

Complaint

IN THE MATTER OF

S. KLEIN, INC.

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

Docket C-3015. Complaint, April 4, 1980—Decision, April 4, 1980

This consent order requires, among other things, a Washington, D.C. retailer of consumer goods to cease entering into layaway agreements which fail to clearly and conspicuously advise customers of their right to revoke transactions and receive refunds of money paid toward the cost of their purchases. Additionally, the order requires the firm to honor cancellations; furnish credit customers with cost disclosures required by Federal Reserve Systems regulations; and refund to eligible customers all monies known to have been forfeited under layaway transactions since August 1, 1975.

Appearances

For the Commission: *Bernard Rowitz and Irvin E. Abrams.*

For the respondent: *Joel P. Bennet and Jacob A. Stein, Wash., D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Truth In Lending Act, as amended, 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 S. Klein, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth In Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent S. Klein, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1227 F St., N.W., Washington, D.C.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of women's ready-to-wear clothing and accessories and other consumer goods and products to the general public at retail.

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COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, 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 ordinary course and conduct of its business, as aforesaid, respondent offers to sell and distribute merchandise in commerce by operating a number of retail clothing stores located in the District of Columbia and the Commonwealth of Virginia, and by causing merchandise to be shipped from its various suppliers to its clothing stores for distribution to and purchase by the general public located in states other than those from which such shipments originate. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in merchandise and services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the ordinary course and conduct of its business, as aforesaid, and in connection with the retailing of women's ready-to-wear clothing, accessories and other consumer goods and products, respondent now causes and for some time last past has caused, certain of its credit customers to enter into binding retail contracts which are referred to by respondent as "layaways." Customers entering into these contracts are permitted, after making a downpayment, to select merchandise and defer the balance due. The merchandise is held by respondent until such balance is paid in full. Many, if not all, of these contracts contain the following provision:

... If payments are not made regularly, or if 15 days are allowed to pass without a payment being made, claim on merchandise and deposit are forfeited. . .

Respondent, by and through the use of the above contract provision, denies customers the right to receive a refund of any amounts paid toward the purchase price of said merchandise upon default of the layaway contract.

The condition imposed upon respondent's layaway customers through the use of the above language and contract provision, is adhesive; is to the disadvantage of said customers; is not offset by any reasonable value received; and is included without regard to the actual risk of nonpayment or loss borne by respondent. Therefore, such contract provision is contrary to public policy and, the use of said contract provision was and is unfair.

PAR. 5. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in or affecting commerce, with corporations, partner-

ships, firms and individuals engaged in the sale of merchandise of the same general kind and nature as those sold by respondent.

PAR. 6. The aforementioned acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition, in or affecting commerce, and unfair acts and practices, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

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

PAR. 7. In the ordinary course and conduct of its business, as aforesaid, respondent is a creditor and regularly extends consumer credit, as "creditor" and "consumer credit" are defined in Regulation Z, the implementing regulation of the Truth In Lending Act, as amended, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 8. Subsequent to July 1, 1969, respondent in the ordinary course and conduct of its business as aforesaid, has caused and is causing customers to execute layaway contracts, as described in Paragraph Four herein, for the sale of merchandise. Under said contracts, customers agree to pay for merchandise in more than four installments. Also, under said contracts, said respondent retains the merchandise for the customers until the total price is paid in full. The contracts do not, however, clearly and conspicuously give to customers the right to revoke the purchase at any time prior to full payment of the total price and delivery of the merchandise, and to request and receive a full and prompt refund of any amounts paid toward the total price of the merchandise. Said respondent's layaway sales are, therefore, credit sales as "credit sale" is defined in Regulation Z. By and through the use of its layaway contracts, respondent:

1. Fails 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 Regulation Z.
2. Fails to use the term "cash price," as defined in Section 226.2(i) of Regulation Z to describe the purchase price of the goods, as required by Section 226.8(c)(1) of Regulation Z.
3. Fails to use the term "cash downpayment" to describe the

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downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

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

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

6. Fails 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.

7. Fails to disclose the number, amount, due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments using the term, "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

8. Fails to disclose a description or identification of the type of security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

PAR. 9. Pursuant to Section 103(s) of the Truth In Lending Act, as amended, respondent's aforesaid failure to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, as amended, and the Truth In Lending Act and the regulations promulgated thereunder; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by

respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issued its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent S. Klein, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal offices and place of business located at 1227 F St., NW, Washington, D.C.

