

Complaint

IN THE MATTER OF
UNITED BUILDERS, INC., ET AL.

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

Docket 9043. Complaint, July 15, 1975 — Decision, Aug. 8, 1978

This order, among other things, requires a Charleston, W. Va. home improvements firm to cease misrepresenting or failing to make relevant disclosures regarding prices, interest rates, savings, discounts and financing arrangements. Further, the firm must cease failing to furnish consumers, in connection with the extension of credit, those materials and disclosures required by Federal Reserve System regulations. The company is additionally required to establish a \$17,500 escrow account for making restitution to entitled customers, and to effectuate such restitution in a manner prescribed in the order.

Appearances

For the Commission: *Aaron H. Bulloff, Allan M. Huss, Sharon J. Devine and David V. Plottner.*

For the respondent: *Stanley E. Preiser, Preiser & Wilson, Charleston, W. Va.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that United Builders, Inc., a corporation, and Marvin Bloom and Paul Denillo, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and of 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 United Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 418 West Washington St., Charleston, West Virginia.

Respondents Marvin Bloom and Paul Denillo are the principal

officers of said corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of residential aluminum siding and other home improvement products to the public and in the installation thereof.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, advertising, and promotional material, contracts, and other business papers and documents to be shipped and transmitted from and to their place of business, located as aforesaid in the State of West Virginia, to their prospective purchasers and to purchasers thereof located in various States of the United States other than the State of West Virginia, and 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.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase and installation of their home improvement products, respondents have made numerous statements and representations in their promotional material, and through oral statements and representations made by their salesmen or representatives to prospective purchasers, respecting the nature of their offer and its price.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set out herein, and through oral statements made by their salesmen or representatives, respondents represent, and have represented, directly or by implication, that:

(1) Respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling price.

(2) After the installation of respondents' aluminum siding is completed, the homes of purchasers will be used for demonstration and advertising purposes by the respondents; and that as a result of

allowing their homes to be used as models, purchasers will be granted reduced prices or will receive allowances or discounts.

(3) Purchasers of respondents' products will pay a specified interest rate.

(4) Purchasers of respondents' products will have no liens placed against their property.

(5) Respondents owned Charleston National Bank and/or Kanawha Valley Bank.

PAR. 6. In truth and in fact:

(1) Respondents' products have not been offered for sale at special or reduced prices, and savings have not thereby been afforded purchasers because of reductions from respondents' regular selling price. In fact, respondents do not have regular selling prices, but the prices at which respondents' products are sold vary from customer to customer, depending on the resistance of the prospective purchaser.

(2) Purchasers have not been granted reduced prices, nor have they received allowances or discounts as a result of respondents' claims that the purchasers' property would be used as a display model. Respondents' claim was a representation designed to break down the prospective purchaser's sales resistance, and not to afford the purchaser a reduction in price.

(3) In many instances, purchasers of respondents' products pay interest rates different from the rates represented to them by respondents' salesmen.

(4) Purchasers of respondents' products have liens placed against their property either in the form of a second mortgage evidenced by a trust deed or in the form of a security interest created by operation of state law and perfectable under state law.

(5) Respondents do not own Charleston National Bank and/or Kanawha Valley Bank.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were and are false, misleading, and deceptive.

PAR. 7. In the usual course of their business as aforesaid, respondents employ a liquidated damages clause in their contracts, which requires purchasers to pay twenty-five percent (25%) of the contract price if they cancel the contract at any time before work is started. The amount fixed by this liquidated damages clause is not a reasonable forecast of just compensation for the harm that would be caused by a breach of the contract, or the harm that would be caused by a breach of the contract is not one that is incapable of, or is very difficult of, accurate estimation. As such, the liquidated damages clause serves as a penalty to the purchaser or attempts to impose a

penalty on the purchaser, and, accordingly, is an unfair act or practice.

