

Complaint

96 F.T.C.

IN THE MATTER OF
FARNAM COMPANIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3052. Complaint, Dec. 11, 1980—Decision, Dec. 11, 1980

This consent order requires, among other things, a Phoenix, Ariz. firm and its corporate officer, engaged in the manufacture, advertising, sale and distribution of pesticide products, to cease representing, through print and broadcast advertising or otherwise, that their pesticide products are absolutely or unqualifiedly safe, non-toxic or free of hazard to humans, pets, wildlife or the environment; or making any representation that is inconsistent or which detracts from the effectiveness of required warnings or directions for use set forth on pesticide product labels. The firm is further prohibited, for a period of three years, from disseminating advertising or promotional material which fails to include a warning statement as designated in the order.

Appearances

For the Commission: *Allen R. Franck.*

For the respondent: *Steven Feola, Smith & Feola, Phoenix, Ariz.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Farnam Companies, Inc., a corporation, and Russell W. McCalley, individually and as an officer of said corporation, [hereinafter sometimes referred to as respondents] have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect hereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Farnam Companies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business located at 2230 East Magnolia St., Phoenix, Arizona.

Respondent Russell W. McCalley is an officer of the corporation. He directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporate respondent.

PAR. 2. Respondents have been, and are now, engaged in the selling for sale, sale and distribution of various pesticide products,

including a snail and slug pesticide designated as "Snail Jail," to distributors, jobbers and retailers for resale to the public, and to the public at retail. For the purpose of this complaint and the order attached, the term "pesticide product" refers to any substance or mixture of substances, including molluscicides, intended for preventing, destroying, repelling or mitigating "plant pests" as defined at 7 U.S.C. 150aa(c).

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time in the past have caused, said snail and slug pesticide to be shipped from their warehousing facilities in Omaha, Nebraska to purchasers located in various other States throughout the United States, and maintain, and at all times mentioned herein did maintain, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Snail Jail pesticide is registered with the Environmental Protection Agency as required under the Federal Pesticide, Fungicide and Rodenticide Act, 7 U.S.C. 136, et seq., and as required by that Act, the following warning label appears on the package in which the product is sold:

WARNING: Use only as directed. Read entire label before using. This pesticide may be fatal to children and dogs or other pets if eaten. Keep children and pets out of treated area. May be fatal if swallowed. Do not take internally. Harmful dust. Avoid breathing dust and vapor. Avoid contact with skin, eyes, and clothing. Do not contaminate or store near feed or food stuffs. Wash after handling. Baits should be spread in such a way that children, pets or farm animals cannot reach them. Birds feeding in treated areas may be killed. Do not store in direct sunlight. Do not reuse empty container. Wrap container and put in trash collection.

PAR. 5. In the course and conduct of their business, respondents have disseminated or caused to be disseminated advertisements concerning pesticide products, including "Snail Jail," by means of printed advertisements in magazines and newspapers distributed through the mail and by means of advertisements transmitted by television stations located in various States of the United States, which had the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of pesticide products, including "Snail Jail."

PAR. 6. Among the advertisements so disseminated or caused to be disseminated by respondents are those contained in Exhibits A through G, attached hereto and by this reference made a part hereof.

PAR. 7. The aforesaid advertisements represent directly or by implication that:

1. Snail Jail protects users, pets and children, is completely safe for children and is non-toxic.
2. Snail Jail's toxic ingredients [metaldehyde and carbaryl] are locked inside a plastic container and can not come in contact with skin no matter how much it is handled.
3. The Environmental Protection Agency has approved Snail Jail as safe for users, children, pets and the general environment.

PAR. 8. In truth and in fact:

1. Snail Jail is potentially harmful to users, pets and children who swallow or have contact with the toxic ingredients in the product.
2. Snail Jail's toxic ingredients can come into contact with skin through handling of the Snail Jail container.
3. The Environmental Protection Agency has not approved Snail Jail as safe for users, pets, children, or the general environment.

Therefore, the aforesaid advertisements were, and are, deceptive or unfair.

PAR. 9. By making statements and representations, alone or in cooperation with others, orally or in writing, which appear in advertisements in print or broadcast media, in promotional material and by other means, about Snail Jail in a manner which is inconsistent with or disregards warnings, cautions, limitations and instructions for use found in labeling, respondent negates the import and purposes of, and detracts from the effectiveness of such warnings, cautions, limitations or instructions.