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

ORDER

For the purpose of this order, the term "layaway" shall mean any transaction whereby the customer agrees to purchase goods or products at the time of the transaction, by means of a downpayment and subsequent payment or payments, with the respondent retaining possession of the goods or products until the agreed payment or payments are completed.

It is ordered, That respondent, S. Klein, Inc., a corporation, its successors and assigns and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale and distribution of women's ready-to-wear clothing and accessories or any other consumer goods or products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Entering into any layaway transaction, directly or by implication, either orally or in writing, unless the customer has no contractual obligation to make payments and may, at his or her option, revoke a purchase made under such transaction and receive prompt refund of any amounts paid toward the cash price of the merchandise, less a

reasonable service charge not to exceed ten percent of the cash price, with a maximum of five dollars for merchandise costing ninety dollars or less and a maximum of ten dollars for merchandise costing more than ninety dollars; and, the customer receives the following written disclosure, clearly and conspicuously, at the time of the transaction, in not less than 10 point bold face type, of his or her rights and conditions to a prompt refund:

NOTICE OF YOUR RIGHT TO CANCEL

YOU MAY CANCEL THIS TRANSACTION AT ANY TIME AND RECEIVE A PROMPT REFUND OF ALL AMOUNTS PAID BY YOU, LESS A SERVICE CHARGE.

THE SERVICE CHARGE WILL BE NO MORE THAN 10% OF THE CASH PRICE WITH A MAXIMUM OF \$5.00 FOR MERCHANDISE COSTING \$90.00 OR LESS; AND A MAXIMUM OF \$10.00 FOR MERCHANDISE COSTING MORE THAN \$90.00.

IF YOU WANT TO CANCEL THIS TRANSACTION, YOU MUST DO SO IN PERSON AT THE STORE IN WHICH THE MERCHANDISE IS HELD.

It is further ordered, That respondent make prompt refund, of any amounts paid toward the cash price of merchandise, to customers who revoke purchases made under layaway transactions as described in the paragraph immediately above.

It is further ordered, That respondent make a cash refund or give a merchandise credit, at the customer's option, of all moneys known to be forfeited, or which should have been known to be forfeited, by its customers under layaway transactions, less a \$1.00 service charge, from August 1, 1975, to the date this order becomes final, and in this connection respondent shall:

A. Compile a list of the names and last known addresses of all customers who entered into layaway transactions for the purchase of respondent's goods or products and who have forfeited moneys on said transactions during the period from August 1, 1975, to the date this order becomes final. Said list is to contain the individual amounts of such forfeitures.

B. Send notice letters, which are attached, herein, as Appendices A and B, within one month of the date this order becomes final, by first class mail, to each customer referred to in subparagraph A above, advising each customer of his or her right to a refund, the amount of the refund, and his or her option of receiving a cash refund or a merchandise credit; *provided, however,* that with respect to those customers whose letters are returned to respondent undelivered, respondent shall make a reasonable effort to obtain a current mailing address for each such customer. Respondent's obligation to make

refunds under this paragraph of the order shall terminate after its efforts to send notice letters as outlined above have been unsuccessful, but in no event shall such obligations with respect to such customers referred to in subparagraph A above expire prior to one year after the date this order becomes final.

C. Make such refunds available immediately upon the receipt of the information set forth in Appendix B.

D. Maintain a list which contains the following data: name and address of each customer who received a refund; the date it was refunded; and the amount of such refund.