PAR. 8. In the conduct of their aforesaid business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms, and individuals in the sale of aluminum siding and other home improvement products of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts, and practices, has had, and now has, the capacity and tendency to lead 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 substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. 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 II

Alleging violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time in the past have regularly extended, consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 12. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, and in connection with their credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused, and are now causing, customers to execute a document entitled "Contract," a retail installment contract, for the purchase and installation of residential aluminum siding. Subsequently, at the time of or after installation, after the credit transaction for the installation of the siding is consummated, respondents, in certain instances, have their customers execute a document entitled either "Contract and Disclosure" or "Disclosure

Statement for Real Estate Loan." Only the document entitled "Contract and Disclosures" or "Disclosure Statement for Real Estate Loan" contains the consumer credit cost disclosures required by Regulation Z. In certain other instances, respondents themselves fail to secure customers' signatures on disclosure statements in favor of respondents' having banks secure these signatures at the time of or after installation, after the credit transaction is consummated.

Therefore, respondents have failed to make the consumer credit cost disclosures required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of the Regulation.

PAR. 13. By and through the use of respondents' contract to perform home improvements, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the respondents' customers. Respondents' retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind their transactions until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures in the manner and form required by Regulation Z, whichever is later, as required by Section 226.9(a) of Regulation Z.

Having consummated a rescindable consumer credit transaction, respondents or their representatives have, in many instances, initiated installation of the home improvements, and, subsequently, respondents have delivered or caused to be delivered to their customers a written notice of the customers' right to rescind, which notice is ante-dated to the date of consummation of the contract.

By and through their actions as alleged above, respondents have:

(1) Failed to give notice to the customer of his right to rescind the credit transaction by furnishing him with two copies of the "notice to customers required by federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(2) Failed to delay the making of any physical change in the property of the customer until after the rescission period has expired, as required by Section 226.9(c)(2) of Regulation Z.

(3) Failed to delay performance of any work or service for the customer until after the rescission period has expired, as required by Section 226.9(c)(3) of Regulation Z.

(4) Failed to delay the making of deliveries to the residence of the customer until after the rescission period has expired, as required by Section 226.9(c)(4) of Regulation Z.

(5) Failed to provide customers with two copies of the "effect of rescission," set forth in Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

PAR. 14. Having consummated a rescindable consumer credit transaction, as alleged in Paragraph Thirteen above, respondents include following language in the contract:

In event of cancellation, home owners agree to pay 25% of contract price to contractor for damages for breach of contract.

By and through the use of this quoted language, respondents have:

(1) Represented, directly or by implication, that customers will or may be liable for damages, penalties, or any other charges if they exercise the right to rescind provided by Section 226.9 of Regulation Z, contrary to the provisions of Section 226.9(d) of Regulation Z.

(2) Supplied additional information, not required by Regulation Z, which is stated so as to mislead or confuse the customer concerning his right to rescind the credit transaction, in violation of Section 226.6(c) of Regulation Z.

PAR. 15. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act, and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulations promulgated thereunder, and the respondents having been served with a copy of that complaint, together with a proposed form of order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period

of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following findings of fact, conclusions of law, and order:

1. Respondent United Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its former office and principal place of business located at 418 West Washington St., in the City of Charleston, State of West Virginia.

Respondents Marvin Bloom and Paul Denillo are officers of said corporation. They formulate, direct, and control the policies, acts, and practices of said corporation, and their addresses are the same as that of said corporation.

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

STIPULATIONS OF FACT

1. United Builders, Inc. (hereinafter, United) by its agents or employees, entered into transactions with various customers for the purchase of home improvements.

2. Stipulations 3 through 29 relate to purchases of respondents' home improvements financed by the Kanawha Valley Bank of Charleston, West Virginia, for the period October 1, 1972, to August 31, 1974, inclusive.

3. In those instances in which the transaction was financed by the Kanawha Valley Bank, during the negotiations between the customer and United for the purchase of home improvements it was agreed by the customer and United that United would attempt to secure financing for the transaction through the Kanawha Valley Bank.

4. Financial information was obtained in many cases by a salesman of United from the customer at the time the customer signed a contract with United Builders, Inc. This financial information included information regarding outstanding debts, employment, income, and ownership of the real property to be improved.

5. Prior to the time the customer signed the contract with United, the salesman in many cases informed the customer of one or more specific finance terms, including the period of repayment, the amount financed, the amount of monthly payment, and the interest rate.

6. At the conclusion of the above negotiations between the customer and the salesman of United, a contract for the purchase of

home improvements was executed by and between the customer and United.