Therefore, the advertisements and other promotional materials, which contain the statements and representations referred to in Paragraph Nine above are unfair or deceptive.

PAR. 10. In the further course and conduct of its business as aforesaid, respondents have made statements and representations, alone or in cooperation with others, orally or in writing, which appear in advertisements in print and broadcast media, in promotional material or by other means, about Snail Jail without disclosing that such products are hazardous. Knowledge of the hazards associated with the use of such products would enable and encourage consumers to exercise the proper degree of care in using them.

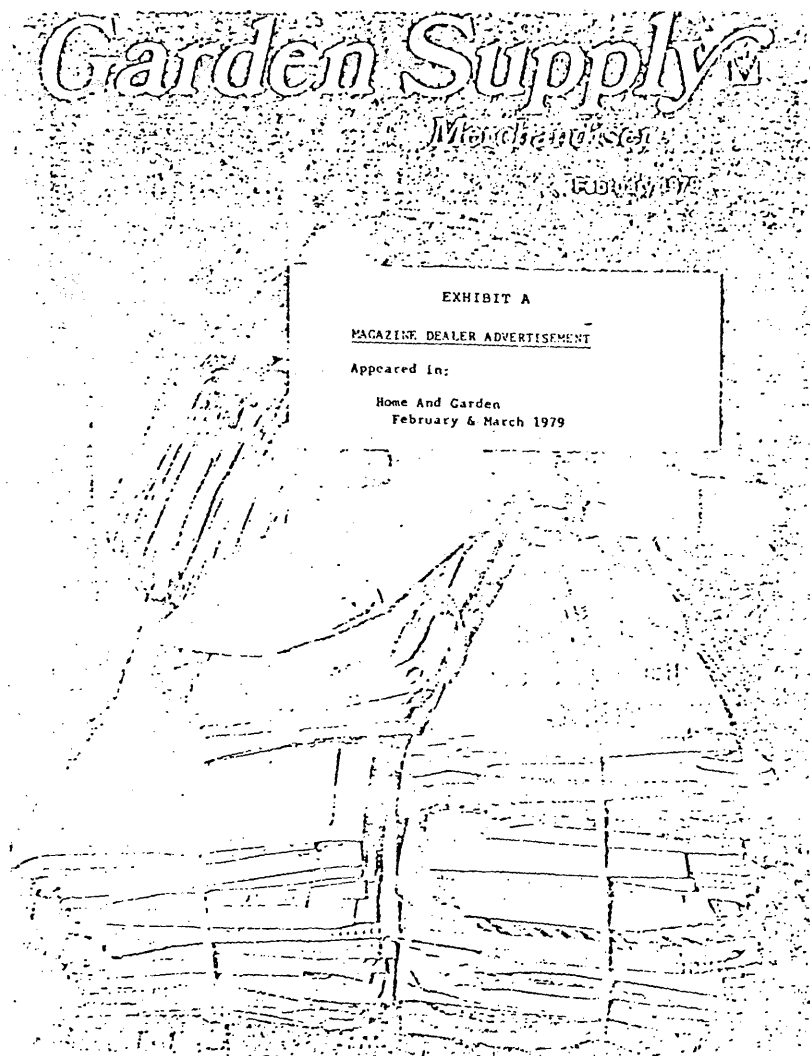
Thus, respondents have failed to disclose material facts which, if known to consumers, would be likely to affect their consideration of whether or not to purchase, and how to properly use, such products. Therefore, advertisements, promotional materials, acts and prac-

tices, which fail to disclose the aforesaid material facts, are unfair or deceptive.

PAR. 11. In the course and conduct of their business, 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. 12. The use by respondents of the aforesaid unfair or deceptive statements, representations, acts and practices directly or by implication, has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of respondents' pesticide products.

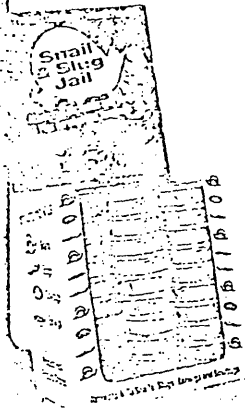
PAR. 13. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.



