corporation operating out of the same premises as New Rapids Furniture Warehouses, Inc. (Kantor 73), was chartered on April 16, 1969. (CX 1h, Kantor, 182-183) [11] One Stanley Katzman, an employee of Kantor's in the New Rapids Furniture Warehouses, Inc. business, persuaded Kantor to put the furniture warehouse in the

carpet business sometime in the mid-1960's and New Rapids Carpet Center, Inc. was organized two or three years later to handle the growing carpet business (Kantor 68, 69, 70). At a discovery hearing on January 22, 1976, Kantor was not sure if the corporation had ever been dissolved but testified that "we haven't been using it as a corporation for at least three or four years" (Kantor 62, 63). It was, in fact, dissolved by proclamation of the Secretary of State of New York on December 15, 1973. (CX 1h, Kantor 182-183)

6. As in the case of the furniture warehouse business, the carpet center, according to Kantor, was owned 100 percent by his wife, who was entitled to all its "earnings" (Kantor 215, 216, CX 3j).

7. Respondent Kantor's wife, however, took no active part in the operation of the business (Kantor 216). He, as "General Manager" of New Rapids Carpet Center (CX 106b) was responsible for New Rapids Carpet Center Inc.'s day-to-day operations (Kantor 218) and had "more or less full control of the thing" (Kantor 219). In any event, respondents do not deny that Kantor formulated, directed and controlled the policies of New Rapids Carpet Center, Inc., including the acts and practices challenged in this complaint. (Answer, Paragraph 1)

Respondent Charge Account Factors, Inc.

8. Respondent Charge Account Factors, Inc. was chartered as a New York corporation on October 21, 1955 (CX 1f). In its early years, when respondent Kantor's father Abraham was active to some extent in the business and the office was at 29th St. and Broadway in New York City, this corporation bought installment paper from various dealers (Kantor 235, 236). By about 1968 or 1969, however, the father was no longer active, the office downtown was closed⁶ and Charge Account Factors, Inc., having ceased to buy paper from other dealers, was taking only the paper from "the carpet sales" (Kantor 236). [12] Kantor recalled at a discovery hearing in early 1976 that no taxes to New York State had been paid for three or four years (Kantor 63). Official records disclose that Charge Account Factors, Inc. was dissolved by proclamation of the Secretary of State of New York on December 15, 1972 (CX 1f).

9. At the hearing here Kantor testified that he and his father, Abraham Kantor, each had had a one-third interest in the "earnings" of Charge Account Factors, Inc., and a third "partner" one Morris Wishnetsky, had had the final third (Kantor 215, 216, 234, 235). However, he omitted to explain, as shown in the transcript of his 1972

⁶ Kantor testified under oath in 1972 that the address of Charge Account Factors, Inc. was by then in his father's home at 1746 Andrews Ave. in the Bronx. (CX 3g)

testimony before the Consumer Affairs Department of the City of New York, that he and his father had bought the third partner out "many years ago" (CX 3i), so that long before 1972 he and his father were the sole owners of Charge Account Factors, Inc. (CX 3j).

10. Respondent Kantor was the Secretary of the Corporation and "the active individual" therein. (Kantor 72) His father, who had never been very active in the business, was entirely inactive from about 1968 or 1969 (Kantor 236) and Kantor was "the only active person at that time" (Kantor 236). Again, as with the furniture warehouse and carpet center, respondent Kantor was responsible for the day-to-day operations (Kantor 218). Nor do respondents deny that Kantor formulated, directed and controlled the policies of Charge Account Factors, Inc., including the acts and practices challenged by this complaint. (Answer, Paragraph 1)

Respondent Charge Account Credit Corp.

11. Charge Account Credit Corp., a New Jersey corporation was chartered on November 7, 1956 (CX 1d). Like its New York chartered counterpart, Charge Account Factors, Inc., Charge Account Credit Corp.'s business was buying installment paper from various dealers (Kantor 235) but in this case it was to buy Jersey paper (Kantor 71). Its official New Jersey office was 2377 5th St., Coytesville, New Jersey (CX 1d) but its main office was always in New York City. In the early years, while respondent Kantor's father was to some extent active in the business, said office was at 29th St. & Broadway (Kantor 235, 236) but about 1968 or 1969, when respondent Kantor's father became completely inactive in the business, the office was moved to [13] respondent Kantor's own home (Kantor 236).⁷ The charter of Charge Account Credit Corp. was voided for non-payment of New Jersey State taxes by proclamation on April 12, 1973 (CX 1d). Thereafter respondent Kantor, using the name Lee Woods and with his wife as a partner, registered the trade name Charge Account Credit Company with the State of New Jersey, ostensibly to liquidate the paper involved but he was still doing business under this name in New Jersey three years later at the time of the hearing (Kantor 63, 64).

12. Respondent Kantor testified at this hearing that, as in the case of Charge Account Factors, Inc., he had had only a one-third interest in the "earnings" of Charge Account Credit Corp., his father, Abraham Kantor, and another "partner," one Morris Wishnetsky, each also having one-third interest (Kantor 72, 215, 216, 234, 235). However, he omitted to explain, as shown in the transcript of his 1972

⁷ Kantor testified under oath in 1972 that the office of Charge Account Credit Corp. had "for many, many years" been in his own home at 330 Windsor Road, Englewood, New Jersey.

testimony before the Consumer Affairs Department of the City of New York, that he and his father had bought out the third partner "many years ago" (CS 3i), so that long before 1972 he and his father were the sole owners of Charge Account Credit Corp. (CX 3j).

13. Respondent Kantor was the Secretary of the corporation and "the active individual" therein (Kantor 72). After his father's complete retirement from the business about 1968 or 1969, it appears that respondent Kantor was not only responsible for day-to-day operations (Kantor 218) but was "the only active person at that time (Kantor 236) and was responsible for the organization's policy (Kantor 72). Respondents do not deny that Kantor formulated, directed and controlled the policies of Charge Account Credit Corporation, including the acts and practices challenged by this complaint (Answer, Paragraph 1).

The Integrated Family Enterprise

14. The several corporations described in Findings 1 thru 3 have all come and gone but the integrated family enterprise for the sale and financing of household furnishings of which each was for a while a part remains constant under the direction and control of Lee Kantor, a/k/a Lee Woods.

[14] 15. The two corporations selling carpeting and furniture, New Rapids Furniture Warehouses, Inc. and New Rapids Carpet Center, Inc., were wholly owned by respondent Kantor and his wife (Kantor 215, 216) and he was the direction and control of each (Answer, Paragraph 1). The two corporations financing such sales (Charge Account Factors, Inc. and Charge Account Credit Corporation) were wholly owned by respondent Kantor and his father (CX 3i-j) and he was the direction and control of these parts, too, of the integrated enterprise (Answer, Paragraph 1). The corporations come and go but the underlying reality, respondent Kantor's family enterprise, endures.

16. Despite respondent Kantor's, occasional protestations on the stand that various parts of his enterprise were "separate and independent," it appears that he himself ordinarily views the carpeting, furniture, and related financing activities as a single enterprise. When estimating total dollar sales of his business in the late 1960's at about \$200,000 a year,^{*} he testified that "of our installment sales it (carpeting) involved 70% of the business" (Kantor

^{*} Respondent Kantor claims that the gross sales of the business have fallen off badly in recent years. At an early prehearing conference (January 22, 1976), his attorney, Mr. Perlow stated:

"He's got a business that - I don't think they gross - what is your gross all together? Mr. Kantor: I couldn't tell you offhand - but it's not a hell of a lot. Mr. Perlow: Any approximation? Mr. Kantor: About \$40,000 or \$50,000" (Kantor 57).

215). Another time he referred to "the carpet department" of the business (Kantor 81). Of similar import was his statement that by 1968 Charge Account Factors, Inc. was taking only the installment paper from "the carpet sales" (Kantor 236).

17. Particularly significant here was Kantor's testimony while explaining his negotiation of the purchase of carpet sales "leads" in New Jersey (see Finding below) that "they (the leads) were sent to New Rapids Carpet Center — or New Rapids Furniture. . . . I don't recall, actually. It was either one or the other" (Kantor 81-82). Shortly thereafter, explaining to which company such leads would have been sent, he testified: [15]

I really don't recall. I don't know if he (the seller) was aware of the fact that there was another corporation called New Rapids Carpet Center or not. This was a later day organization. This wasn't organized the same time as New Rapids Furniture was. He was aware of New Rapids Furniture and it would seem to me he would think of (in?) those terms (Kantor 82-83).

To the question "So he would send in these leads to New Rapids Furniture, as well as New Rapids Carpet?" Kantor answered, "Yes" (Kantor 83).

Ideal Designs, Inc.

18. Ideal Designs, Inc. (hereafter "Ideal") was a corporate retailer of carpeting for about a decade (from 1965 to 1975, when it went into bankruptcy) in Floral Park and later in Franklin Square in Nassau County on Long Island (Fisher 881-2). It was wholly owned by three "partners": Harvey Brodsky, Jules Engelson, and Marvin Fisher (Fisher 895, 897). The last testified here at the instance of complaint counsel only under compulsion of an order from the District Court for the Southern District of New York (Fisher 880, *et seq.*, 895, 897).

19. During the period of its existence Ideal had an arrangement with an advertising agency called Herb Brauner Associates (hereafter "Brauner") whereby Brauner would run TV commercials worked up by Ideal and Brauner (Fisher 887, 899) on TV and radio time bought by Brauner from New York City broadcasting stations for the use of such clients as aluminum siding marketers and swimming pool contractors as well as Ideal Designs (Fisher 897). Ideal paid nothing for this broadcast time, which was purchased by Brauner, but Ideal did pay Brauner for the customer "leads" which the commercial evoked, on a "per lead" basis (Fisher 897-898).