7. This contract did not contain any disclosure of consumer credit information, including the period of repayment, the amount of monthly payment, the annual percentage rate, or the finance charge, nor was a "Notice to the Customer" as set forth in Section 226.9(b) of Regulation Z (hereinafter, "Notice to the Customer"), provided to or left with the customer.

8. In some instances, after execution of the contract, United obtained and paid for building permits and descriptions of property.

9. Respondents' usual practice was to have their salesmen transmit the customer's financial information to United's office personnel, who, in turn, forwarded this finance information, including the amount financed and the number of payments, to an employee of the Installment Loan Department of the Kanawha Valley Bank.

10. In each such transaction, the amount of the finance charge, amount of each monthly payment, deferred payment price, and annual percentage rate were determined by the salesman for United in accordance with instructions and charts provided by the Kanawha Valley Bank.

11. Kanawha Valley Bank approved or disapproved the financing of the transaction, and so notified United's office personnel.

12. After execution of the contract by and between the customer and United, and after approval of financing of the transaction by Kanawha Valley Bank, United contracted for the performance of its obligations with various subcontractors.

13. These subcontractors, in fact, performed the obligations of United under the contract, and they were paid therefor by United.

14. After the subcontractor commenced performance under the contract, United, in some instances, advised the Kanawha Valley Bank to transmit to the customer such other documents as were necessary to complete the financing arrangement, if the Kanawha Valley Bank had not yet done so.

15. Kanawha Valley Bank personnel then mailed to the customer a document entitled Installment Note and Disclosure, together with a form letter instructing the customer to sign the original document, to return it to Kanawha Valley Bank, and to retain the duplicate copy.

16. Upon completion of United's obligations under the contract, the customer executed a "Property Improvement Completion Certificate," (hereinafter, "Completion Certificate") which he gave to United, or its subcontractor or other agent or employee.

17. The Installment Note and Disclosure contained the consumer credit cost disclosures pertaining to the financing of the transaction.

18. The Kanawha Valley Bank did not transmit to the customer the "Notice to the Customer" in conjunction with the furnishing of disclosures.

19. United transmitted the executed "Completion Certificate" to Kanawha Valley Bank.

20. Upon receipt of an executed Installment Note and Disclosure from the customer and receipt of an executed "Completion Certificate" from United, Kanawha Valley Bank deposited the amount financed directly to the account of United.

21. In certain instances, the customer and the salesman from United agreed to consolidate certain existing debts of the customer as part of the transaction.

22. When the customer agreed to a debt consolidation, United caused disbursement of funds to the customer to discharge the customer's obligations which were consolidated with the cost of the home improvement.

23. In some instances, Kanawha Valley Bank required a deed of trust to secure the financing for the home improvement.

24. In such instances, Kanawha Valley Bank personnel notified United of this requirement.

25. In such instances, the Kanawha Valley Bank supplied United with a completed deed of trust, a completed real estate disclosure, a completed installment note, and a "Notice to the Customer."

26. United, its agent or employee, in turn, presented the deed of trust, installment note, real estate disclosure, and "Notice to the Customer" to the customer and obtained the customer's signature on each document.

27. Upon the execution of the deed of trust by the customer, his signature was acknowledged by a notary public, who in many instances was an agent or employee of United.

28. Executed deeds of trust, real estate disclosures, installment notes, and signed copies of the "Notice to the Customer" were delivered to Kanawha Valley Bank by United.

29. In such instances, upon receipt of the executed "Completion Certificate," deed of trust, real estate disclosure, installment note, and signed copy of the "Notice to the Customer," the Kanawha Valley Bank deposited the amount financed directly to the account of United.

30. At all times material hereto, United and the Kanawha Valley Bank were engaged in a regular course of dealing as herein set forth with regard to the financing of home improvement transactions.

31. The Kanawha Valley Bank instructed United with regard to the handling of financing of home improvement transactions, and United followed this instruction.

32. Stipulations 32 through 40 relate to transactions financed by the Kanawha Valley Bank for the period September 1, 1974, to October 1, 1975, inclusive.

33. On or about September 1, 1974, as a result of a change in West Virginia consumer protection laws, United entered into a written agreement with the Kanawha Valley Bank for the financing of home improvement transactions.

34. Pursuant to the written agreement between United and the Kanawha Valley Bank, United included consumer credit disclosure information in its contract.