NEW! Snail Attracts/Kills Snails and Slugs

Never again will your customers have to

Now there's Snail & Slug Jail! It contains a secret formula — "attractant." Snails, slugs, even ants, earwigs and sowbugs are lured by this attractant. Once inside they run into metaldehyde and carbaryl... they never come out. Both ingredients are locked inside the Snail & Slug Jail... protects children and pets. The Snail Jail can be used over and over because everything inside is protected from the weather. Snail & Slug Jail, the new product that answers your consumers' problems. Be ready — order today!



INTRODUCTION SPECIAL

\$2.69 \$1.61

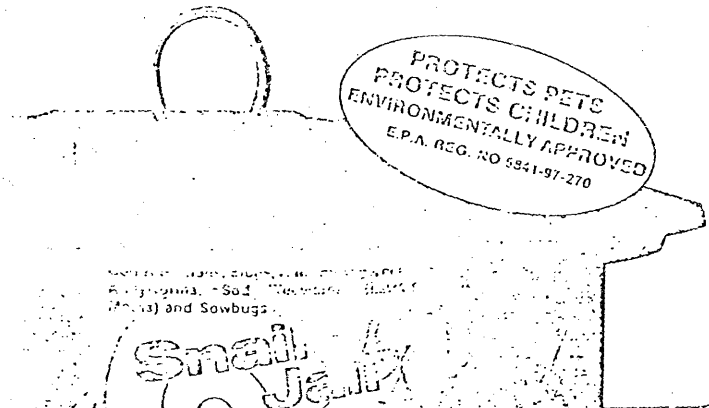
YOU SAVE
10¢
20¢
40¢
60¢
80¢
100¢

OFFER ENDS APRIL 10, 1965

& Slug Jant

Plus Earwigs and Sowbugs

spread poison on their lawns or gardens.



Controls Earwigs, Sowbugs, Slugs, Snails, and other garden pests.
EPA Reg. No. 5841-97-270

Snail & Slug Jant
Plus Earwigs and Sowbugs

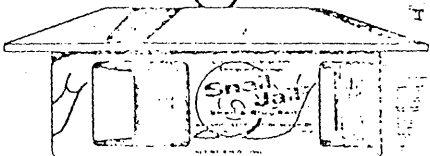
1-800-528-6050 (EXCL. 852)

FARNAM

FARNAM CO., INC. P.O. BOX 100, JOHNSON CITY, IA 52601

**Attract and Kill Snails,
Slugs, Pill Bugs, Earwigs
With Amazing New**

Snail Jail



- Approved lure attracts and destroys garden pests without spreading harmful poison, meal or pellets
- Designed to protect pets, children, and garden wildlife
- Environmentally approved — EPA #5841-97-210
- Effective over a 500 square foot area
- Bait and chemicals housed inside — only snails, slugs, and bugs can reach in
- Convenient disposable container
- Can't come in contact with skin no matter how much it's handled
- Won't wash away in the rain, or blow away in the wind
- Reusable, lasts for weeks!

ONE LOW PRICE

BUYS MONTHS OF
PROTECTION FOR YOUR
YARD, VEGETABLE GARDEN,
& FLOWER GARDEN —
THROUGH ALL TYPES
OF WEATHER!

**LOOK FOR THIS
DISPLAY AT YOUR
NEAREST FARNAM
DEALER TODAY!**

Snail Jail is available at the following
stores in the Dallas area:

- Turner Hardware
- Handy Dan's (all stores)
- Chuck's Nursery
- Blalock Gardens
- Gibson's (selected stores)
- Skaggs (all stores)
- Bruce Miller's Nursery
- C & S Hardware Stores (all stores)
- Stroud's Garden Center
- Mr. G's Garden Center

EXHIBIT B

NEWSPAPER AD

Appeared in:

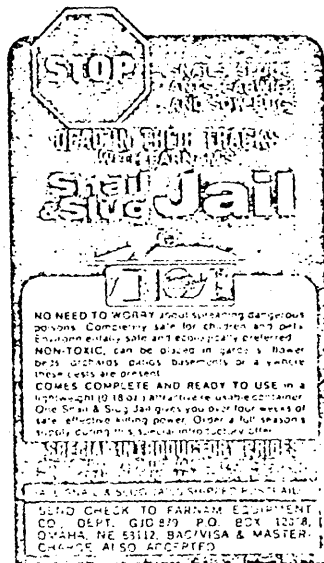
Times Picayune
New Orleans, La.
7/13, 7/14, 7/15/79

