

Complaint

93 F.T.C.

IN THE MATTER OF
ROYAL FURNITURE CO., INC., ET AL.

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

Docket 9090. Complaint, Oct. 26, 1976 — Decision, March 29, 1979

This consent order, among other things, requires a Bronx, N.Y. furniture and appliance retailer to cease failing to advise consumers that co-signers may be required in credit transactions; signed documents are not final until they have been approved; and that customers may, upon denial of credit, cancel their purchases and receive refunds of downpayments. The Company is required to honor valid cancellations; make proper refunds; and furnish consumers with credit disclosures required by Federal Reserve System regulations and booklets outlining their legal and contractual rights. Additionally, the firm is prohibited from engaging in harassing debt collection practices, including false threats of repossession and garnishment; and improper third-party contact. The order also requires the firm to establish procedures for handling complaints regarding defective, damaged or nonconforming merchandise; and maintain specified records.

Appearances

For the Commission: *Henry R. Whitlock* and *Sandra L. Bird*.

For the respondents: *Howard Mann, Weiss, Rosenthal, Heller, Schwartzman & Lazar*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 Royal Furniture Co., Inc., a corporation, and Milton Landes, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the 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. For the purpose of this complaint and the proposed order attached hereto, the following definitions of terms shall apply:

1. "Consumer" refers to a natural person who seeks or acquires goods, services or money for personal, family or household use.

2. "Co-signer" refers to a natural person who, by agreement, and without compensation, renders himself liable for the credit purchases of a consumer.

3. "Retail Installment Credit Agreement" refers to a written agreement pursuant to which respondents extend credit to consumers for the present and future purchase of respondents' merchandise.

4. "Debt collection" refers to any activity other than the use of judicial process which is intended to bring about or does bring about repayment of all or part of a consumer debt, except:

(1) Inquiry to locate a consumer whose whereabouts are genuinely unknown to the creditor; and/or

(2) Inquiry to determine the nature and extent of a consumer's wages or property;

Provided that, in these two instances, no specific mention is made of the alleged indebtedness.

PAR. 2. Respondent Royal Furniture Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 2936 Third Ave., Bronx, New York.

Respondent Milton Landes is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the purchasing, advertising, offering for sale, sale and distribution of furniture, appliances and related products to the public at retail.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two and Three hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 4. Respondents maintain and have maintained a substantial course of business including the acts and practices, as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents, through advertising brochures and oral statements of

respondents' salesmen, employees or representatives (hereinafter referred to as "representatives") have made, and continue to regularly make, numerous and various statements and representations concerning the terms and methods of payment, and the availability of credit for the purchase of respondents' merchandise.

Typical and illustrative of the foregoing, but not all inclusive thereof, are the following statements often used in conjunction with one another by their being interspersed throughout respondents' advertising brochures:

- Use Royal's Easy Credit
- Budget Terms
- Budget Accounts Invited at Royal
- Royal Welcomes People on Welfare,
Social Security and Pensions, Newlyweds,
Students and Teenage Accounts, Civil
Service Employees and Union Members
- Terms especially made to fit your
budget
- Low downpayment, convenient credit
terms
- Arrange your own downpayment
- Use your credit
- House Full of Luxury - Instant Credit
Too

PAR. 6. By and through the use of the above-quoted statements and representations and others of similar import and meaning not specifically set out herein, respondents have represented and continue to represent, directly or by implication, that:

1. Respondents offer liberal policies with regard to the extension of credit, downpayments required, terms and conditions of repayment of the indebtedness and/or collection practices.
2. Respondents offer personalized credit and allow their customers to arrange downpayments, payment schedules and credit terms to suit the customer's own financial needs and budget limitations.
3. Customers on low and fixed incomes can establish their own credit accounts.
4. Customers will be given immediate credit from respondents without difficulty.

PAR. 7. In truth and in fact:

1. Respondents do not offer liberal credit terms and customers who fall behind in their payments are subjected to late charges and strict collection practices including law suits.
2. Respondents do not offer personalized credit terms and do not

allow their customers to determine the amount of the downpayment, payment schedule, or credit terms.

3. In many instances customers with low and fixed incomes are not extended credit solely on their own account and must secure one or more co-signers.

4. In many instances, credit is not extended immediately or is withdrawn or otherwise subjected to conditions subsequent to respondents' acceptance of the credit transaction or execution of the contract.

PAR. 8. Therefore, the aforesaid statements, representations, acts and practices regarding the terms, conditions and availability of credit offered by respondents were and are, false, misleading and deceptive, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Eight hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 9. In the further course and conduct of their business as aforesaid, respondents use a form printed on two sides, the front serving as respondents' sales slip and the back containing respondents' Retail Installment Credit Agreement.