35. United's salesman or agent or employee left copies of the Contract and Disclosure Statement and "Notice to the Customer" with the customer.

36. United negotiated the note to Kanawha Valley Bank and delivered to Kanawha Valley Bank the Contract and Disclosure Statement, the "Notice to the Customer," and the executed "Completion Certificate."

37. In some instances, Kanawha Valley Bank required a deed of trust to secure financing for the home improvement.

38. In such instances, United obtained a deed of trust from the customer and assigned the deed of trust to the Kanawha Valley Bank.

39. Except for the changes enumerated in Stipulations 32 through 38, the procedure used to finance United home improvements transactions with Kanawha Valley Bank was identical to the facts enumerated in Stipulations 3 through 30.

40. In some instances, United may not have followed this procedure.

41. In certain instances, after United attempted financing sales of home improvements through the Kanawha Valley Bank, but was not able to obtain this financing, United then sought to obtain financing through Charleston National Bank or advised the customer to seek financing elsewhere.

42. Stipulations 43 through 63 relate only to purchases of United's home improvements, financed by the Charleston National Bank of Charleston, West Virginia, as described in Stipulation 41, from July 1, 1973, to October 1, 1975, inclusive.

43. In many instances, financial information was obtained by a salesman of United from the customer at the time the customer signed a contract with United. This financial information included

information regarding outstanding debts, employment, income, and ownership of the real property to be improved.

44. Prior to the time the customer signed the contract with United, the salesman informed the customer of one or more specific finance terms, including the period of repayment, the amount financed, the amount of monthly payment, and the interest rate.

45. A contract for the purchase of home improvements was executed by and between the customer and United.

46. In certain instances, this contract did not contain any disclosure of consumer credit information, including the period of repayment, the amount of monthly payment, the annual percentage rate, or the finance charge, nor was a "Notice to the Customer" as set forth in Section 226.9(b) of Regulation Z (hereinafter "Notice to the Customer") provided to or left with the customer.

47. In some instances, after execution of the contract, United obtained and paid for building permits.

48. United's usual practice was to have its salesmen transmit the customer's financial information to United's office personnel, who, in turn, forwarded this financial information, as well as the amount financed and the number of payments to an employee of the Installment Loan Department of the Charleston National Bank.

49. In each transaction, the amount of finance charge, amount of each monthly payment, deferred payment price and annual percentage rate were determined by an employee of United from instructions and charts provided by the Charleston National Bank.

50. Charleston National Bank approved or disapproved the financing of the transaction, and so notified United's office personnel.

51. After approval of financing of the transaction by Charleston National Bank, and after execution of the contract by and between the customer and United, United contracted for the performance of its obligations with various subcontractors.

52. These subcontractors, in fact, performed the obligations of United under the contract, and were paid therefor by United.

53. Charleston National Bank's financing procedures required United to furnish the bank with a note payable to United, a Contract and Disclosure Statement, and a "Notice to the Customer," each signed by the customer.

54. Charleston National Bank's procedures also required that the aforementioned documents be completed on forms provided or approved by Charleston National Bank.

55. United's agent or employee, who in most instances was not the original salesman, returned to the customer's home to complete

and obtain the customer's signature on the above required documents.

56. In some instances work on the property had already commenced at the time of this second visit.

57. At this second visit, United's agent or employee obtained the customers' signatures on the note, Contract and Disclosure Statement, and the "Notice to the Customer." In some instances, United's agent or employee dated these documents with the date that the customer executed the contract with the salesman for the purpose of home improvements, even though this second visit occurred at a later date.

58. United's agent or employee left copies of these documents with the customer.

59. Upon completion of United's obligation under the contract, the customer executed a "Property-Improvement Completion Certificate" (hereinafter "Completion Certificate") which he gave to United, its subcontractor, agent or employee.

60. Respondents negotiated the note to Charleston National Bank and delivered to Charleston National Bank the Contract and Disclosure Statement, the "Notice to the Customer," and the "Completion Certificate."

61. After the Charleston National Bank received these documents, it deposited the amount financed directly to the account of United.

62. At all times material hereto, Charleston National Bank did not require a deed of trust as security for any aforementioned extension of credit, nor did it take nor file any such deed of trust.

63. At all times material hereto, United and the Charleston National Bank were engaged in a regular course of dealing with regard to the financing of home improvement transactions, as herein set forth.