20. The format and content of Ideal's commercial, which had been worked up by Ideal & Brauner together (Fisher 899), did not vary significantly throughout the life of the arrangement, except as to

details like the precise amount of the price (*e.g.*, \$77 vs. \$69) or the exact amount of square footage (Fisher 883). [16]

Q. Did you run this identical ad from the first time that you advertised?

A. No (but) (t)hey were all very similar. In other words, there were slight variations. Sometimes we advertised instead of \$77 it would have been \$69. Or we changed the square footage. But basically it was the same ad. And we gave the same gifts away.

Q. And can you tell us once again what was the period covered by these ads?

A. The ad ran the full time we were in business, the full ten years. (Fisher 883)

This remained as true after as before the Jersey leads were sold by Brauner to Kantor (Fisher 896).

21. Complaint counsel's Exhibit CX 9b, a copy of which follows, is a fair example of the text of the Ideal commercial as it was broadcast, both before and after Kantor began buying the Jersey leads (Fisher 896): [17]

516 328-0350
512 347-7477

CT #150

JUL 22 1959

RECEIVED

IDEAL DESIGNS, INC.

SALES SERVICE

1959

SERVICE

Quality Service Reliability

IDEAL DESIGN (1 MIN) 5 SPOTS (2 SAT 350M) 2-4:30 147 JERICHO TURNPIKE
7-21-59 CHANNEL 7 (WABC-TV) 5 SPOTS M THROUGH FRI. 12 FLORAL PARK, N.Y.

SLIDE I NEED LUXURY CARPETING? NOW IDEAL DESIGNS, OF FLORAL PARK, IS RUNNING, THEIR
GREATEST CARPET SPECIAL EVER.....

SLIDE II IDEAL DESIGNS CUTS CARPET PRICES...NOW! GET ENOUGH BROADLOOM TO CARPET ANY
AREA OF YOUR HOME OR APARTMENT, UP TO 150 SQUARE FEET, CUT, MEASURED, AND
READY FOR INSTALLATION FOR ONLY \$77 ~~CALL~~

SLIDE III GET A REAL CARPET BUY...GET 100% DUPONT CONTINUOUS FIBERMENT NYLON FREE
BROADLOOM, FOR ONLY \$77

SLIDE IV ENOUGH BROADLOOM TO CARPET A LIVINGROOM, OR BEDROOM, OR DINING AREA, DURING
THIS SPECIAL OFFER, FOR ONLY \$77 ONLY \$77 CALL NOW

SLIDE V CALL NOW...GET INCLUDED WITH YOUR ORDER, AN UPRIGHT HUNT VACUUM CLEANER, &
A 9X12 RUG.....CALL NOW MURREYHILL 2 6800

SLIDE VI FOR FREE INFORMATION, IN NEW YORK, L.I. WESTCHESTER CALL MURREYHILL 2 6800
MI 2 6800 THATS MURREYHILL 2 6800 IN N.J. CALL ESSEX 5 5700

THATS ESSEX 5 5700 OUT OF TOWN, PLEASE, CALL COLLECT.....

CX 4K

[18] 22. The Ideal commercial, as will be noted from CX 9b, included telephone numbers for viewers to call if they wanted to take advantage of the offer being made on the commercial. Broadcasts of this commercial reached such potential buyers not only in New York City but in its environs to the east (Nassau and Suffolk Counties, on Long Island), to the north (Westchester County and Connecticut), and to the west (New Jersey) (Fisher 882, CX 3z13). However, from Ideal's viewpoint, its Long Island location was too far from New Jersey to service the leads that were phoned in from that state and so after a while it ceased to respond to the Jersey leads (Fisher 884).

23. About 1968 Brauner told Ideal he would have to raise the price per lead from \$15 to \$18 unless he (Brauner) were permitted to sell the Jersey leads to a reliable company "that would handle it for (Ideal)" (Fisher 885, 898-9). When the Ideal people said they didn't care what Brauner did with the Jersey leads (Fisher 899) Brauner proceeded to make a separate arrangement of his own with respondent Kantor, whose advertising over WMCA Brauner had been handling (Kantor 221).

24. Kantor had begun to feel that the cost of advertising exceeded the profit in the carpet business and Brauner suggested buying "leads" so that New Rapids would know what its promotional cost was (Kantor 221). Kantor agreed verbally to purchase the Jersey leads on the same (per lead) basis as Ideal was purchasing leads elsewhere in the area (Fisher 882, 887, Kantor 222, CX 3z14). The date that this arrangement was entered into is not clear on the record. While it may have started as early as late 1968 (Fisher 885), or as late as early 1970 (CX 106b) it probably started in 1969 (CX 3z14) and lasted something over a year (Kantor 84; CX 3z13) until early 1971 (CX 106a; CX 3z14).

Respondents' Knowledge of the Ideal Design Commercial

25. During the hearing of this matter, respondent Kantor made various inconsistent statements about his knowledge as to where Brauner was getting the leads that New Rapids was buying. Kantor at one point testified that Brauner made "no specific mention of the fact that they (the leads coming thru Brauner's answering service) were Ideal Design's leads" (Kantor 224). Shortly thereafter, however, Kantor conceded that when Brauner asked if Kantor would be interested in buying leads "he (Brauner) told us that he had leads from Ideal Design. . . and later we found out that they came from other sources" (Kantor 225). We adopt as most likely Kantor's [19] subsequent testimony that Brauner told him Ideal was the advertiser and the leads being purchased were names of people who had

answered Ideal TV ads. Because of Kantor's dominant position in New Rapids Carpet Center, Inc. and the other corporate respondents, his knowledge was also theirs.

26. The record evidence of respondents' knowledge concerning the content of the Ideal ad which was generating the leads being purchased is also somewhat confused. In a 1971 affidavit on this subject, Kantor said that Ideal had:

apparently received these names as a result of certain television advertising which offered 150 feet of continuous filament nylon carpeting for \$77.00. Said price did not include delivery, padding and installation charges. (CX 106b)

Comparison with the ad itself (CX 9b) reveals this to be inaccurate in that a gift was mentioned but the price and square footage were correctly stated. Again, whatever knowledge Kantor had was also that of New Rapids Carpet Center, Inc., and the other corporate respondents, which he dominated.

27. Kantor's testimony in the hearing here was that "at the beginning" he was not aware of the representations made in the Ideal ads (Kantor 83). According to him, he never listened to TV or radio, never heard the advertisement as it appeared there and never saw any written copy (Kantor 86, 225A). At some point, Kantor testified, he had asked Brauner "what is the ad?" and Brauner allegedly said:

The ad reads - 150 square feet of carpeting for \$89.95 and - this was supposed to be uninstalled - just 150 square feet of carpeting - and for installation, you charge them the prevailing installation price. (Kantor 86)

Kantor added that "this is about what I was told about it - and this is what I knew about it" (Kantor 86).

28. It will be noted that in addition to the deviation from the terms of the advertisement (*i.e.*, no gift) to which Kantor testified in 1971, his 1976 testimony in [20] this case fixed the advertised price at \$89.95 instead of \$77.00. If the price originally quoted by New Rapids' salesmen to New Jersey leads was, as Kantor says, \$89 for 150 square feet (Kantor 256), it is fairly inferable that Kantor's alleged unawareness of the terms quoted in the Ideal commercial could not have extended much, if any, beyond "the beginning" of the arrangement.

29. Even the \$89 price, not being in accordance with the Ideal commercial, according to Kantor, elicited protests from New Jersey leads, who had heard the price was \$79 (\$77?). As a result New Rapids' price was reduced to \$79 (\$77?) he testified (Kantor 238, 256, 257; see also 232, which may refer to this episode).

30. It was allegedly two or three months after Kantor started answering the Jersey leads before he found out from customers

complaining to his salesman Kantor says, that the Ideal commercial contained an offer of a free gift (CX 3z18). He was "dumbfounded" when demands for such gifts were made and promptly called Brauner, who confirmed that that was what the ad said but explained that the offer was "innocuous" (CX 3z18) because it applied only if the viewer bought precisely what was offered on the commercial (i.e., the \$79 or \$89 package) and Ideal could supply Kantor with one or two of the advertised vacuum cleaners in case he ever needed them (Kantor 238, 239, 240).

31. However, Kantor could never get any vacuum cleaners or even the name of Ideal's source of supply (Kantor, CX 217). Accordingly, he adopted a suggestion by his salesman that New Rapids substitute a different gift, to wit, a free reinstallation of the carpet purchased, in case the customer were to move to a new home within the next year (Kantor 238, 240). With this explanation, Kantor asserted, it could fairly be said that there was no situation where New Rapids did not supply a promised gift (Kantor 238).

32. The foregoing findings make it clear that respondent Kantor and through him the corporate respondents he dominated were substantially aware of the basic terms (price and square footage) of the Ideal TV commercial almost from "the beginning" of the arrangement and at least after the first two or three months of an arrangement that lasted over a year, were similarly aware of the same commercial's promise of a free gift. [21] Accordingly, it is found that respondents were aware of the key terms of the commercial during most of the time they were responding to the New Jersey leads which said commercial evoked.

Alleged Buyer Confusion of New Rapids and Ideal

33. Upon receipt of each name from Brauner respondent Kantor would arrange for one of his two New Jersey commission salesmen to communicate with the prospective customer and seek an order for carpeting (CX 106c & d). Sometimes, however, Kantor would call such leads preliminarily himself (Kantor 252).