The sales slip on the front of said form sets forth a description and price of the consumers' present purchases, downpayment, if any, the balance owed and the amount and time schedule for the consumer's minimum periodic payments.

The Retail Installment Credit Agreement on the back of said form sets forth the terms under which respondents are extending credit to the consumer for his present and future purchases. Such terms include, but are not limited to, the amount and method of assessing finance charges, acceleration of balance due upon default, and liability for attorney's fees. The Retail Installment Credit Agreement incorporates by reference the terms set forth on the sales slip.

PAR. 10. By virtue of respondents' false, misleading and deceptive representations, acts and practices as set forth in Paragraphs Five and Six, consumers have been induced to order merchandise on credit and in regard thereto have paid substantial sums of money to respondents as deposits or downpayments and have entered into Retail Installment Credit Agreements as described herein with respondents.

In many instances, at the time the credit agreements are entered into, respondents represent, directly or by implication, that the sales slips and the credit terms contained in the Retail Installment Credit Agreements have been accepted by or on behalf of respondents, and that the sales have been consummated in mutually binding agreements.

PAR. 11. In many instances, after having received moneys from consumers as deposits or downpayments for merchandise, respondents have failed or refused to honor the terms of the agreement by conditioning delivery of merchandise upon consumers paying larger downpayments or deposits, obtaining co-signers or agreeing to purchase less expensive merchandise than originally ordered.

Therefore respondents' aforesaid misrepresentation that the sales slips and the Retail Installment Credit Agreements between themselves and consumers mutually bind the store and the customer was and is a false, misleading and deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended, and respondents' failure or refusal to honor their agreements with consumers to deliver the merchandise originally ordered by consumers on the credit terms originally agreed upon was and is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 12. In the further course and conduct of their business, as aforesaid, in many instances respondents, directly or indirectly, have told consumers who did not agree to the foregoing changes in the terms of either their sales slips or Retail Installment Credit Agreements that respondents would not cancel said consumers' contractual obligations, and/or would not refund any moneys already paid to respondents.

Therefore, the aforesaid act or practice was and is an unfair practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 13. As a result of the foregoing respondents have (a) induced and are inducing members of the public through unfair and deceptive acts and practices to pay to respondents substantial sums of money towards the purchase of respondents' merchandise, and (b) have continued to retain substantial sums of said monies and/or have continued to refuse to cancel contractual obligations.

PAR. 14. The use by respondents of the aforesaid acts and practices, including their continued refusal to honor their agreements with consumers on the credit terms originally agreed upon and their continued retention of said sums and their continued refusal to cancel contractual obligations of their customers, was and is unfair

and injurious to the public in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Fourteen hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 15. In the further course and conduct of their business as aforesaid, respondents, in many instances, have required consumers, who want to purchase merchandise on credit, to obtain one or more persons to act as co-signers of the Retail Installment Credit Agreement between respondents and said consumers. The persons acting as co-signers are designated as co-buyers on the Retail Installment Credit Agreements, but in most instances respondents treat said persons as co-signers.

PAR. 16. In most instances where respondents have required co-signers as aforesaid, respondents have not, prior to said co-signers becoming obligated, either orally or in a writing readily understandable to a person without legal experience or background, disclosed to the co-signers their legal obligations and rights as co-signers and which, if any, of the terms and conditions of the Retail Installment Credit Agreements apply to co-signers.

PAR. 17. Respondents have further failed to disclose to potential co-signers that, in many instances, respondents have:

1. Sued co-signers for the unpaid balance owed by consumers plus accrued finance charges and attorney's fees.
2. Applied the technical terms of the Retail Installment Credit Agreements, such as those terms specifically listed in Paragraph Nine above, to the co-signers.
3. Sued co-signers without giving them any notice of consumers' defaults or an opportunity to pay prior to suit.
4. Sued co-signers in the same action as consumers and enforced the judgment obtained against co-signers prior to or simultaneously with enforcement against consumers.

Thus respondents have failed to disclose material facts which if known to certain co-signers would likely affect their decision to become co-signers of respondents' Retail Installment Credit Agreements.

PAR. 18. Therefore respondents' failure to disclose material facts as to the obligations of the aforesaid co-signers and possible

Complaint

93 F.T.C.

consequences of their agreement, prior to the completion of the credit sale and in a meaningful manner and in clear, plain language, was and is unfair, misleading and deceptive and constituted and now constitutes an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT IV

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Eighteen hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 19. In the course and conduct of their business as aforesaid, in instances where respondents have required consumers to provide one or more co-signers on respondents' Retail Installment Credit Agreements, respondents have often further required said co-signers to sign a Continuing Guarantee and Waiver containing, inter alia, the following provisions:

1. The co-signer guarantees payment for any future indebtedness contracted by the consumer for two years from the date of the guarantee, up to a specified maximum amount.
2. The co-signer waives the sending of notice to himself of a default on the part of the consumer.
3. The contract of guarantee is irrevocable as to future credit purchases for a two year period.
4. The co-signer agrees to pay all present or future indebtedness without first requiring the respondents to seek payment from the consumer.