CONCLUSIONS OF LAW

1. United Builders, Inc. arranged for the extension of credit within the meaning of Section 226.2(h) of Regulation Z, the implementing regulation promulgated under the Truth in Lending Act.

2. The credit extended by Charleston National Bank and the Kanawha Valley Bank in each transaction described in the above Stipulations of Fact is consumer credit as defined by Section 226.2(p) of Regulation Z.

3. Each transaction described in the above Stipulations of Fact

constituted a single consumer credit transaction from the bank to the customer through the instrumentality of United Builders, Inc.

4. Each of the consumer credit transactions described in the above Stipulations of Fact is a transaction which gave rise to a right of rescission as set forth in Section 226.9 of Regulation Z.

ORDER

I

It is ordered, That respondents United Builders, Inc., a corporation, its successors and assigns, and its officers, and Marvin Bloom and Paul Denillo, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, distribution, or installation of aluminum siding, storm windows, storm doors, or any other products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, orally or in writing, or by any other means, that any price for respondents' products and/or services is a special or reduced price, unless such price constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such products and/or services were sold or offered for sale to the public on a regular basis by respondents in the recent, regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

(2) Representing, directly or by implication, orally or in writing, or by any other means, that the home of any of respondents' customers or prospective customers has been specially selected as a model home to be used, or will be used, as a model home, or otherwise, for advertising, demonstration, or sales purposes, or that such customers will thereby be granted any allowance, discount, or commission; *provided, however,* that nothing in this order shall prohibit respondents from representing, after a contract has been executed between respondents and a purchaser of respondents' products or services, that purchasers or prospective purchasers can earn future compensation by providing the names of prospective purchasers to respondents' personnel connected with the sale of respondents' products or services.

(3) Representing, directly or by implication, orally or in writing, or by any other means, that the purchaser will pay any interest rate other than that which the purchaser will actually pay; *provided,*

however, that nothing in this order shall prohibit respondents from stating the lending institution's prevailing rate of finance charge expressed as an annual percentage rate, as "annual percentage rate" is defined in Section 226.2(g) of Regulation Z.

(4) Failing to disclose, clearly and conspicuously, that purchasers will have liens placed against their property, when such is the case.

(5) Representing, directly or by implication, orally or in writing, or by any other means, that respondents own, or have any ownership in, any bank, finance company, or any other lending institution.

(6) Using any liquidated damages clause in their contract form.

(7) Failing, for a period of ten years after the effective date of this order, to maintain adequate records:

(a) For a continuing period of three (3) years from the date of transaction which disclose the factual basis for any representations or statements as to special or reduced prices, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraphs Five (1) and (2) of the complaint.

(b) For a continuing period of three (3) years from the date of transaction with regard to each and every contract hereafter entered into between respondents and their customers, which disclose the amount each customer was charged, exclusive of interest or finance charges, for material and labor; and for those contracts involving siding or the installation of siding, or both, the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, and the total amount of money paid to salesmen, agents, or representatives for the solicitation of said contracts.

The information prescribed in subparagraph (7) need not be aggregated onto separate documents. Respondents' retention of records of the type prescribed in subparagraph (7) shall be deemed *prima facie* evidence of compliance with subparagraph (7).

(8) Failing to maintain for a continuing period of three (3) years from the date of transaction, all invoices, notices for payment, and all similar documents which respondents receive in the regular course of their business from suppliers, subcontractors, and other persons, and, for a continuing period of three (3) years from the date of transaction, copies of all contracts entered into between respondents and their customers. This provision notwithstanding, respondents shall continue to preserve evidence of compliance with the

requirements of Truth in Lending, as required by Section 226.6(i) of Regulation Z.

II

It is further ordered, That respondents United Builders, Inc., a corporation, its successors and assigns, and its officers, and Marvin Bloom and Paul Denillo, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement or consumer credit sale of home improvement products or services, or any other products or services, as "credit sale" is defined in Section 226.2(t) of 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 make the consumer credit cost disclosures prescribed by Section 226.8 of Regulation Z prior to consummation of the transaction as required by Section 226.8(a) of Regulation Z.

(2) Failing to give notice to the customer of his right to rescind the credit transaction by furnishing him with two copies of the "notice to customers required by federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(3) Failing to delay the making of any physical changes in the property of the customer until after the rescission period has expired, as required by Section 226.9(c)(2) of Regulation Z.

