

Complaint

90 F.T.C.

IN THE MATTER OF

HEIRLOOM COLLECTION, INC., ET AL.

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

Docket C-2898. Complaint, Aug. 25, 1977 — Decision, Aug. 25, 1977

This consent order, among other things, requires an Indianapolis, Ind. door-to-door seller of china, crystal, cookware, flatware, and linen, to cease violating the Truth in Lending Act by failing to provide to consumers, in connection with the extension of consumer credit, such disclosures as are required by Federal Reserve Board regulations. Further, the order requires the firm to make conspicuous disclosure of customers' refund rights in lay away plan agreements; to retain, without contractual obligations, merchandise until full cash payment is received; and where such purchase is revoked, to make prompt refund of all monies paid toward full cash price.

Appearances

For the Commission: *Richard A. Palewicz.*

For the respondents: *Thomas E. Tobin, Indianapolis, Ind.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof and more particularly described below and sometimes referred to hereinafter as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Heirloom Collection, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent Future Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent Linencrest, Inc. is a corporation organized, existing

and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent George L. Douglass is an individual and an officer of respondent corporations. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of said corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been engaged in the offering for sale, sale and distribution of china, crystal, cookware, flatware and linen to the general public.

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

PAR. 4. Subsequent to July 1, 1969, respondents, Future Enterprises, Inc., and George L. Douglass, in the ordinary course and conduct of their business as aforesaid, in connection with credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute retail installment contracts which contain certain credit information. Said respondents do not provide these customers with any other consumer credit information. By and through the use of these contracts, respondents, Future Enterprises, Inc., and George L. Douglass:

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

2. Fail to disclose the number, amount, and due date or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

3. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and to state 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.

4. Fail to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 5. Subsequent to July 1, 1969, respondents, The Heirloom

Collection, Inc., Linencrest, Inc., and George L. Douglass, in the ordinary course and conduct of their business as aforesaid, have caused and are causing customers to execute layaway contracts for the sale of merchandise. Under said contracts, customers agree to pay for merchandise in more than four installments. Also, under said contracts, said respondents retain the merchandise for most of their customers until the cash price is paid in full. The contracts do not, however, clearly and conspicuously give to customers the right to revoke the purchase at any time prior to full payment of the cash price and delivery of the merchandise, and to request and receive a full and prompt refund of any amounts paid toward the cash price of the merchandise. Said respondents' layaway sales are, therefore, credit sales as "credit sale" is defined in Regulation Z. By and through the use of their layaway contracts, respondents, The Heirloom Collection, Inc., Linencrest, Inc., and George L. Douglass:

1. Fail to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property which is the subject of the credit sale, using the term "cash price," as required by Section 226.8(c)(1) of Regulation Z.
2. Fail to disclose the amount of any downpayment in money using the term "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.
3. Fail to disclose the difference between the "cash price" and the "cash downpayment," using the term "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.
4. Fail to disclose the sum of the "unpaid balance of cash price" and all other charges individually itemized, which are included in the amount financed but which are not part of the finance charge, using the term "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.
5. Fail to disclose the amount of credit extended, using the term "amount financed," as determined and required by Section 226.8(c)(7) of Regulation Z.
6. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, using the term "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
7. Fail to disclose the number, amount, and due date or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.
8. Fail to disclose the sum of the payments scheduled to repay the indebtedness, using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

9. Fail to describe or identify the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and to clearly identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

10. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and to state 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.

PAR. 6. Pursuant to Section 103(s) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act and the Truth in Lending Act and the regulation promulgated thereunder; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the

Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Heirloom Collection, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent Future Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent Linencrest, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 2424 East 55th St., Indianapolis, Indiana.

Respondent George L. Douglass is an officer of each of the corporate respondents. He formulates, directs and controls the policies, acts and practices of said corporations and his address is the same as that of the corporate respondents.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents The Heirloom Collection, Inc., a corporation, Future Enterprises, Inc., a corporation, and Linencrest, Inc., a corporation, their successors and assigns, and their officers, and George L. Douglass, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device in connection with the extension or arrangement for the extension of "consumer credit" as defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (Pub. Law 98-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property which is the subject of the credit sale, using the term "cash price," as required by Section 226.8(c)(1) of Regulation Z.

2. Failing to disclose the amount of any downpayment in money, using the term "cash downpayment" as required by Section 226.8(c)(2) of Regulation Z.

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

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

5. Failing to disclose the amount of credit extended, using the term "amount financed," as determined and required by Section 226.8(c)(7) of Regulation Z.

6. 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, using the term "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Failing to disclose the number, amount, and due date or period of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

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

9. Failing to describe or identify the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and to clearly identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

10. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and to state 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.

11. Failing to disclose the "annual percentage rate" accurately to the nearest quarter of one percent in accordance with Section 226.5 as required by Section 226.8(b)(2) of Regulation Z.

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

Provided, however, that lay away plans shall not be considered extensions of credit subject to the provisions of Regulation Z if under such lay away plans: one, respondents retain the merchandise for the customer until the cash price is paid in full; two, the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amounts paid toward the cash price of the

merchandise; and, three, the customer receives a clear and conspicuous written disclosure contained in the lay away plan agreement of his right to a full refund.

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the sale of the respondents' goods or services, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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.

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

It is further ordered, That respondents maintain at all times in the future, for a period of not less than three (3) years, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relative to the manner and form of their continuing compliance with all the above terms and provisions of this order.

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

IN THE MATTER OF
ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

Docket C-2015. Interlocutory Order, Aug. 30, 1977

Denial of respondents' petition to reopen proceeding for modification of the consent order.

ORDER DENYING RESPONDENTS' PETITIONS TO REOPEN THE
PROCEEDING FOR MODIFICATION OF CONSENT ORDER

Respondents ITT Continental and Bates, ITT's advertising agency, petition the Commission, pursuant to Rules of Practice Section 3.72(b), to reopen the above-styled proceeding for purposes of modifying in certain specified aspects Paragraph I.1 of the order entered on August 17, 1971. 79 F.T.C. 248, 254.

Petitioners assert that modification of the order is needed to permit them to conduct consumer tests so as to substantiate intended advertising claims with respect to a new bread product, "Fresh Horizons." However, nothing in the order precludes such testing. Petitioners further assert that Paragraph I.1 of the order is inconsistent with the First Amendment, as applied in the recent series of Supreme Court "commercial speech" cases. The issue of the order's applicability to a particular advertising claim is not before the Commission, however. A hypothetical construction of the order that suggests it might bar truthful, adequately substantiated claims does not justify modification at this time.

The Commission has determined that petitioners have failed to present adequate evidence that changed conditions of fact or law, or the public interest, requires modification of the order. Rules of Practice, Section 3.72(b)(2).

The aforesaid petition is accordingly denied, without prejudice to respondents' right to refile at an appropriate time.

It is so ordered.