PAR. 20. By and through the use of the aforementioned Continuing Guarantee and Waiver respondents:

1. Extend the co-signer's obligation beyond the amount specified in the original sales contract to include all future credit purchases of the consumer for a two year period, and up to a specified maximum, without the co-signer's specific knowledge of or control over the amount, frequency or terms of said purchases, and without said co-signer having an opportunity to re-evaluate the consumer's ability to pay for future purchases.
2. Deny the co-signer any opportunity to attempt to rectify a default prior to his being sued.
3. Prevent the co-signer from cancelling his future liability upon a change in either the consumer's or the co-signer's financial situation.

4. Place the co-signer in a position where he may be held primarily and/or solely liable for the debts of another.

PAR. 21. The aforementioned obligations and liabilities are not bargained for provisions and are not generally understood by persons without legal experience and background.

PAR. 22. Therefore, the use by respondents of the Continuing Guarantee and Waiver in which co-signers may be held primarily and/or solely liable for respondents' customers' debts, under the terms described herein, was and is an unfair act and practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Twenty-Two hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 23. In the further course and conduct of their business as aforesaid, in most of the instances where respondents have required that co-signers sign the aforementioned Continuing Guarantee and Waiver, respondents have not, prior to the co-signers signing, either orally or in a writing readily understandable to a person without legal experience or background, disclosed to the co-signer his legal obligations and rights under the technical terms of the Continuing Guarantee and Waiver as set forth more fully in Paragraphs Nineteen and Twenty.

PAR. 24. The circumstances surrounding the credit transaction as set forth more fully in Paragraphs Fourteen, Fifteen and Sixteen herein and the failure of respondents to meaningfully disclose to co-signers their legal obligations and rights under the Continuing Guarantee and Waiver, has the tendency and capacity to mislead prospective co-signers into the mistaken belief that: co-signers are liable to pay only for consumers' purchases listed on the form serving as respondents' sales slip, as described in Paragraph Fourteen herein.

Thus, respondents have failed to disclose material facts, which, if known to certain co-signers, would likely affect their consideration of whether or not to act as co-signers of credit sales with respondents.

PAR. 25. Therefore respondents' failure to disclose the aforementioned material facts in a meaningful manner and in plain language, prior to the completion of credit sales, was and is unfair, misleading

and deceptive and constituted and now constitutes an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VI

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Twenty-Five are incorporated by reference herein as if fully set forth verbatim.

PAR. 26. In the further course and conduct of their business as aforesaid, in those instances where respondents have required co-signers to sign Retail Installment Credit Agreements and/or Continuing Guarantees and Waivers, respondents have often failed to furnish the aforesaid co-signers with copies of all the agreements they have signed in the credit transaction.

PAR. 27. Therefore the aforesaid act or practice was and is unfair in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VII

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, Paragraphs Two through Twenty-Seven hereof are incorporated by reference as if fully set forth herein verbatim.

PAR. 28. In the course and conduct of their business as aforesaid, respondents in numerous instances have commenced legal proceedings to collect monies owed respondents under the terms of the Retail Installment Credit Agreements and/or Continuing Guarantee and Waivers.

PAR. 29. Subsequent to the service and filing of the summons in the aforementioned legal proceedings, respondents in many instances, directly or by implication, have advised persons who have been sued and who contact respondents concerning the action, to continue making payments and to ignore summonses or other legal notices. In connection with the aforesaid, respondents have accepted and/or agreed to accept payments from consumers and co-signers, and have failed to file with the court a notice of discontinuance, settlement or any other papers which would indicate that an agreement has been reached between the parties to the action. As a result of, and in reliance on, such deceptive or misleading representations, the aforementioned persons default in appearing in said action, or fail to take other necessary legal action.

PAR. 30. The legal consequences as well as the potential effect on

an individual's credit rating of failing to appear in legal proceedings, of failing to file documents showing that a case has been settled or discontinued and of failing to take other affirmative legal actions, are not generally known or understandable to persons without legal experience or background.

PAR. 31. As a result of the foregoing respondents have (i) induced and are inducing members of the public through unfair and deceptive acts and practices to pay to respondents substantial sums of money towards the purchase of respondents' merchandise, and (ii) have continued to accept and retain payments from persons whom they advised, directly or by implication, to ignore court summonses and other legal papers while respondents have proceeded with their legal suits against these persons or have failed to discontinue or formally settle said legal suits.