(4) Failing to delay performance of any work or service for the customer until after the rescission period has expired, as required by Section 226.9(c)(3) of Regulation Z.

(5) Failing to delay the making of deliveries to the residence of the customer until after the rescission period has expired, if the creditor has retained or will acquire a security interest other than one arising by operation of law, as required by Section 226.9(c)(4) of Regulation Z.

(6) Failing to provide the customer with two copies of the "effect of rescission" set forth in Section 226.9(d) of Regulation Z, in the manner and form required by Section 226.9(b) of Regulation Z.

(7) Representing, directly or by implication, that customers will or may be liable for damages, penalties, or any other charges in the event they cancel a contract that is rescindable pursuant to Section 226.9 of Regulation Z.

(8) Supplying customers with any additional information, explanations, contract clause, or other statements pertaining to a transaction which mislead or confuse the customers or contradict, obscure,

or detract from the disclosures required by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

(9) Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, at the time and in the manner, form, and amount required by Sections 226.6, 226.8, 226.9, and 226.10 of Regulation Z.

III

It is further ordered, That respondents shall, within ninety (90) days after service of this order, pay a pro rata share of the escrow account established in subparagraph (2) below to all of respondents' customers who are entitled to receive a share, as "entitled customer" is defined in subparagraph (1) below, subject to the monetary limitation in subparagraph (2) below. Respondents shall effectuate such restitution in the following manner:

(1) For purposes of this order, an "entitled customer" is a person who purchased a home improvement from respondents on credit, as "credit" is defined in Section 226.2(q) of Regulation Z, during the period July 1, 1973, to October 1, 1975, and who has not, at the time of the signing of this Agreement, instituted any private legal action against respondents alleging violations of Regulation Z. "Entitled customers" shall not include persons who received disclosure statements used and prepared by creditors other than respondents and mailed by the creditor directly to the customer.

(2) On or before the third day after the date this order becomes final, respondents shall deposit the sum of seventeen thousand five hundred dollars (\$17,500) into an escrow account in a lending institution with which respondents have had no prior dealings. The escrow account shall be utilized for the payment of amounts due to such of respondents' customer entitled to restitution. Respondents' liability for restitution pursuant to the terms of this order shall not exceed seventeen thousand five hundred dollars (\$17,500). Printing costs, postage costs, reasonable and ordinary secretarial fees (as incurred up to but not to exceed \$200), and escrow agent fees may be charged against the escrow account, but no other expenses shall be so charged.

(3) On or before the tenth (10th) day after the date this order becomes final, respondents shall compile a list containing the name and last known address of each entitled customer, as defined herein, and shall send or cause the escrow agent to send to that customer a copy of the letter set forth in subparagraph (4), *infra*, together with an envelope addressed to the escrow agent with postage prepaid.

(4) The letter to be sent to each entitled customer shall be as follows:

Dear Customer:

The Federal Trade Commission has ordered United Builders, Inc. to give back approximately \$17,500, to be divided among each of its customers who bought a home improvement from United between July 1, 1973, and October 1, 1975. Each customer gets an equal share.

The amount of the equal shares will be determined by the number of such customers who sign and send this notice to the independent escrow agent.

To get your share, you must sign and return the bottom part of this letter. It must be postmarked before (*month, day, year—fourteen days after mailing*). The escrow agent will send you a check. The money will be yours to keep. You must, however, continue your scheduled payments for your home improvement.

Your acceptance of this refund does not affect any rights or obligations you may have under the Truth in Lending Act, nor does it extend any statute of limitations. United has made no admission of wrongdoing in this matter.

If you wish to receive this payment, please sign below and return the bottom part of the notice in the enclosed pre-addressed, pre-stamped envelope.

UNITED BUILDERS, INC.

(*Tear off and return*)

The money which the escrow agent will send me should be sent to this address:

SIGN HERE _____

PRINT YOUR NAME _____

PRINT YOUR ADDRESS _____

(5) On or before the thirty-fifth (35th) day after the date this order becomes final, respondents, their agent or the escrow agent shall seek to obtain, for each customer whose letter is returned to respondents undelivered, a current mailing address by the following methods: (1) contacting the holder of the entitled customer's indebtedness; and (2) contacting telephone and utility companies. Respondents, their agent or the escrow agent shall use the address so obtained to comply with subparagraph (3) above, on or before the forty-fifth (45th) day after the date this order becomes final, but not less than ten (10) days after the date each letter is returned to respondents undelivered.