34. When Kantor made such preliminary calls, he testified, he not only avoided mention of any connection with Ideal Design or even that Ideal was the source of the lead but "in every case" affirmatively told the lead that "we are not the people that advertised" (Kantor 253, 254). The claim of affirmative disclosure that "we are not the people that advertised" is somewhat at variance with testimony which Kantor gave the City of New York Department of Consumer Affairs in 1972:

Ms. Sullivan: Did you say that you were not from Ideal Designs?

Mr. Kantor: Well, we said, "we understand that you're interested in carpeting," that's the way we started. (CX 3z15, CX 3z16, referred to at Kantor 253)

In light of this inconsistency, we do not credit Kantor's assertion that he made an affirmative disclosure to New Jersey leads that his company was not the same one that advertised. It is further found that failure to mention Ideal by name when saying "we understand that you're interested in carpeting" may have left the customer, initially, at least, believing he was dealing with an Ideal representative.

35. Despite this potential for some confusion inherent in respondent Kantor's failure adequately to disassociate New Rapids from Ideal in his approach to the New Jersey leads, the consumer testimony here revealed relatively little such confusion. Only two witnesses out of many witnesses and affiants testified that a New Rapids salesman said he worked for both New Rapids and Ideal (Crute 556, 557; Beard 571). Our attention has been drawn to no evidence that any other lead thought [22] New Rapids was Ideal or somehow represented Ideal.⁹ Accordingly, the two cases cited are found insufficient to support the complaint's allegation in Paragraph 12-1 that it was a "practice" of respondents' salesmen to tell questioning purchasers that they worked for both New Rapids and Ideal.

Bait and Switch Tactics

36. The price advertised in the Ideal Design TV commercial for 150 square feet of continuous filament nylon carpeting,¹⁰ whether \$77 or even \$89, represented a "substantial" reduction from the price regularly charged by New Rapids Carpet Center, Inc.¹¹ (Kantor 260). The addition of the advertised gift (either an upright vacuum cleaner or a 9' x 12' rug) would have made such an offer cost more than the company's profit on the sale (Kantor 240). Kantor conceded in a 1972 hearing before the New York City Department of Consumer Affairs that he was not, in fact, "in a position" to offer the free gift that Ideal was advertising (CX 3z17).

37. The evidence of consumer witnesses and affiants leaves little question but that the real purpose of respondents in purchasing

⁹ In two cases a lead mistakenly thought New Rapids had also been the advertiser (Cipriani 508; Tomaro 709).

¹⁰ The commercial's reference to continuous filament "pile" carpeting is a mistake of some sort. As explained by respondent Kantor at the hearing, pile (sheared filament) cannot be continuous filament; the terms are mutually inconsistent (Kantor 261).

¹¹ This uncontested evidence that the TV ads' "special" price was substantially below New Rapids' regular price for similar carpeting, while tending to support a bait and switch charge, at the same time disposes of the allegation of Paragraph 11-3 of the complaint that this carpeting was actually sold at the "usual and customary" retail price for respondents' merchandise. It clearly was not and such is our finding.

Brauner's New Jersey leads was not to sell the advertised goods at the advertised price. The real purpose, it is found, was to use the low, low price and gift offer in Ideal's TV commercial merely to get a foot in the door and then, by disparagement and invidious comparison, to switch the New Jersey leads over to a much more expensive substitute.

[23] 38. A pattern of disparaging New Rapids' "special" offer and persuading the Jersey leads to switch to a much more expensive substitute is documented in this record by a substantial amount of evidence. Four witnesses told their stories at some length and 21 affiants corroborate the picture which emerged from the witnesses' testimony.

39. Witness Cipriani was led to buy \$400 worth of substitute carpeting by the New Rapids salesman's disparagement of his own \$77 "special":

When he (the New Rapids salesman) got to my house he told me it was ridiculous to think that they would carpet three of those size rooms under that price, because they were too big. (Also?) the carpeting that was. . . advertised was of a lower grade and I would probably want something a little heavier for the traffic and everthing. So naturally I chose a better grade carpeting. (Cipriani 511, 520)

40. Witness Crute was led to buy \$500 worth of substitute carpeting by the New Rapids salesman's disparagement of his own \$77 "special":

A man came to my house, a representative, with the carpeting for \$77. The carpeting that he showed me for \$77 was really - and also the salesman downgraded the carpeting himself.

* * * * *

He was telling me it was no good, you know. This wasn't worth putting in (down?) and he had some better carpeting he could show me which was a little bit more money and which he did. . . (Crute 556)

41. Witness Beard's purchase of over \$580 worth of substitute carpeting was effected by similar disparagement of the salesman's own "special":

Well, he came and he showed the carpet that he had. The carpets that he had that he showed me for \$77, you know, weren't nice. He admitted himself that they weren't fit.

* * * * *

[24] He said that they weren't - you know - they just weren't fit either for \$77 to put down in your home.

* * * * *

So, in turn, of course, he had - you know - other carpets, so naturally I looked at the better carpet. So I also did buy the better carpet. (Beard 572)

42. Witness Tomaro was similarly led to buy \$148 worth of substitute carpeting by a salesman's disparagement of his own \$77 "special":

(T)he carpet was guaranteed longer and it was a better make than - because he told me the one that's advertised in television he can only guarantee it for one year.

* * * * *

He volunteered it (this information).

* * * * *

The only thing that made me change my mind was that I wasn't going to get a carpet for \$77 and next year I have to turn around and put another carpet there for \$77 and keep on going one year after another.

* * * * *

If they only guarantee it for one year, I figured it's less. (Tomaro 803, 804)

43. Many affiants confirm that the bait and switch tactics described by the above four witnesses were not isolated or untypical acts and, at the same time, illustrate the variety of ways employed by New Rapids' salesmen to achieve the desired result. Sometimes the affiant simply states that the salesman "downgraded" or "degraded" the \$77 carpeting special: Scavone, CX 30a & b (up to \$350); Ransom, 29a (up to \$650); Smith, CX 32a (up to \$350) and Mordicai, CX 23a (up to \$175). Sometimes it appears that the salesman attached specifically the \$77 carpet's quality: Ronan, CX 84 (up to \$150); Manning, CX 22a (up to \$200); Hughes, CX 36a (up to \$506); or durability: Champion, CX 16 (up to \$495); Doloszycki, CX 11 (up to \$138); or called it "cheap" or "for cheap people": Enna, CX 17 (up to \$173); Schuman, CX 31a (up [25] to \$354). Sometimes the salesman carried unattractive samples of the special: Nelson, CX 38a & b (up to \$600) or samples of the substitute carpet only: Nann, 39a (up to \$559). Sometimes the \$77 special was simply said not to be available: Myers, CX 24a (up to \$495); Hill, CX 35a (up to between \$270 and \$370); Baskerville, CX 33a (up to \$551); Smith, 41a (up to \$723). One salesman pointedly ignored the special: Flor, CX 19a (up to \$373). One "advised against" buying the special, apparently successfully: Ferrara, CX 18a (up to \$600). In only one case reviewed did the salesman meet such determination to buy the \$77 special that the lead could not be talked out of it. New Rapids solved this novel problem by never

making delivery of the order. O'Grady, CX 25a & b (purchased for \$92, including incidental charges).

44. No significant infirmities in any of this evidence is apparent and no rebuttal evidence was tendered. Accordingly, it is found that New Rapids Carpet Center, Inc.'s salesmen made no use of the Ideal Design leads except to get their feet in potential customers' doors, after which they promptly disparaged the \$77 offer and commonly succeeded, instead, in selling such customers substitute carpeting at prices many times higher than the Ideal TV commercial had advertised. It must be inferred from the extent of the practice that this was all done pursuant to a plan by respondent Kantor and the respondent corporations dominated by him to use the Brauner leads for just such bait and switch purpose rather than to obtain customers by actually selling carpeting at the bargain price advertised by Ideal.

Free Gift

45. The Ideal TV commercial included a promise of a free gift - either a stand-up vacuum cleaner or a 9' x 12' rug - to anyone taking advantage of the advertisement's principal offer: 150 sq. ft. of continuous filament nylon carpeting for \$77 (CX 9b). The cost of a vacuum cleaner, however, was enough to make the offer unprofitable for respondents if they should attempt to carry out these terms literally (Kantor 240).

46. To minimize this expense Kantor was advised by Brauner to take the tack that no-one was entitled to a gift unless he bought the \$77 "special" on the advertised terms (CX 3z18). Since most buyers were talked out of the "special" by New Rapids' salesmen, the burden of giving away rugs or vacuum cleaners (or a free re-installation, which Kantor says he added in place of [26] a vacuum cleaner, 238, 240) should not have been burdensome. However, while New Rapids never openly repudiated the general promise of a gift, it made successful use of many expédients to avoid giving such gifts away, as the record here reveals.

47. Witness Crute understood from the Ideal TV commercial that there would be a gift if she ordered three rooms of carpeting (as she did) but she didn't think to mention this at the time and the salesman never mentioned it either. She never received one and didn't know why. (Crute 558).

48. Witness Beard was told by her New Rapids salesman that if she bought the better carpet he was offering she would receive a gift. She bought the carpet and asked for the gift but she never received anything and didn't know why. (Beard 572).

49. Witness Tomaro testified that the TV ad offered a free gift of a

vacuum cleaner or a 9' x 12' rug (Tomaro 779) and the salesman who responded to his phone call promised the vacuum cleaner, but Tomaro never received it (Tomaro 778). Four or five months later, when he complained about this to New Rapids' lawyer, the latter said "I'll look into it" but that was the last Tomaro ever heard from the lawyer or the company or anybody on that subject (Tomaro 782, 783).