The use by respondents of the aforesaid acts and practices, was and is an unfair and deceptive act or practice to the injury of the public in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VIII

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Four hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 32. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of their merchandise, respondents, in their salesrooms and warehouse, have maintained, and are now maintaining, floor models and displays of merchandise being offered for sale, on the basis of which their customers select and order such merchandise.

In this connection, respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the quality and durability of merchandise being offered for sale, the terms and conditions under which merchandise will be sold and delivered and the services that will be provided by the respondents.

Moreover, subsequent to making sales and deliveries, respondents and their representatives have made, and are now making, numerous oral statements, representations and promises to their customers regarding the time and the manner in which respondents will perform various adjustments, replacements and repairs.

PAR. 33. By and through the use of the aforementioned floor models and displays, together with the aforesaid oral statements,

representations and promises made by respondents, their sales representatives and other employees, respondents have represented, and are now representing, directly or by implication, that:

1. Merchandise delivered will conform in color, material, style, quantity and quality to that ordered.

2. Merchandise sold by respondents will be delivered to the customer free from damage and defects.

3. Merchandise which is delivered to purchasers with damages or defects or which does not conform to the merchandise ordered, will be repaired or replaced within a reasonable time.

4. Merchandise which is delivered to purchasers with damages or defects or which does not conform to the merchandise ordered will be repaired or replaced to the satisfaction of the purchaser.

PAR. 34. In truth and in fact:

1. In many instances, merchandise delivered does not conform in color, material, style and quality to that ordered.

2. In many instances, merchandise sold by respondents is delivered to purchasers with damages and/or defects.

3. In many instances, merchandise which is delivered to purchasers with damages and/or defects and/or does not conform to the merchandise ordered is not repaired or replaced within a reasonable time.

4. In many instances, merchandise which is delivered to purchasers with damages and/or defects and/or does not conform to the merchandise ordered is not repaired or replaced to the satisfaction of the purchasers.

PAR. 35. Therefore, the aforesaid statements, representations, acts and practices regarding respondents' products and services, were and are, false, misleading and deceptive, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT IX

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Four and Thirty-Two through Thirty-Five hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 36. By virtue of respondents' misleading, deceptive and false representations, acts and practices, set forth in Count VIII customers have been induced to pay substantial sums of money to respondents for furniture and other merchandise. Respondents have received said

sums and have failed or refused, and continue to fail or refuse, to repair or replace, or make refunds for, damaged, and/or defective and/or non-conforming merchandise, or to honor the implied warranties imposed by law upon such sales.

PAR. 37. Therefore, the use by the respondents of the aforesaid practices was and is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT X

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Thirty-One hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 38. In the further course and conduct of their business, respondents and their representatives have engaged in a variety of harrassing and threatening debt collection activities including but not limited to the following:

1. Telephone calls to consumers and consumers' neighbors threatening repossession or seizure of merchandise purchased from respondents.
2. Telephone calls to consumers threatening immediate wage garnishment and other extraordinary action prior to institution of legal proceedings.
3. Telephone calls to consumers and their neighbors, friends and employers by persons representing themselves as New York City marshals, sheriffs or attorneys or other state or local officials.
4. Mailing to allegedly delinquent consumers a "Speed-O-Gram" which by its color and appearance, styling, printing and format simulates a telegraphic message.

PAR. 39. In truth and in fact:

1. Respondents have not caused repossession or seizure and under state law, respondents have no legal right to cause repossession or seizure of merchandise purchased in a retail installment credit transaction prior to obtaining a final judgment in a legal proceeding.
2. Respondents have not caused immediate wage garnishment or other extraordinary action and under state law respondents have no legal right to cause wage garnishment or other extraordinary action prior to obtaining a final judgment in a legal proceeding.
3. In many instances telephone calls to consumers, their neighbors, friends and employers, by persons claiming to be New York

City marshals, sheriffs or attorneys or other state or local officials are not made by such persons but are made by respondents and their representatives.

4. The "Speed-O-Gram" is not a telegraphic message; rather it is a form collection letter sent through the regular United States mail which because of its simulation misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the statements and representations set forth in Paragraph Thirty-Eight are false, misleading and deceptive.

PAR. 40. In the further course and conduct of their debt collection activities respondents or their representatives have:

1. Telephoned alleged debtors' neighbors and friends and made specific mention of the alleged indebtedness.

2. Telephoned alleged debtors' places of employment and made specific mention of the alleged indebtedness to persons other than the alleged debtors.

PAR. 41. Respondents' aforementioned conduct has the capacity directly or indirectly to jeopardize consumers' employment, cause embarrassment and damage to reputation and to coerce consumers to make payments of amounts allegedly owed and/or to forego or waive defenses.

Therefore the aforementioned acts and practices are unfair.