It is further ordered, That respondent, S. Klein, Inc., a corporation, its successors and assigns, and its officers, 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. L. 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to make the consumer credit cost disclosure required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

2. Failing to use the term "cash price," as defined in Section 226.2(n) of Regulation Z, to describe the purchase price of the goods, as required by Section 226.8(c)(1) of Regulation Z.

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

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

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

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

7. Failing to disclose the number, amount, due dates or periods of payments scheduled to repay the indebtedness, and the sum of such

payments using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

8. Failing to disclose a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

9. 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 and 226.10 of Regulation Z.

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in layaway sales, advertising or consummation of any extension of consumer credit, and that respondent secure a signed statement acknowledging receipt of said order from all such personnel.

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

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

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

APPENDIX A

(Date)

IMPORTANT NOTICE OF YOUR RIGHT TO A REFUND

Dear Customer:

S. Klein, Inc., has entered into an agreement with the Federal Trade Commission to give you a cash refund or, at your option, a merchandise credit for moneys forfeited by you as the result of your layaway transaction with us. All such refunds, however, are subject to a one dollar service charge.

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Our store records indicate that your refund amounts to _(amount)_. Any inquiries regarding this refund should be directed to S. Klein, Inc. at (telephone number).

In order to obtain this refund, please bring the enclosed form, in person, to our store located at 1227 F Street, N.W., Washington, D.C.

Sincerely,

S. Klein, Inc.

APPENDIX B

NOTICE OF ACCEPTANCE OF REFUND

I hereby accept the refund offered by S. Klein, Inc., and I have checked below the way that I wish to receive it.

1. ☐ Cash Refund
2. ☐ Merchandise Credit

Name (Please Print)

(Number & Street)

(City - State)

(Customer's Signature)

(Date)

NOTE: Bring this Notice to S. Klein, Inc. in person for a refund.

IN THE MATTER OF
PAY 'N PAK STORES, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2780. Decision, Jan. 16, 1976 — Modifying Order, April 9, 1976

This order reopens proceeding and modifies a consent order issued on Jan. 16, 1976, 41 FR 9862, 87 F.T.C. 99, against a chain of hardware and plumbing supply stores by allowing a general limitation disclosure on "closeout" merchandise but not as to "clearance" merchandise; further, the disclosure requirements of order paragraphs III and IV.B are changed by deleting the word "specifically."

ORDER REOPENING THE PROCEEDING AND MODIFYING DECISION AND
ORDER

On January 16, 1976, the Commission issued a decision and order against Pay 'N Pak Stores, Inc. in connection with the availability and pricing of advertised specials. The order includes a provision which allows Pay 'N Pak to advertise merchandise for sale when there is a clear and conspicuous disclosure of any specific exception, limitation or restriction with respect to store, item or price.

On October 31, 1979, Pay 'N Pak Stores, Inc. petitioned the Commission pursuant to Section 2.51 of the Commission's Organization, Procedures and Rules of Practice, 16 CFR 2.51, to reopen the proceeding and modify the decision and order to allow a more general limitation disclosure for "closeout" and "clearance" merchandise. "Closeout" merchandise was defined as merchandise whose entire inventory is being disposed of at a reduced price and which is not planned to be restocked. "Clearance" merchandise was defined as merchandise whose price has been reduced to reduce the inventory of such merchandise.

After due consideration, the Commission believes that the public interest will be served by modifying the decision and order to allow a general limitation on "closeout" merchandise but not as to "clearance" merchandise.

It is ordered, That the proceeding is reopened.

It is further ordered, That the decision and order issued on January 16, 1976 is modified as follows:

The following language is added to the first proviso in Provision I:

For closeout items, in instances where an advertisement is for more than one store, the specific limitation will be deemed to be complied with by disclosures that "quantities are limited to stock on hand" and that the items are closeout items. Closeout designation is only appropriate for items where Pay 'N Pak both is disposing of the entire inventory of