50. That Kantor's various ways of avoiding the gift promised on Ideal's TV ad were not limited to a few such instances is confirmed by a number of affidavits in evidence here:

Doloszycki, CX 11a&b	(TV promise of gift disparaged by salesman who promised "better deal" with other carpeting)
Champion, CX 16b	(salesman promised free carpet sweeper; never delivered despite many protests)
Ferrara, CX 11b	(salesman disparaged vacuum cleaner so elected to take 9' x 12' rug; promise always confirmed but never honored)
[27] Manning, CX 22b	(salesman promised either vacuum cleaner or 9' x 12' rug but neither ever received)
Scavone, CX 30a&b	(per TV ad, bought carpeting and selected vacuum cleaner as free gift but never received gift, despite repeated company assurances it would be forthcoming)
Baskerville, CX 33a&b	(per TV ad, when carpeting purchased asked for free vacuum cleaner, which salesman promised; never received despite subsequent promise by company it would be shipped)
Hill, CX 35a&b	(at time of carpet purchase salesman confirmed TV promise of free vacuum cleaner with carpet; never delivered)

Rentas, CX 40a

(TV offered free vacuum cleaner or 9' x 12' rug with carpet purchase; salesman disparaged rug and promised vacuum cleaner with carpet; never delivered despite repeated promises by company)

51. No significant infirmities in this evidence are apparent and no rebuttal evidence was ever tendered. From the substantial number of omissions by respondents to deliver the free gifts offered on the Ideal TV commercial, even though this expectation was commonly confirmed by respondents' own salesmen and even though an obligation to deliver in such cases was never denied by the respondents, it is found that such omissions were a regular practice of the business.

COUNT II

Miscellaneous Incidental Marketing Practices

52. Count II of the complaint supplemented the main charges of Count I (bait & switch, free gift) with additional allegations of miscellaneous other marketing practices by respondents which apparently came to the Commission's attention as an incident to the main investigation. Apart from two unfair practices apparent on the face of New Rapids Carpet Center's executed contracts, the charges recited in Count II seem to have been tacitly abandoned and/or inadequately briefed.

[28] 53. Par. 16-1 charges the use of high pressure selling tactics. Complaint counsel's pretrial brief (at page 9) anticipated producing consumer witnesses and affiants "who tried to cancel within a day or a few days after execution of the contract but without success" and were thereafter sued for payment. If such evidence was produced the Administrative Law Judge has no memory of it and complaint counsel's proposed finding (#22) makes no reference to such evidence, relying rather on a "contention" of complaint counsel that respondents' customers "might well have cancelled within a reasonable time afterward had they been given adequate opportunity to consider . . ." Accordingly, the request for a specific finding of high pressure selling is declined, although without prejudice to entry of a cooling-off order insofar as the facts found here are sufficient in themselves to justify such an order.

54. Paragraph 16-2 charges that it has been the practice of respondents' salesmen to write on the face of carpeting purchase contracts a purported "guarantee" (e.g. "8 year wear guarantee" or

"10 year wear guarantee" or "12 year wear guarantee") so vague as to be deceptive. That this was, in fact, a usual practice was well established by certain witnesses (Porter 538, Beard 573-575) and confirmed by a large number of executed contracts in evidence. (See the CX 55 series of contracts, particularly b, c, h, k, m, n, r, s, t, u, v, w, x, y, z, z1-15 and z17-19.)

55. It is further found that such a guarantee (e.g. "8 year wear guarantee") fails to disclose adequately (1) the nature and extent of the guarantee, (2) the conditions and limitations on the guarantee, and (3) the manner in which the guarantor will perform and is therefore unfair.

56. However, the further allegation of Paragraph 16-2 of the complaint that in a substantial number of instances the respondents have not performed under the implied terms and conditions of the guarantee is a complex question not well adapted to resolution in the present litigation and, perhaps for that reason, apparently abandoned by complaint counsel. In any event the non-performance charged is not found to be a fact.

[29] 57. Paragraph 16-3 of the complaint charges that in a substantial number of instances respondents have forced substitution or have tried to force substitution of carpeting which was used or soiled or varied in quality or color from that ordered and Paragraph 16-4 goes on to charge wrongful institution of lawsuits to effect payment in such cases. So far as we can tell from complaint counsel's proposed findings of fact these charges have completely abandoned. In any event we are pointed to no evidence supporting such charges and, accordingly, they are not found to be a fact.

58. Paragraph 16-5 of the complaint charges that, when writing up carpeting sales contracts, respondents salesmen have stated neither the yardage nor the price per yard but have merely referred to carpeting and total cost, thus depriving customers of opportunity to check the amount of carpeting or to compare unit costs with those charged by respondents' competitors.

59. It appears that one of the New Rapids Carpet Center purchase form contracts in evidence here (CX 55a thru CX 55z19) did not even contemplate statement of the amount of carpeting purchased. The other form contracts in evidence here (CX 55z20 thru CX 55z34) contain a blank space to enter "quantity" but the executed forms show no example of such entry.

60. None of these contracts, of either kind (CX 55a thru CX 55z34) reveals either an entry or a place to enter the unit (per yard) price of the carpeting purchased. It is found that the combination of these

omissions made in practically impossible for the buyer to make more than a very rough price comparison with competitive carpeting.

COUNT III

Inconvenient Venue

61. Many New Jersey purchasers of carpeting from respondent Kantor and/or his sales corporations (including many of the customers attracted by the Ideal TV commercial), have been sued for the alleged purchase price or deficiencies in payment or on other grounds by such corporation or an affiliated finance company to [30] whom the related installment purchase contract has been transferred. Such suits have frequently been brought in New York City's Civil Court, even though the sale out of which such alleged causes of action arose was made in New Jersey to a New Jersey citizen who could not, merely by virtue of such purchase, be deemed to do business in New York under New York's so-called "long arm" statute. It may fairly be inferred that the purpose of invoking such improper venue has been to facilitate obtaining default judgments and thus avoid a fair adjudication of the facts. The evidence in support of this complex finding is summarized in TABLE I, whose underlying supports are as follows.

62. A survey of suits which were brought by respondents here against New Jersey residents in the Civil Court of the City of New York during the period from 1/1/69 to 6/21/71 was made by a law clerk, one Laidman for the Newark Essex Law Reform Project. His statistical affidavits (CX 6a-k and CX 7a-j) summarizing his findings, which are of a purely routine, clerical nature, are specifically found to constitute reliable hearsay evidence of judicial records, individual copies of which would unquestionably constitute admissible evidence in any court.

63. Laidman's survey reveals a total of 175 such suits. That a large number of the New Jersey residents named as defendants in such suits were customers of respondents who had bought carpeting in New Jersey and had nothing to do with New York is established by reference to the live testimony of five such defendants, supplemented by the affidavits of 30 more such defendants.

64. That a common result (and thus, inferably, a purpose) of respondents' suits against New Jersey residents in New York has been to obtain default judgments is shown by the high proportion of such suits which resulted in a default.

65. The evidence supporting both these findings may be summarized as follows:

[31] TABLE I

N.J. Resident	Laidman Reference	Transcript or Affidavit Reference	Sale Made in N.J. Reference	Purchase Cost	Ad damnum or default judgment	N.J. residents denial of service of process (reference)	Suit filed (S) Default Judgment (D) in N.Y.
<i>Witnesses</i>							
Cipriani	CX 6h	505-528	514	\$400.00	\$261.20	514	(S)
Beard (Gilbert)	CX 6h	569-588	576	\$580.00	\$90.98	587	(S)
Porter	CX 7f	532-554	541	\$653.00	\$952.20	541	(D)
Tomaro	CX 7f	776-809	781	\$148.00	\$143.85	786	(D)
Crute	CX 7i	555-568	558	\$500.00	\$695.61	559	(D)
<i>Affiants</i>							
Doloszycki	CX 7g	CX 11	11c	\$138.02	\$164.47	11c	(D)
Casler (Caster)	CX 7e	CX 15	15c	\$300.00	\$252.17	15c	(D)
Champion	CX 7h	CX 16	16a,c	\$495.43	\$647.58	16d	(D)
Enna (Emma)	CX 7e	CX 17	17a,c	\$173.04	\$277.79	17c	(D)
Flor	CX 6g	CX 19	19c	\$372.86	\$329.97	19b	(S)
O'Grady	CX 6e	CX 25	25b	\$92.00	\$138.35	25b	(S)
Parker	CX 7e	CX 26	26b	\$182.46	\$208.67	26b	(D)
Pickett	CX 7f	CX 27	27a,b	\$811.64	\$1199.60	27c	(D)
Schuman	CX 6e	CX 31	31a,c	\$354.00	\$354.00	Summons rec'd (31b) 34b Summons rec'd (35c)	(S)
Gass	CX 7c	CX 34	34a,b	\$700.00	\$1126.18		(D)
Hill	CX 6e	CX 35	35a	\$270-\$370	\$290.05		(D)

[33] 66. The foregoing finding that in 175 cases respondents sued New Jersey residents on New Jersey contracts in the City Court of New York City is corroborated by a determination of Hon. Edward Thompson, Administrative Justice of that Court on May 24, 1973, that 181 such actions (brought by respondents against New Jersey residents) must be set aside and dismissed and all judgments entered therein must be vacated (CX 95a-f) because of improper venue and resultant denial of due process of law developed before Justice Thompson during a hearing on January 16, 1973, (CX 93a-z59), (See particularly Justice Thompson's final finding at CX 93z55 and CX 93z56:

I am convinced beyond a shadow of a doubt that each and every one of those judgments and/or summonses . . . should, in the interest of justice be vacated or dismissed. . . . Due process has not even been waved before the eyes or the ears of the average witnesses who have testified. . .)