PAR. 42. In some instances respondents have engaged in the debt collection activities set forth in Paragraphs Thirty-Eight and Forty and/or have instituted legal proceedings against consumers while there is a dispute between respondents and consumers as to acceptability of merchandise or repairs, and/or correctness of billing. Said conduct has the capacity directly or indirectly to coerce consumers to make payments of amounts allegedly owed and/or to forego or waive defenses.

Therefore respondents' aforesaid acts and practices are unfair.

PAR. 43. Therefore, the representations, acts and practices set forth herein are unfair, false, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT XI

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended the allegations of Paragraphs Two through Forty-Three hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 44. In the course and conduct of their business as aforesaid,

and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 45. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, directly or by implication, has had, and now has, 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 complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 46. The 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 and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT XII

Alleging violations of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two and Three hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 47. 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 Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 48. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are now causing, customers to execute binding "retail installment credit agreements," hereinafter referred to as the "credit agreement," for the purchase of respondents' goods and services. Said agreements constitute the only disclosure of consumer credit terms made to customers before a transaction is consummated.

PAR. 49. In connection with extensions of credit, respondents make disclosures to consumers describing the credit terms of their

agreements and consumers' accounts. Said disclosures include, but are not limited to, disclosure that the finance charges will be computed by a periodic rate and disclosure of the annual percentage rate of such charges. Furthermore, in connection with their extensions of credit, respondents have caused to be delivered, and are delivering, to their customers, periodic billing statements. Based upon the foregoing, respondents profess to be extending open end credit.

PAR. 50. However, in further connection with their extensions of credit, respondents:

1. Fail to disclose, before the first transaction is made on the account, the minimum payment which will be required on future purchases.
2. Require customers to execute a new retail credit agreement for each subsequent purchase made on the account.
3. Require that under certain circumstances co-signers be obtained before additional purchases can be made.
4. Reverify as a matter of course the credit status of consumers with third parties before delivering merchandise purchased subsequent to the first sale.

PAR. 51. For the reasons set forth in Paragraph Fifty, and for other reasons not specifically set forth herein, respondents are not extending consumer credit on an account pursuant to a plan under which the respondents permit consumers to make repetitive transactions on a revolving basis, and are, therefore, extending other than open end credit.

PAR. 52. By and through the use of the aforementioned credit agreement, respondents:

1. Fail to make the required disclosures clearly, conspicuously, and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.
2. Fail to make the disclosures required by Section 226.8 of Regulation Z prior to the time the transaction is consummated either on:
 - (a) the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or
 - (b) one side of the separate statement which identifies the transaction as required by Section 226.8(a) of Regulation Z.
3. Fail to use the term "cash price" to describe the cash price, as

defined in Section 226.2(n) of Regulation Z, of the property purchased, as prescribed by Section 226.8(c)(1) of Regulation Z.

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

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

6. Fail to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed, but which are not a part of the finance charge, as prescribed by Section 226.8(c)(5) of Regulation Z.

7. Fail to use the term "amount financed" to describe the amount of credit of which the customer will have actual use determined in accordance with (c)(7) of Section 226.8 of Regulation Z, as required by Section 226.8(c)(7) of Regulation Z.

8. Fail to determine the sum of all charges incident to or as a condition of the extension of credit as required by Section 226.4 of Regulation Z and to disclose that sum, with a description of each amount included, using the term "finance charge" as required by Section 226.8(c)(8)(i) of Regulation Z and also fail to print this term more conspicuously than other terminology as required by Section 226.6(a) of Regulation Z.

9. 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, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

10. Fail to disclose 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 and to print that term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

11. Fail to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.

12. Fail to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

13. Fail to disclose 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.

PAR. 53. 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 hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, 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, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Royal Furniture Co., Inc. 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 2936 Third Ave., Bronx, New York.

Respondent Milton Landes is an officer of said corporation. He formulates, directs, and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER I

A. *It is ordered*, That respondents, Royal Furniture Co., Inc., a corporation, its successors and assigns, and its officers, and Milton Landes, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the purchasing, advertising, offering for sale, sale and distribution of furniture or other merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' terms of credit are lenient, including but not limited to representations that respondents offer "easy credit" or "instant credit" or that customers can arrange their own downpayments.
2. Failing to disclose conspicuously, in close conjunction with every mention of the availability of credit and credit terms in respondents' advertising, and in a manner appropriate to the media used, that co-signers may be required of persons whose credit ratings do not meet respondents' standards for credit accounts if respondents, in the course of their business, ever require co-signers.
3. Failing to offer to refund any consumer deposit placed towards purchases at the time the consumer's credit agreement for a purchase or credit account is disapproved and failing to make such refund within seven (7) business days from the request for such refund.
4. Failing to provide any consumer whose credit account or purchase is subject to credit approval with the following information, at the time the credit agreement is signed, in at least 12 point type:

IMPORTANT!