(6) Respondent shall instruct the escrow agent as follows:

(a) The escrow agent shall receive and keep each signed and returned letter set forth in subparagraph (4) sent to it by each entitled customer.

(b) On the seventieth (70th) day after the date this order becomes final, or on the first business day thereafter if said seventieth (70th) day is not a business day, the escrow agent shall compute the amount to be paid to each entitled customer who has signed and returned the letter set forth in subparagraph (4) to the escrow agent

by dividing the sum remaining in the escrow account after payment of the escrow agent's fees and expenses equally among those entitled customers; *provided, however*, that no pro rata share may exceed \$1,250.

(c) By the second business day after computation as provided in subparagraph (6)(b), the escrow agent shall mail a cashier's check for the amount computed in subparagraph (6)(b) to each entitled customer who has signed and returned the letter set forth in subparagraph (4) to the escrow agent with his current address. Said mailing shall be by first-class mail. Enclosed with each check shall be the following letter:

Dear Customer of United Builders:

Here is a check for \$ _____, which is your share of the \$17,500 being returned, as we told you in our previous letter. This check does not affect your schedule of payments.

(Escrow Agent for United Builders)

(d) Any checks which are returned uncashed shall be redeposited in the escrow account.

(e) Upon the ninetieth (90th) day after the date this order becomes final, the escrow agent shall terminate the escrow account, and disburse any monies left therein to respondents.

Respondents' obligation under Paragraph III shall terminate upon the performance of the escrow agent's obligations as set forth in this subparagraph.

IV

It is further ordered, That respondents deliver a copy of this order to all present and future sales personnel whose services are engaged by respondents, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

V

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, voluntary bankruptcy, assignment, the creation or dissolution of subsidiaries, or any other change in the corporation.

VI

It is further ordered, That the individual respondents named

herein promptly notify the Commission of the discontinuance of their present business or employment. In addition, for a period of ten (10) years from the effective date of this order, the respondents shall promptly notify the Commission of each affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged, as well as a description of their duties and responsibilities. The expiration of the notice provision of this paragraph shall not effect any other obligation arising under this order.

VII

It is further ordered, That respondents shall, within sixty (60) days after the effective date of this order, and within thirty (30) days after the termination of the escrow account, file with the Commission a report in writing setting forth the manner in which they have complied with the provisions of this order, and any future compliance reports in the form and manner which the Commission may order.

Complaint

92 F.T.C.

IN THE MATTER OF

COOGA MOOGA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2925. Complaint, Aug. 9, 1978—Decision, Aug. 9, 1978*

This consent order, among other things, requires a Los Angeles, Ca. marketer and promoter of Acne-Statin, a product advertised for the treatment of acne, to cease disseminating advertisements which misrepresent, through endorsements or otherwise, the characteristics, performance, efficacy or superiority of its skin products. Additionally, the firm is required to maintain ad substantiation records for a specified period of time; and to pay a pro rata share of any restitution which might be ordered by the Commission or a court.

Appearances

For the Commission: *Mark A. Heller* and *Ira R. Nerken*.

For the respondents: *James J. Cook*, Los Angeles, California.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Cooga Mooga, Inc. (hereinafter "Cooga Mooga"), a corporation, and Charles E. Boone (hereinafter "Boone"), as an individual and corporate officer, hereinafter, at times referred to as respondents, having violated the provisions of the said 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. "Cooga Mooga" is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 9255 Sunset Boulevard, Suite 519, Los Angeles, California.

PAR. 2. "Boone" is an individual and corporate president of "Cooga Mooga." He formulates, directs and controls the acts and practices of "Cooga Mooga," including the acts and practices described herein, and he is the principal beneficiary of the corporation's business. "Boone's" business address is 9255 Sunset Boulevard, Suite 519, Los Angeles, California.

PAR. 3. Respondent "Cooga Mooga" is a privately held corporation which was organized and is maintained for the purpose of promoting and conducting the business interests of "Boone." "Cooga Mooga"