*"Sewer Service"*¹²

67. The data appearing in the last two columns of the table incorporated in Finding #65 which is entitled "TABLE 1" reveals that in most of respondents' "long arm" suits against New Jersey customers in the Civil Court of the City of New York (whether or not such suit had yet eventuated in a default judgment) the consumer-defendants denied that they had ever been served with process or had otherwise learned (except from FTC or other investigators) that they had been sued in New York or that a default judgment had been taken against them there.

[34] 68. The evidence of "sewer service" and default judgments turned up by the Laidman study related only to New Jersey residents sued in New York. However, other evidence confirms that arranging for "sewer service," thereby obtaining default judgments against customers has been a common practice of respondents in their suits generally, not merely those against New Jersey residents.

69. One Novack, an attorney employed by the New York Regional Consumer Protection Council, headed a survey of actions brought by respondents against New York City residents between (January) 1969 and (May) 1972 (CX 56a). Her statistical findings, embodied in worksheets (CX 57) and summarized in a statistical affidavit (CX 56) reveal that respondents took about 22 default judgments against New Yorkers during that period.

¹² "Sewer service," as used in the complaint here was defined by complaint counsel:

"It's a common word used around this area for a process server who has ostensibly made personal service upon a defendant in accordance with the law when in fact he never made such personal service. The term "sewer service" means that the summons is actually put into the sewer rather than served in accordance with the law" (Koch 199).

70. Although the court records in almost all of these cases show a proper return of service of summons and complaint (CX 56b thru CX z9), that there must have been some deficiency in the notice given defendants in such actions seems almost certain in light of the large number of defaults found. Using the Novack summary of default judgments (above), Commission investigators set out to determine how many, if any, of the judgment debtors were really served with process, as shown on the records of the Civil Court of the City of New York.

71. Affidavits obtained from 13 such judgment debtors, establish (1) that the alleged debt in each case arose out of a purchase of carpeting or furniture from respondents and (2) that the judgment debtor in each case denied that any process had ever been served on him. Table II summarizes these findings:

[34a] TABLE II

Name of New York Resident	NOVACK Reference	Judgement Debtor's Affidavit	Debt related to carpet or furniture purchase	Service of process denied by debtor
1. Kellam	57z56	CX 77	77a	77d
2. Michael	57z78	CX 79	79a	79b
3. Neuer	57z85	CX 80	80a	80d
4. Pena	57z91	CX 81	81a	81b
5. Prieto	57z94	CX 82	82a	82b
6. Robinson	57z101	CX 83	83b	83c
7. Ronan	57z108	CX 84	84b	84d
8. Alexander	57d	CX 86	86a	86b, c
9. Coleman	57z28	CX 88	88a	88c
10. Douglas/Person	57z19	CX 89	89a	89c
11. Elsey	57z21	CX 90	90a	90b
12. Gaines	57z31	CX 91	91a	91c
13. Jones	57z52	CX 92	92a	92c

[35] 72. Complaint counsel also urge us to make use of affidavits by Commission investigators showing that in an additional 18 cases such investigators were unable to locate New York judgment debtors identified by the Novack study and that from what the investigator learned at the recited place of service it would have been impossible for the debtor to have resided there because the building had previously been torn down or the debtor had never been heard of in such building or had moved before the date of service or for other similar reasons. (CX 58 thru CX 74)

73. We decline to attach any weight to such evidence because it

plainly involves multiple hearsay from unknown sources whose reliability cannot be weighed properly. It is found, however, from the affidavits of the purchaser-defendants themselves (which we deem sufficiently reliable for this purpose) that in many of respondents' collection suits against New Yorkers in the Civil Court of the City of New York the service of process shown on the records of that court was falsely returned and we further find that such false return by the process server in most cases was entered by respondent Kantor or his employees, who served much of respondents' process. (Kantor 267-270)

COUNT IV

Truth in Lending

74. Respondents regularly arrange for the extension of consumer credit, as the phrases "consumer credit" and "arrange for the extension of consumer credit" are defined in the Federal Reserve Board's Regulation Z, the implementing regulation of the Truth in Lending Act. (Cipriani, 521; Porter, 537) In connection with their credit sales, as "credit sales" is defined in Regulation Z, respondents have required their customers to enter into contracts for the sale of respondents' goods. (Crute, 557; CX 10d; Beard (Gilbert) 573; CX 47c)

75. Sixty-one contracts entered into by respondent New Rapids Carpet Center, Inc., and its consumer-contractors, (who are identified in the contracts) are found on one or the other of two pre-printed contract forms. (CX 55a thru CX 55z34) Such cost and financing information as was offered the consumer appears on these contracts.

[36] 76. One of these two pre-printed contract forms (see contracts numbered CX 55a thru 55z19) used both before and after July 1, 1969 (the effective date of the Truth in Lending Act) fails to disclose the following:

(1) The amount of the finance charge, as required by Section 226.8(c)(8) of Regulation Z.

(2) 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.

(3) 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.

4. Identification of 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.

77. The same pre-printed contract form (CX 55a thru CX 55z19) uses the terms "contract," "deposit," and "net," instead of "cash

price," "cash downpayment," and "unpaid balance of cash price" respectively, when describing the difference between the cash price and the total downpayment, as required by Section 226.8(c)(1), (2), and (3) of Regulation Z.

78. The same pre-printed contract form (CX 55a thru CX 55z19) did not have a space provided for the "deferred payment price" (which is defined as the sum of the cash price, the finance charge, and all charges which are included in the amount financed but which are not part of the finance charge), as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

79. The same contract form (CX 55a thru CX 55z19) contains no blank spaces for required disclosures, including the finance charge, the annual percentage rate of interest, the amount or method of computing late charges, [37] or the penalty for prepayment. Nor was such information hand written by the salesmen on any of the 44 such contracts in evidence here. The financial information which was provided to respondents' customers was written in a small box approximately two inches square, at the bottom of the front page of this contract. Even if fully completed by the salesman, such box of information could not have provided financial disclosure which was clear, conspicuous, or in a meaningful sequence, as required by Section 226.6 of Regulation Z.

80. At various times after July 1, 1969, the effective date of the Truth in Lending Act, respondents used another type of pre-printed contract form (see CX 55z20 thru CX 55z34) which, when completed properly, as appears generally to have been the case, contained the information and terminology necessary for compliance with Regulation Z. However, in a number of instances after July 1, 1969, as listed below, respondents continued to use the older contract forms for contracts providing for more than four installment payments (the regulatory minimum until 10/28/75) and did not alter them to make the required disclosures.

<i>Consumer</i>	<i>Contract</i>	<i>Contract Date</i>
Anthony	CX 55a	1/13/70
Clifton	CX 55f	2/28/70
Davis	CX 55i	10/11/70
McFaddon	CX 55y	3/30/70
Mari	CX 55z	9/11/70
Rouse	CX 55z10	3/20/70
Taylor	CX 55z16	11/22/70

Interstate Commerce

81. Respondents in their joint Answer do not deny any of the allegations of Paragraph 4 of the complaint concerning interstate commerce. Accordingly it is found, as alleged in the first section of Paragraph 4 of this complaint, that:

Respondents New Rapids Carpet Center, Inc. and Lee Kantor, individually and as General Manager of New Rapids Carpet Center, Inc., are now, and have been for some time last past, engaged in business as a retailer of [38] carpets, and respondent Lee Kantor, both individually and doing business as New Rapids Furniture Warehouses, Inc.,¹³ is now, and has been for some time last past, engaged in business as a retailer of furniture, major appliances and carpets, all of the said respondents offering for sale and selling their respective products to the consuming public on a cash or credit basis. Respondents sell and ship their products from New York State to purchasers located in other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

82. It is further found, as alleged in the second section of Paragraph 4 of the complaint that:

In the course and conduct of their business in connection with sales made on credit, respondents New Rapids Carpet Center, Inc. and Lee Kantor assign or transfer their installment sales contract paper, which each of said respondents secure from purchasers of their respective products, to their two affiliated companies, respondents Charge Account Credit Corp. and Charge Account Factors, Inc., for collection purposes only.

[39] 83. It is further found, as alleged in the third section of Paragraph 4 of the complaint that:

In furtherance of their collection objectives, respondents Charge Account Credit Corp. and Charge Account Factors, Inc. currently and for some time last past have issued coupon payment books to the aforesaid purchasers, many of whom are residents of the State of New Jersey, have used the facilities of the United States mail to solicit and obtain payments from said purchasers, and have used the facilities of the courts of the State of New York to sue residents of the State of New Jersey. In connection with the foregoing activities, respondents Charge Account Credit Corp. and Charge Account Factors, Inc. maintain and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

84. It is further found, as alleged in the fourth section of Paragraph 4 of the complaint that:

¹³ In their answer to Paragraphs 1 and 2 of the complaint, respondents formally denied that respondent Kantor has been doing business individually as New Rapids Furniture Warehouses, Inc. since that corporation was dissolved. (For legal theory, see TR 142.) However, we do not understand this to constitute a denial that the business carried on by Kantor, whether under his own name or the corporate tittle, is and has not been engaged in interstate commerce.

As an integrated operation, all of said respondents referred to in this Paragraph Four, in the course and conduct of their aforesaid business, and at all times mentioned herein, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the offering for sale, and sale, of furniture, major appliances and carpets and other products of the same general kind and nature as that sold by said respondents and in the collection of monies allegedly due in connection therewith.

85. The parties' agreement on the correctness of these jurisdictional facts is corroborated by the evidence of record here. The charges of Counts I & II (bait and switch, free gift and miscellaneous marketing tactics) concern selling leads called from New Jersey in response to television advertising broadcast from New York to New Jersey and the ensuing acts and practices of a New York retailer in the course of soliciting sales, [40] entering into purchase contracts and delivering carpeting in New Jersey. Count III concerns the impropriety of out-of-state venue in litigation growing out of such interstate sales and financing contracts incidental thereto. [Count IV, concerning truth in lending, requires no showing of engagement in interstate commerce.]