PLEASE READ THIS BEFORE YOU SIGN!

This contract will be checked by our credit department before we will deliver anything. Maybe they won't approve it. If they don't, we may ask you for a bigger downpayment. Or for bigger monthly payments. Or for one or more added signatures by relatives or friends (called co-signers) who'll promise to pay if you don't.

If you don't agree with those changes, you can cancel your order. As soon as you do that, we'll refund your downpayment.

Royal Furniture Co.

5. Unilaterally, and without the consumer's written consent, changing the terms of any credit agreement with a consumer after the consummation of the credit agreement including but not limited to requiring a larger deposit, co-signers, or purchase of less expensive merchandise. The consumer's right to give written consent can not be waived.

6. Using any collection or dunning letter which simulates a telegram or using any other methods or forms or types of communications which misrepresent the nature, import or urgency of any communication.

7. Representing to any consumer or co-signer against whom legal proceedings have been commenced, directly or by implication, that the account has been adjusted or such suits discontinued, unless:

(a) Within seven (7) business days of making an adjustment with such consumer or co-signer, respondents discontinue the legal proceedings by filing, or causing to be filed, with the court a notice of discontinuance or notice of settlement in the form required by the court.

(b) Within ten (10) business days from making such adjustment respondents send a copy of the papers required to be filed with the court in Order I(A)(7)(a) herein to the consumer and/or co-signer involved and, where applicable, to counsel representing the consumer and/or co-signer.

8. In the course of collecting a debt communicating or threatening to communicate with the consumer's employer or any agent of the employer or any other person not liable for the debt other than the spouse or attorney of the consumer or threatening repossession, wage garnishment, or other extraordinary measures, except:

(1) Inquiry to locate a consumer whose whereabouts are genuinely unknown to the creditor; and/or

(2) Inquiry to determine the nature and extent of a consumer's wages or property;

(3) Communication with credit bureaus to the extent permitted by the Fair Credit Billing Act, 15 U.S.C. 1666, and regulations promulgated thereunder.

Provided that, in these instances, no specific mention is made of the alleged indebtedness, except as permitted by the Fair Credit Billing Act, 15 U.S.C. 1666, and regulations promulgated thereunder.

9. Misrepresenting directly or by implication that respondents or

their representatives are New York City marshals, sheriffs, attorneys or any other state or local official.

10. Misrepresenting directly or by implication the debt collection activities that respondents or their representatives are engaging in or will engage in, including but not limited to threats of immediate repossession or wage garnishment prior to obtaining judgment.

11. Failing, at all times subsequent to the effective date of this order, to maintain complete records of all notices required by Order I(A) during the immediately preceding three-year period.

12. Failing to furnish to each customer who purchases any merchandise exceeding \$50 in cost, and to each customer upon the opening of a credit or charge account, a booklet containing clear disclosures, in language which is easily understandable to such customers, describing their rights and obligations in respect to respondents': (1) warranties and guarantees; (2) refund policies, including the procedures established by Order I(A)(3), I(B)(1)(b), (c), (d) and (e); (3) delivery terms; (4) procedures for repair or replacement of non-conforming, defective or damaged merchandise, including the procedures established by Order I(B); and any other rights provided for in this order and any other material information. Such disclosures shall clearly delineate the conditions which customers must comply with in order to avail themselves of any procedure established by this order or by respondents. The booklet required herein shall be submitted for approval with the initial compliance report required by Order III(F).

13. Failing to disclose, orally and in writing, to each customer who purchases merchandise exceeding \$50 in cost, and to each customer upon the opening of a credit or charge account, that the booklet required by Order I(A)(12) above is available and will be given to each such customer. Said written notice shall be given to such customers at the time of execution of their sales or credit agreements and shall contain the following language:

NOTICE TO CUSTOMER

BE SURE TO GET OUR BOOKLET!

Be sure to get our booklet that tells you about your rights. It contains our warranty and shows you what to do if something is wrong with the items we deliver. Or if the item you bought needs fixing. How to get repairs and replacements from us. Or how to get a refund.

Take the booklet home and study it carefully. Keep it handy for future reference.

14. Failing to display prominently and conspicuously the language required by Order I(A)(13) above in signs posted at four or more locations in that portion of respondents' business premises

most frequented by prospective customers, and in each location where customers normally execute sales agreements, consumer credit documents, or other binding instruments. Such language shall be considered prominently and conspicuously displayed only if so positioned as to be easily observed and read by intended individuals.

15. Failing to provide in such booklet that customers may have other legal rights concerning their contracts in addition to those set out in the contract and booklet.

16. Failing to comply with all requirements, or to fulfill all of the obligations to customers, which are set forth in Paragraph B of this Order I, and to comply with all of the procedures and rights set forth in this booklet.