Dallas Morning News
Dallas, Texas
7/13/79

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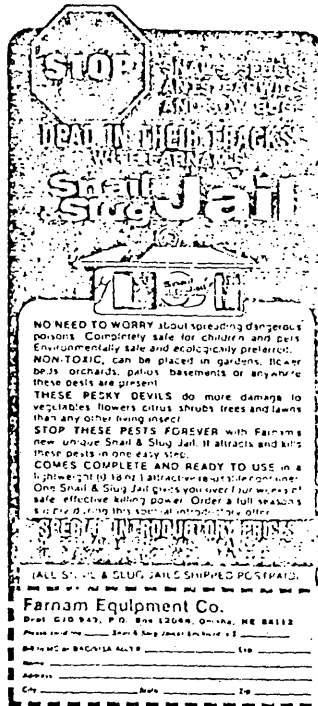
EXHIBIT C

MAGAZINE ADVERTISEMENT

Appeared in:

Elks Magazine, April 1979
 Family Food Garden, April 1979
 Moose, April 1979
 National Gardener, July 1979, August 1979
 Organic Gardening, April 1979
 Sunset Magazine, May 1979
 VFW, April 1979

EXHIBIT D

MAGAZINE ADVERTISEMENT

Appeared in:

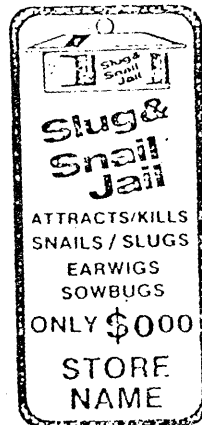
Family Handyman, April 1979
 Flower & Garden, April 1979
 Kiwanis, April 1979
 Mechanix Illustrated, April 1979
 Workbench, May 1979, June 1979
 Progressive Farmer, April 1979

EXHIBIT E

ADVERTISING SLICK SENT TO DEALERS

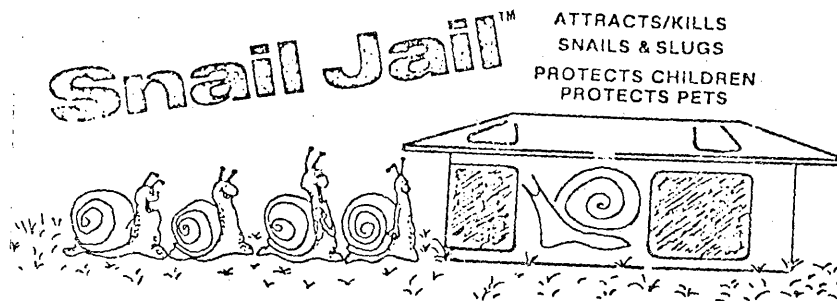


Slug &
Snail
Jail



ADVERTISING SLICK SENT TO OWNERS

EXHIBIT F



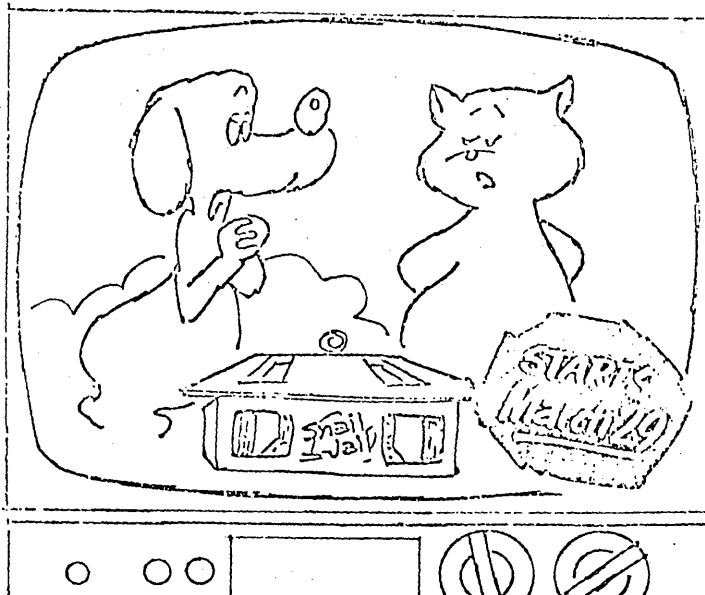
DEALER MAILER

Story Board for Television Ads

EXHIBIT G

Introducing...

Your Two New Super Stomping
Snail Jail Salesmen!



Dynamic, Fully Animated Tele Commercial Starts Selling \$ For You On March 29th!