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over all respondents.

Comment: Jurisdiction over the subject matter here is found in Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a) and, with respect to Count IV, under Section 108 of the Truth in Lending Act, 15 U.S.C. 1607. All respondents appeared generally by attorney.

2. The acts and practices charged in the complaint and proved here took place in commerce, within the meaning of the Federal Trade Commission Act, except that no finding concerning engagement in commerce is made as to acts and practices charged under Count IV.

Comment: Engagement in interstate commerce within the meaning of the Federal Trade Commission Act, 15 U.S.C. 44, was not denied by respondents in their joint Answer to the complaint and was confirmed by evidence summarized in Findings #81-85. The Truth in Lending Act authorizes this Commission to seek cease and desist orders against violators of the Act without reference to engagement in or effect on interstate commerce. 15 U.S.C. 1607(c).

3. Respondent Lee Kantor, a/k/a Lee Woods, was the organizing, controlling and actively directing force in each of the respondent corporations and in New Rapids Furniture Warehouses, Inc., another affiliate, while said corporations existed. All of them together [41] with Kantor in his past and present capacity as an individual businessman, have constituted an integrated family enterprise which Kantor has always dominated and whose acts and practices, including those found here, he has always personally formulated, directed and controlled.

Comment: Although carefully maintaining record denials of virtually all substantive allegations of the complaint throughout this proceeding, respondents in their "Proposed Findings Of Fact And Conclusions Of Law" seem in the end to place almost exclusive reliance on their principal contention, to wit, that respondent Kantor did none of the things charged here in his *individual* capacity and thus presumably cannot be saddled with a cease and desist order properly directed to the corporations for whom he worked. The facts do not support such a conclusion.

In the first place, the last of the corporations involved was dissolved some three years ago, yet respondent Kantor has continued to carry on substantially the same business as in days of yore. His counsel argues (Tr. 142) that under New York law *de facto* corporations have continued to exist after dissolution of the *de jure* ones and that Kantor must be viewed as still a mere corporate employee without liability for these corporations' acts and practices. We do not pause to consider whether such would, in fact, be the result of a proper application of state law, because this case is governed in such matters by the federal law and the law of this Commission in particular. *Spiegel, Inc.*, 86 F.T.C. 425, 445 (1975).

On the question of individual responsibility for the unfair trade practices of corporations in interstate commerce a very considerable body of law has grown up and is dispositive here. The better authorities hold that an individual [42] participant can be held responsible for the acts and practices of a corporation – even a closely held family corporation such as those involved here – merely on the basis of his domination of corporate affairs *generally* ("formulates, controls and directs policies" is the usual phrase). *Tractor Training Service, et al. v. FTC*, 227 F.2d 420 (9th Cir. 1955). Other cases hold that there must be a further showing

that such individual actually participated in the challenged acts and practices.¹⁴ *Coro, Inc., et al. v. FTC*, 338 F.2d 149, 154 (1 Cir., 1964) cert. den. 380 U.S. 954.

But this distinction is of no import here because respondents did not deny in their Answer that respondent Kantor has dominated each of the respondent corporations both generally and with reference to the specific acts and practices charged here. They could hardly have done otherwise. His general dominance of the respondent corporation and their affiliate, New Rapids Furniture Warehouses, Inc., as well as of the integrated family enterprise which they together made up was clearly established by the evidence here. The corporations were really one and that one was Kantor. Moreover, his central position in virtually everything respondents ever undertook and in all the things they are charged with doing was just as clearly demonstrated. In light of all this evidence respondents' principal if not sole defense - no individual responsibility for corporate acts - cannot be accepted.

[43] 4. While engaged in the offering and sale of carpeting and other household goods at retail out of a small furniture warehouse in the Bronx (New York), respondent Kantor, individually and through the various corporations of the integrated family enterprise he has dominated and controlled, has engaged in unfair methods of competition and unfair acts and practices in commerce, including the following:

(a) He arranged to receive leads from a TV advertisement of a bargain price for carpeting, not to sell the advertised carpeting (which his salesmen immediately disparaged once they could get into customers' homes), but to switch these leads to buying much more costly carpeting, as was, in fact, almost always what happened.

Comment: "Bait and switch" is too common a commercial practice and its unfairness is too well settled to require more than cursory comment. The Commission's "Guides Against Bait Advertising" prohibit it and define it as follows:

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something

¹⁴ It is fair to say that while this Commission has continued to align itself in theory with the general domination school the facts on which its decisions have rested, at least since *Coro*, have almost always revealed an individual who participated in the particular acts and practices challenged as well as dominating the corporation more generally. *Coran Bros. Corporation, et al.*, 72 F.T.C. 1 (1967).

else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. 16 C.F.R. 238.0 - 238.1 (1976).

[44] Recent cases affirming the doctrine include *Tashof v. FTC*, 437 F.2d 707 (D.C. Cir., 1970); *Consumers Products of America, Inc. v. FTC*, 400 F.2d 930 (3 Cir., 1968), *cert. den.*, 393 U.S. 1088 (1969); and *Carpets "R" Us, Inc.*, D. 8947, Commission's Opinion of 2/26/76.

The only feature of respondent Kantor's "bait and switch" operation which might be considered novel is the fact that neither Kantor nor any of his henchmen actually made the representations contained in the Ideal Design TV commercial (CX 9b). It had, in fact, been running for some time before Kantor agreed to start buying the New Jersey leads. It seems plain, however, that this makes no significant difference in the equities of the situation.

Whether Kantor made his own representations or effectively adopted others' representations, the offense came to the same thing. In both cases he would know equally well consumers were being offered a very "alluring" bargain but an "insincere" one, since his own intentions (as possibly distinguished from those of Ideal) were to abandon and disparage the "bait," in order to "switch" the customer to vastly more profitable business as soon as the initial hurdle of getting a foot in the door could be accomplished.

It is the disparagement of one's own merchandise which largely distinguishes "bait and switch" from lawful "trading up".¹⁵ From that viewpoint it makes no difference whether the pre-disparagement "bait" representations were made or adopted by Kantor. Either way it was the same unfair business practice. We have no trouble finding that the evidence here amounted to a "bait and switch" operation and was, accordingly, an unfair trade practice.

[45] (b) In the course of the above "bait and switch" operation (but not necessarily part of it) he also managed by various devices to renege on the TV commercial's promise of a free vacuum cleaner or a 9' x 12' rug to buyers of the advertised carpeting.

¹⁵ Kintner, Earl W., *A Primer On The Law Of Deceptive Practices* (1971), p. 176.

Comment: Insofar as the TV commercial's offer of a gift to be included with purchase of carpeting was merely part of the bigger "bait and switch" operation found here, its legality would seem to be governed by the same considerations just discussed. *Atlantic Sewing Stores, Inc.*, 54 F.T.C. 174, 179 (1957). Since, however, there was no switch of interest among the disappointed consumers as far as the gift was concerned, we are more inclined to view this as a simple matter of systematic failure to honor a promise broadcast to many small consumers and believed by them but probably not worth litigating in individual cases. It seems, in fact, one of those cases Mr. Justice Brandeis thought peculiarly suited to the mission of this Commission:

To justify filing a complaint the public interest must be specific and substantial. . . . Sometimes (it is so) because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it.

(c) It has been his practice to write up carpeting sales contracts with a guarantee of so many years "wear" that is so vague as to be virtually worthless.

Comment: The deceptively vague guarantees of "6 years wear" or "8 years wear" or "10 years wear" etc. which respondent Kantor's salesmen were sometimes accustomed to write into their installment sales contracts [46] (apparently as the needs of the moment might dictate) fly so clearly in the face of this Commission's "Guides Against Deceptive Advertising of Guarantees" (adopted 4/26/60) that no further reference seems necessary. Those guides specify the standards by which guarantees are to be judged as follows:

239.1 *Guarantees in general.*

In general, any guarantee in advertising shall clearly and conspicuously disclose -

- (a) The nature and extent of the guarantee. . . .
- (b) The manner in which the guarantor will perform. . . .
- (c) The identity of the guarantor. . . . 15 C.F.R. 239.1

[A subsequent policy statement by the Commission confirms that the Guides are applicable to both actual warranty documents and advertisements of warranties. 40 F.R. 60 168 (12/31/75)]

Respondents' guarantees clearly do not pass this test and,

accordingly, it is found that they constitute unfair acts and practices in commerce.

(d) His sale contracts have omitted terms important for the buyer to know, including credit price elements, disclosure of which is guaranteed by the Truth in Lending Act, and elementary quantity/unit cost data, knowledge of which might well have rendered Kantor's customers somewhat less susceptible to "bait and switch" and other predatory schemes.

Comment: The Truth in Lending Act and implementing Regulation Z of the Federal Reserve Board are very specific in their requirements regarding disclosure of the terms of consumer credit transactions and there is little if any room for a [47] plea of "substantial" compliance. One either is or is not. *Beauty-Style Modernizers, Inc.*, 83 F.T.C. 1761 (1974). Respondents' contracts are not. It is that simple.

The complaint also charges that respondents' carpeting form sales contracts long had no place for disclosing the quantity of carpeting or its unit (per yard) cost and that even later a new form anticipating a statement of quantity was never filled out in actual practice, while disclosure of unit cost is still not even within the contemplation of the form in use. We have been loathe to find this an unfair practice because it is certainly not the current understanding of the commercial community that disclosure of quantity sold and unit cost is mandatory or even usual in ordinary experience.