B. *It is further ordered*, That beginning the effective date of this order respondents shall cease and desist from failing to act in accordance with the following procedures:

1. As to complaints, written or oral, of damaged, defective, or non-conforming merchandise, made within thirty (30) days of actual delivery of such merchandise:

(a) Respondents shall investigate all such complaints within fourteen (14) days from the date of such request, except that if a service person cannot gain access to the merchandise for a scheduled service call, respondents shall have seven (7) days from that missed appointment in which to investigate the complaint.

(b) Respondents shall repair to mint condition or make replacement or offer to make full refund of the purchase price of damaged, defective or non-conforming merchandise within a reasonable time not to exceed thirty-one (31) days from the date of complaint, unless: (1) such merchandise was sold "as is," and the notice requirements of Order I(B)(3) were complied with; or (2) the damage or defect in the merchandise was caused by the customer or another while the merchandise was in the customer's possession or control. Whenever respondents for either of the above reasons refuse a customer's request to repair or replace merchandise or to refund the purchase price thereof, respondents shall forthwith notify the customer in writing within the aforementioned thirty-one (31) day period of the specific reasons for the refusal and shall advise the customer of the customer's right to submit any dispute arising out of such refusal to a court of law including small claims court.

(c) If the repair or replacement of such damaged, defective or non-conforming merchandise is unsatisfactory to the consumer, respondents shall cancel all applicable contract provisions with a full

refund within seven (7) business days from receipt of the customer's request for cancellation. Whenever respondents for valid reasons refuse a customer's cancellation and refund request pursuant to this section, respondents shall within seven (7) business days from receipt of said request notify the customer in writing of the specific reasons for the refusal and shall advise the customer of the customer's right to submit any dispute arising out of such refusal to a court of law including small claims court.

(d) If the investigation, repair, or replacement cannot be completed within the time specified by Paragraph B, subparts 1(a) and 1(b) of this Order I, respondents shall make diligent efforts to notify the customer orally and shall notify the customer in writing immediately upon ascertaining that respondents are unable to make timely performance, and shall, at the customer's option cancel all applicable contract provisions with a full refund within seven (7) business days from the date set for completion. In no event shall respondents' notice of inability to make timely performance be given to the customer after the last day set out for performance in Paragraph B, subparts 1(a) and 1(b) of this Order I.

(e) Respondents may refund in full the actual purchase price of the merchandise if repair is not commercially practicable and respondents are unable to provide replacement.

2. For purposes of the time limitations contained in Paragraph B of this Order I, customers may at any time give their written consent for an extension of respondents' time for performance. Such written consent shall set forth a date certain which shall be a date by which respondents actually expect to complete performance. No rights accruing from the provisions contained in this Order I shall be affected by such extension.

3. The provisions of Paragraph B of this Order I shall not apply to merchandise sold "as is," *provided, however*, that when merchandise is sold "as is" respondents shall provide the following information conspicuously on the face of the sales contract, invoice and receipt for merchandise:

WARNING — "AS IS" SALE.

NO WARRANTY.

This item may need repairs or replacements. Since it is sold "as is" without any warranty, you'll have to pay for them yourself. No matter what you've been told, we won't pay or return your money.

4. For purposes of the provisions of Paragraph B of this Order I,

non-conforming merchandise shall include, but not be limited to, merchandise which, when delivered, is worn in appearance.

5. Respondents shall not sell merchandise without the implied warranty of merchantability, or with any disclaimer or limitation of such implied warranty, except that respondents may sell merchandise which is clearly designated "as is."

6. The investigation, pick-up and delivery of repair or replacement merchandise within the provisions of Paragraph B of this Order I shall be at no additional cost to the consumer.

7. No rights of consumers or co-signers conferred by state or local statutory law or by the common law shall be affected by the provisions and rights contained herein.

C. *It is further ordered*, That whenever a customer has sought the relief contained in Paragraph B of this Order I, or has advised respondents of the discontinuance of payment on the ground that respondents failed to deliver merchandise, to replace non-conforming merchandise, to repair or replace defective or damaged merchandise, or to make any refund to which a customer is entitled by reason of this order, or otherwise, that respondents desist from any action to collect the amount owed or any part thereof other than mailing a routine statement of account in regard to such merchandise and to desist from giving any adverse information to any credit reporting agency, unless respondents have conducted a thorough investigation of such complaint and made a written reply to the customer, stating whether respondents have concluded that such grievance is justified or unjustified, with reasons in support thereof and what action will be taken.

D. *It is further ordered*, That before any action is taken to collect an amount due from a customer, other than the mailing of a routine statement of account, or before any adverse information is sent to a credit reporting agency, respondents shall ascertain that they are not engaged in a dispute with said customer relating to the quality of the merchandise, or its replacement, condition or repair and, if so involved, verify that respondents have investigated and found the grievance to be unjustified and have so advised the customer, in accordance with the provisions of Paragraph C of this Order I.

E. Order provisions C and D of Order I shall be deemed modified in the event that respondents extend open end credit to the extent that order provisions C and D of Order I are inconsistent with the Fair Credit Billing Act and the regulations promulgated thereunder.

F. *It is further ordered*, That respondents shall, at all times subsequent to the effective date of this order, maintain, and produce

for inspection and copying on reasonable demand by the Federal Trade Commission or its representatives, complete business records relating to the manner and form of their continuing compliance with this order during the immediately preceding three-year period, such records to include: (1) all refund, repair or replacement requests sent to respondents by customers; (2) all other grievance letters and documents received from customers; (3) adequate records to disclose the facts pertaining to the receipt, handling and disposition of each and every communication from a customer, oral or written, requesting cancellation, refund, replacement or repair; (4) all investigation reports concerning such grievances; and (5) all records pertaining to those customers to whom any collection or dunning notices have been sent.

ORDER II

It is further ordered, That respondent Royal Furniture Co., Inc., a corporation, its successors and assigns, and its officer, Milton Landes, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any extension of consumer credit, or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR 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 required disclosures clearly, conspicuously, and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.
2. Failing to make all the required disclosures prior to the consummation of the transaction, in accordance with Section 226.8(a) of Regulation Z, either on:
 - (a) the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the consumer's signature; or
 - (b) on one side of a separate statement which identifies the transaction.
3. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale as prescribed by Section 226.8(c)(2) of Regulation Z.
4. Failing to use the term "cash price" to describe the cash price,

as defined in Section 226.2(n) of Regulation Z, of the property purchased, as prescribed by Section 226.8(c)(1) of Regulation Z.

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

6. Failing to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed, but which are not part of the finance charge, as prescribed by Section 226.8(c)(5) of Regulation Z.

7. Failing to use the term "amount financed" to describe the amount of credit of which the customer will have actual use determined in accordance with Section (c)(7) of Section 226.8 of Regulation Z.

8. Failing to determine the sum of all charges incident to or as a condition of the extension of credit as required by Section 226.4 of Regulation Z and to disclose that sum, with a description of each amount included, using the term "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z and also to print this term more conspicuously than other terminology as required by Section 226.6(a) of Regulation Z.

9. 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 that "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

10. Failing to disclose 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 and to print that term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

11. Failing to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as prescribed by Section 226.8(b)(3) of Regulation Z.

12. Failing to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

13. Failing to disclose 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.

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

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

ORDER III

A. *It is further ordered*, That respondents prominently display the following notice in two or more locations in that portion of respondents' business premises most frequented by prospective customers, and in each location where customers normally sign consumer credit documents or other binding instruments. Such notice shall be considered prominently displayed only if so positioned as to be easily observed and read by the intended individuals:

NOTICE TO OUR CREDIT CUSTOMERS

If you're going to pay in installments, ask for a statement that shows exactly how much you're going to pay. The law says you must be given that statement before you sign any papers. *Don't sign before you've read the statement.* If there's anything you don't understand, please ask us.

B. *It is further ordered*, That respondents deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondents engaged in consummation of any consumer credit transaction or in any aspect of preparation, creation, or placing of advertising, and to all personnel of respondents responsible for the sale or offering for sale of all products covered by this order, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

C. *It is further ordered*, That respondents shall maintain, and produce for inspection and copying on reasonable demand by the Federal Trade Commission or its representatives, for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspapers, radio and television advertising, direct mail and instore solicitation literature, and any other such promotional material utilized in the advertising, promotion or sale of merchandise.

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

E. *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.

F. *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
FEDERATED DEPARTMENT STORES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2958. Complaint, April 2, 1979 — Decision, April 2, 1979

This consent order, among other things, requires a Cincinnati, Ohio operator of retail department stores to cease entering into or enforcing agreements which grant the firm the right to exclude certain tenants from shopping centers; control tenants' advertising, goods and prices; or otherwise restrict competition.

Appearances

For the Commission: *David I. Keniry.*

For the respondent: *G. Duane Vieth, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (15 U.S.C. 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating the following:

PARAGRAPH 1. For the purpose of this complaint the following definitions shall apply:

- a. The term "respondent" refers to Federated and its operating divisions, officers, agents, representatives, employees, successors, and assigns.
- b. The term "shopping center" refers to a planned development of retail outlets in the United States of America, developed and managed as a unit in relation to a trade area which the development is intended to serve and containing (1) a total floor area designed for retail occupancy of 250,000 square feet or more, of which at least 50,000 square feet is for occupancy by tenants other than respondent,