However, the mere fact that a trade practice may be lawful under ordinary circumstances, does not necessarily exempt it from proscription in special circumstances. Here we cannot escape the feeling that deliberately keeping consumers ignorant of the quantity and unit cost of the carpeting they were buying contributed something to Kantor's salesmen's striking ability to switch \$77 buyers to \$400, \$500, \$600 and even costlier carpeting. Accordingly, it is found that respondents' deliberate policy of keeping consumers as ignorant as possible of what they were really ordering, under the circumstances of this case, constituted an unfair trade practice.

(e) He has frequently sued New Jersey customers for alleged breach of contract or non-payment of the price of purchases in what is for them necessarily an inconvenient forum, the New York City Civil Court, thus denying these consumers a fair chance to litigate their rights under his sale contract or otherwise.

[48] *Comment:* A merchandiser-creditor's systematic abuse of its own state "long arm" venue statute to force its out-of-state consumer-debtors to pay without litigating their own claims or face the crushing burden of distant litigation has only recently been dealt with comprehensively and dispositively by this Commission in *Spiegel, Inc.*, 89 F.T.C. 425 (1975). We do not propose to plow the same ground again so soon. The present case is on all fours with *Spiegel*, except perhaps for the differing size of the merchandise-creditors in the two cases, and we hold that *Spiegel* controls this case.

(f) He has regularly obtained default judgments in disputes with his customers, not only by suing them in an inconvenient forum but by frequently seeing that such customers are not served with process or otherwise notified of his suits against them until it is too late and they have been defaulted.

Comment: This practice, commonly called "sewer service," is routinely condemned as depriving its victims of their fundamental rights to the due process ideal of the Constitution. *United States v. Wiseman*, 445 F.2d 792 (2d Cir. 1971), *cert. denied*, 404 U.S. 967; *United States v. Barr*, 295 F. Supp. 889 (S.D.N.Y. 1969). While we find no precedent for treating "sewer service" as an unfair trade practice, it would seem to fall well within the ambit and rationale of *Spiegel, Inc.*, 86 F.T.C. 425 (1975) in which, as we have just seen, this Commission assimilated the collection of commercial origin debts to the maintenance of a fair marketplace. We agree that "sewer service" is smelly business.

5. The aforesaid acts and practices of respondent Kanter and each of the corporate components of his integrated family enterprise have constituted deceptive acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act and in certain cases in violation of the [49] Truth in Lending Act and all have been to the prejudice and injury of the consuming public and to respondents' competitors. An order for relief from respondents' unfair practices is accordingly found to be in the public interest. [50]

RELIEF

Determination of the proper relief from continuation of the unfair acts and practices found starts with the notice order (hereafter sometimes "N.O.") attached to the complaint, which the Commission thought likely to be appropriate if the facts turned out to be as it had

reason to believe was the case when it issued the complaint. Conversely, divergences from the pleaded facts call for some divergences from the contemplated relief.

In this case, many key provisions of the notice order require little or no attention. N.O. I-2, I-3 and I-4 (now ALJ's I-2, I-3 and I-4) (cease and desist from "bait and switch" sales tactics) are plainly appropriate, with one minor addition. (I-2 has been revised to reach more clearly representations "adopted", as in this case, as well as those expressly "made" by respondent. N.O. I-13 and I-14 (now ALJ's I-6 and I-7) seem appropriate to prevent misrepresentation and/or non-delivery of gifts offered, specifically when employed to sweeten a carpeting or other deal. Similarly, N.O. I-24 (now ALJ's I-17) hopefully solve the problem of deceptively vague guarantees.

The various provisions of Part II lay down quite detailed rules for respondent's use of legal process in suits against customers for alleged non-payment of debts or other deficiencies. We would be loathe to tinker with such a (necessarily) elaborate scheme, even if it seemed less adapted than appears to ending such manifestly unfair practices as respondent's abuse of New York's "long arm" venue statute and "sewer service," both well calculated to deprive consumer-debtors of the most elementary due process of law.

The provisions of Part III of the order are very specific, as befits the very specific requirements of the Truth in Lending Act, as to which the Commission has said there is no such thing as "substantial" performance. A creditor either is or is not in violation of that act and there is accordingly little room for argument about a cease and desist order in case of a violation. There are, of course, various other less important provisions of the order than those we have just singled out which seem entirely proper. We turn now to a number of provisions of the complaint order which we find less satisfactory.

[51] In their proposed order, complaint counsel have already recognized that five sections of the notice order should be dropped in whole or in part because the evidence developed during the trial of the violation issues would not support such relief. We concur in all instances and have deleted the following provisions.

N.O. I-1 (now ALJ's I-1[b]): portion requiring respondent to maintain an adequate supply of advertised product deleted.

N.O. I-5 (now deleted entirely): prohibition against representing carpet is cut to fit area covered when pre-cut before installation.

N.O. I-6 (now deleted entirely): portion prohibiting misrepresentation of respondent's method of measuring-up for carpeting or of determining selling prices on the basis of such measurements.

N.O. I-25 (now deleted entirely): prohibited unilateral substitution of different merchandise for that ordered by purchaser.

N.O. I-26 (now deleted entirely): prohibited unilateral cancellation of purchase orders respondent found he could not or would not supply and ordered refunds of all payments already made.

To these five instances where the complaint counsel have themselves suggested deletion for insufficient proof of violation, the Administrative Law Judge has added eight more, where he is convinced that a provision requires deletion or modification due to failure of proof.

[52] N.O. I-1 (portion now designated I-1[b]): re-written to reflect the proof that the sales leads involved here were actually obtained from an ad agency, not from the advertiser; revised also to give respondent an alternative to meeting the original advertiser's price willy nilly (as complaint counsel would have it) if respondent will immediately disclose his differing identity and differing prices (or other conditions of sale) to all purchaser leads actually approached by him.

N.O. I-6 (now deleted entirely): portion which was not deleted at complaint counsel's suggestion, *i.e.*, prohibition against representing that respondent's carpeting is sold by the unit rather than by the square yard. [Query relevancy even if proved].

N.O. I-7 (now ALJ's 5): originally ordered disclosure that respondent's carpeting is sold by the square yard and reference to price per square yard; revised by Administrative Law Judge to require disclosure in sales contracts of quantity purchased and unit price, in accordance with violation found.

N.O. I-8 (now deleted entirely): ordered disclosure during any sales presentation that selling firm was not the advertiser (if such was the case); proof revealed

almost no confusion of identity to support such finding.

N.O. I-9 (now deleted entirely): these three paragraphs
 N.O. I-10 (now deleted entirely): prohibited in various
 N.O. I-11 (now deleted entirely): ways advertising
 "special" prices that were not really "special;" proof
 showed they were "special."

[53] N.O. I-12 (now deleted entirely): ordered disclosure, where word "free" is used re bonus for purchase of other merchandise, that all conditions of "free" gift must be met; advertisement in question (CX 9b) never used word "free" and issue was respondent's good faith in promising "free" gift in connection with "bait and switch" tactics.

Complaint Counsel have proposed two *additions* to the relief referred to in the notice order, both of which have been adopted by the Administrative Law Judge. The first is the minor addition of a caveat in N.O. I-24 (now ALJ's I-17) that the terms of this order are not intended to relieve respondent of any duties under other laws (having in mind particularly the relatively new Magnuson-Moss Act concerning warranties). Secondly, they have sought a prohibition against Kantor's continued use of the word "Inc." as part of the tradename "New Rapids Furniture Warehouses, Inc." ever since the corporation was dissolved, a fact clearly established by the evidence here. It has been held that such a practice is unfair because it tends to deceive customers who prefer to deal with corporations as being more responsible than individuals, etc., *In the Matter of Kodize Process Corporation, et al.*, 40 F.T.C. 441, 1945 and accordingly, we have added such a provision in N.O. I-1 (now ALJ's I-1(a)).

Finally, complaint counsel have also proposed certain changes in wording throughout the order to conform the relief to the fact that emerged from the trial that all of the respondent corporations (New Rapids Carpet Center, Inc., Charge Account Factors, Inc., Charge Account Credit Corp.) and another affiliate (New Rapids Furniture Warehouses, Inc.) have been dissolved for varying lengths of time, as a result of which complaint counsel now desire that the cease and desist order run only against Lee Kantor, a/k/a Lee Woods, individually and as an officer of each of the constituent corporations of his integrated family enterprise, and as doing business individually under the name "New Rapids Furniture Warehouses, Inc." since dissolution of that corporation. The Administrative Law Judge doubts necessity for the order (as distinguished from the complaint)

to refer to Kantor's former positions in dissolved corporations, particularly since the order expressly binds him, his agents, representatives and employees "directly or through any corporation, subsidiary or other device" (see prefaces to Parts I, II and III). In view, however, of the [54] Commission staff's apparent view that the proposed language will have some practical enforcement value and since retaining complaint counsel's language can hardly have any ill effects, the Administrative Law Judge has retained the proposed language in the several sectional prefaces and has adopted other related minor changes such as substituting "respondent" for "respondents" throughout the order and deleting an unnumbered paragraph in N.O. V (now ALJ's IV) requiring the respondent corporations to notify the Commission of significant changes in their status.

[55] The following order will be issued.

ORDER

I

It is ordered, That respondent Lee Kantor, a/k/a Lee Woods, individually, and as a former General Manager of New Rapids Carpet Center, Inc., and as an individual doing business, as New Rapids Furniture Warehouses, Inc. and respondent's agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpets, furniture, appliances and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1.(a) Using "Inc." in the trade name used to designate the business operated by him individually, or otherwise representing in any manner that said business is incorporated or operated by a corporation.

(b) Obtaining sales leads or prospects arising out of any advertising other than respondent's own for the purpose of selling or offering to sell the advertised product without selling or offering to sell such product pursuant to all the advertised terms, unless fair notice is given at the time of the first sales approach of (1) the separate identities of the advertiser to seller and (2) any difference in their prices or other conditions of sale of the advertised product.

2. Using, in any manner, a sales plan, scheme, or device wherein false, misleading or deceptive statements or representations are made or adopted in order to obtain leads or prospects for the sale of carpeting or other merchandise or services.

3. Making representations, orally or in writing, directly or by

implication, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

4. Disparaging, in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

[56] 5. Failing to disclose clearly and conspicuously in all carpeting sales contracts the quantity sold and the price per square yard for such carpeting.

6. Misrepresenting, orally, visually, in writing or in any other manner, directly or by implication, the nature of any gift and the conditions under which it is given.

7. Failing to make delivery to respondent's customers of any gift or bonus product advertised or offered in connection with the purchase of carpeting or any other merchandise.

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

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

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

10. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, [57] and which shall contain in 10 point boldface type the following information and statements in the same language as that used in the contract:

Initial Decision

90 F.T.C.

NOTICE OF CANCELLATION

[enter date of transaction]

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

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

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

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

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

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

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

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

13. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

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

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

16. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Provided, however, that nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon a showing of inconsistency shall make such modifications as may be warranted in the premises.

17. Representing, orally or in writing, directly or by implication, that any product or service is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondents deliver to each purchaser, prior to the signing of the sales contract, a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee equal to the representations, orally or in writing, directly or by implication, made to each such purchaser, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of each such guarantee.

[60] Nothing in this order shall be construed to relieve respondent of his duty to comply with present and future laws, regulations and rules dealing with warranties or guarantees.

II

It is ordered, That respondent Lee Kantor, a/k/a Lee Woods, individually, and as former General Manager of New Rapids Carpet Center, Inc. and as a former officer of Charge Account Factors, Inc. and as a former officer of Charge Account Credit Corp., all of which corporations are now defunct, and as an individual doing business as New Rapids Furniture Warehouses, Inc., and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the collection of consumer debts, shall forthwith cease and desist from:

Failing to give customer-debtors the opportunity to provide respondents with an affirmative statement as to the reason for any alleged default in payment and to furnish the alleged debtor along with the first notice of an alleged default, a self-addressed stamped postcard allowing customer-debtors to either deny liability completely, or to dispute the amount of the debt, or to indicate any other reason for non-payment of the debt. The form of the postcard shall be as follows:

I have not paid this bill for the following reason:

- 1- () It's a mistake. I don't owe anything because _____
- 2- () It's a mistake. The balance should only be \$ _____
- 3- () State any other reason for non-payments:

It is further ordered, That upon receipt of said card indicating the reason for non-payment, all further collection attempts shall be temporarily discontinued and respondent shall designate a responsible individual with respondent's organization who shall make an effort to arrive at a fair and equitable adjustment.

[61] *It is further ordered,* That respondent shall commence legal action against his customers only:

1. Where the debtor does not return the postcard within thirty days after the date of mailing, or
2. Where in the reply the debtor has indicated a dispute over the debt and respondent's representative has made a good faith effort to arrive at a mutually satisfactory resolution of the dispute and such efforts have been unsuccessful.

It is further ordered, That:

1. Where respondent brings suit against a consumer for non-payment of any amount claimed to be due on account of a retail purchase or extension of credit in connection with such purchase or

on account of any contract or security instrument in connection with such purchase, respondents shall notify such consumer of such suit by sending a copy of the summons or other document initiating the action by first class mail with certificate of mailing and "do not forward" and "address correction requested" noted thereupon, to the last known address of such consumer, in addition to any other notification or service required by any other applicable federal, state or local law, rule, practice or custom.

2. Respondent shall send a second notice of suit, in the form and manner described in subparagraph 1 above:

a. To the consumer at a new address when a new address is secured as a result of the first mailing, or

b. To the consumer in care of his place of employment, if known, when the U.S. Postal Service returns the original notice, indicating inability to make delivery and without an address correction noted thereon. Nothing on the outside of any envelope sent care of such place of employment shall indicate the nature of the contents thereof or that it involves a claimed debt; and the envelope shall have as the return address thereon only a post office box address or a vendor's name.

[62] *Provided, however,* that respondents shall not send any notice of suit to a consumer in care of his place of employment unless notice has been attempted under 1 and 2(a) above.

It is further ordered, That where respondents bring suit against any consumer for non-payment of any amount claimed to be due on account of a retail purchase by such consumer or extension of credit in connection with such purchase or on account of any contract or security instrument in connection with such purchase, respondent shall not bring suit except in the county where the defendant:

1. Resides at the commencement of the action, or
2. signed the contract.

This provision shall not preempt any rule of law further limiting choice of forum.

It is further ordered, That when respondents have received satisfaction or partial satisfaction of a judgment, respondents shall within 10 days of the receipt, execute and file a satisfaction piece or partial satisfaction piece with the Clerk of the Court in which the judgment has been obtained.

It is further ordered, That respondents prepare and mail to all customers who have signed retail installment contracts which are not completely paid up, quarterly statements which shall include the previous balance at the beginning of the quarter, the payments made

during the quarter, interest and late charges, if any, and the balance due as the date of mailing.

III

It is ordered, That respondent Lee Kantor, a/k/a Lee Woods, individually and as a former General Manager of New Rapids Carpet Center, Inc., and as an individual doing business as New Rapids Furniture Warehouses, Inc., as a former officer of Charge Account Factors, Inc. and a former officer of Charge Account Credit Corp. and respondent's agents, representatives, and employees, [63] directly or through any corporation, subsidiary, division or 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. Law 90-321, 15 U.S.C. 1601; *et seq.*), do forthwith cease and desist from:

1. Failing to disclose, before the transaction is consummated, as required by Section 226.8(a), the following:

(a) 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.

(b) Identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer as required by Section 226.8(b)(7) of Regulation Z.

(c) The amount of the finance charge, as required by Section 226.8(c)(8)(i) of Regulation Z.

(d) 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.

2. 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.

[64] 3. 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 prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

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

IV

It is further understood that nothing contained in this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to action instituted by municipal or state regulatory agencies.

Nothing in this order shall be construed to imply that any past or future conduct of respondent is subject to and complies with the Rules and regulations of, or the statutes administered by the Federal Trade Commission.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit and in the collection of debts, or in any aspect of preparation, creation, or placement of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

[65] *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 address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of the duties and responsibilities.

FINAL ORDER

[1] The administrative law judge filed his initial decision in this matter on January 19, 1977, and service was completed on February 14, 1977. Neither party filed an appeal from the initial decision. However, by letter of February 19, 1977, counsel for respondents requested that the Commission issue an order placing this matter on its own docket for review, pursuant to Section 3.53 of the Commission's Rules of Practice. On February 22, 1977, complaint counsel filed its opposition to respondents' request. By order of March 14, 1977, the Commission stayed the effective date of the initial decision until further order of the Commission.

[2] The ground upon which respondents' counsel bases his request is the assertion that "the Findings of Fact set forth by the Administrative Law Judge do not support the order. . . ." No reasons are provided for this assertion.

The Commission has determined to deny respondents' request that this matter be placed on the Commission's own docket for review. The appropriate method by which respondents should have sought Commission review of the initial decision was by filing an appeal under Section 3.52 of the Commission's Rules. In any event, respondents have furnished no reasons, and the Commission can discern none, why the findings of fact do not support the order. However, the Commission has determined to place this matter on its own docket for review for the limited purposes of correcting technical errors in the initial decision and determining the appropriateness of the order recommended by the administrative law judge, in accordance with Sections 3.51(a) and 3.54 of the Commission's Rules. The Commission has determined that the initial decision should become effective as provided in Section 3.51 of the Commission's Rules, with the following modifications:

- (1) In Finding 22, line 5, insert "in" between "only" and "New."
- (2) Add Table II, which had been inadvertently omitted from Finding 71 in the printed edition of the initial decision, to that Finding.

[3] (3) In the first paragraph of Part IV of the order, line 6, substitute "municipal" for "minicipal."

(4) In lieu of the last order provision in Part IV pertaining to notification by the individual respondent of changes in his business or employment, substitute:

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 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.

Therefore, it is ordered, That the initial decision and order

contained therein, as modified above, shall become effective on the date of issuance of this order.

IN THE MATTER OF
CAVANAGH COMMUNITIES CORPORATION, ET AL.

Docket 9055. Interlocutory Order, July 26, 1977

Denial of respondents' motion to withdraw matter from adjudication.

ORDER DENYING RESPONDENTS' MOTION TO WITHDRAW
MATTER FROM ADJUDICATION

The administrative law judge has certified to the Commission respondents' motion to withdraw this matter from adjudication for settlement purposes, together with his recommendation that the motion be granted. The motion is opposed by complaint counsel.

Although we agree with the ALJ that progress has been made in drafting an order that would obviate the need for litigation, we cannot now find that there is a sufficient "likelihood of settlement," Rules of Practice, Section 3.25(c), to warrant a further delay of the trial. Instead, we urge the parties to continue their negotiations. In the event negotiations are unsuccessful and respondents choose to renew their motion to withdraw, respondents should include in their submission a revised consent agreement that reflects any changes in their position since the original proffered consent was filed. If the ALJ certifies the motion, we would expect to receive more substantial justification in support of the proffered order. In assessing the adequacy of remedial provisions, for example, it would be helpful if any future submission included the appraisal and absorption study now being conducted and respondents' substantiation of the reasonableness of their proposed default limitation.¹

Respondents' motion is accordingly denied.

It is so ordered.

¹ We do not mean to suggest that there would be a "likelihood of settlement" if the two issues to which these materials relate were satisfactorily resolved.