LOS ANGELES...
SAN FRANCISCO...
SAN DIEGO...

8 WEEK SCHEDULE ON
NETWORK STATIONS

BEST TIMES!

:30 SECOND
FULL-ANIMATION

OVER 1456
HOUSEHOLD
RATING POINTS



3. ...

4.



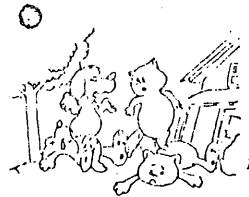
7. (Voice Over) Shell Tell, it's totally new!



11. ... shells and slugs ... for up to 500 square feet.

12.

ision
Jail



1. DOG: "What Happened?"
CAT: "Don't Cha Remember?"



2. CAT: "... We were in the back yard
havin' a picnic with all those
yummy lookin' pellets!"



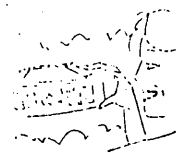
... These ain't no doggy treats ...
re snail poison!"



5. DOG: "Why didn't our master use Snail
Jail?"
CAT: "I'll mention it to him..."



6. "... I've got eight lives to go!"



tin poison to spread in your yard.



9. Snail Jail's bait and chemicals are
locked inside ...



10. ... away from pets and kids. Snail Jail
attracts and kills ...



its for weeks! (End Video Over)



13. CAT: "In case your pet..."



14. "... doesn't have nine lives."

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of 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 considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Farnam Companies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business located at 2230 East Magnolia St., Phoenix, Arizona.

Respondent Russell W. McCalley is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

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

ORDER

It is ordered, That Farnam Companies, Inc., a corporation, successors and assigns, and its officers, and Russell W. McCall individually and as an officer of said corporation, and responder

representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of pesticide products 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, by print or broadcast advertising, other promotional material, or through sales representatives' oral statements, that the pesticide products manufactured, distributed or sold by or through said respondents are absolutely or unqualifiedly safe, non-toxic or free of hazard to adults, children, pets, wildlife or the environment.

2. Making any representation, directly or by implication, by print or broadcast advertising or other promotional material, which contradicts, is inconsistent with, or detracts from the effectiveness of any warning, caution or direction for use required by law to be set forth as a label on pesticide products.

3. Representing that the Environmental Protection Agency or any other governmental agency had approved any pesticide product, unless such is the case; or misrepresenting the scope of approval granted any such product by any governmental agency.

It is further ordered, That for the period of three (3) years following the date of service of this order, respondents shall not disseminate or cause the dissemination of:

a) Any print advertising or print promotional material for any pesticide product unless the following statement is clearly and conspicuously included in such print advertising or print promotional material:

ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND
THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY
AND USE ONLY AS DIRECTED.

b) Any television broadcast advertisement for any pesticide product unless such advertisement orally and visually includes the following statement made in a clear and conspicuous manner:

ALL PESTICIDES CAN BE HARMFUL.
READ THE LABEL. USE AS DIRECTED.

Any other broadcast advertisement for any pesticide product unless such advertisement orally includes the following statement in a clear and conspicuous manner:

ALL PESTICIDES CAN BE HARMFUL.
READ THE LABEL. USE AS DIRECTED.

It is further ordered, That respondent, Farnam Companies, Inc., forthwith distribute a copy of this order to all its operating divisions engaged in the sale, advertising, promotion or distribution of pesticide products and to all present and future employees of said respondent responsible for the advertising, promotion, distribution or sale of such products, and that said respondents secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondent, Farnam Companies, Inc., 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 this order.

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 (10) years from the date of service of this order, said respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That each of 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 each has complied with this order.

It is further ordered, That this order shall become effective upon service.

Complaint

96 F.T.C.

IN THE MATTER OF
EQUIFAX INC.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF THE FAIR CREDIT REPORTING ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8954. Complaint, Feb. 21, 1974—Final Order, Dec. 15, 1980

This order requires, among other things, an Atlanta, Ga. consumer credit reporting firm to cease misrepresenting the identity of its investigative personnel; improperly providing its customers with updated consumer report information; and rewarding or punishing its employees on the basis of the amount of adverse information collected and included in their reports on consumers. The order further requires that the company cease failing to make statutorily required disclosures to consumers requesting information concerning their credit status; provide such consumers with all the information in its files; and reinvestigate any disputed item of information promptly.

Appearances

For the Commission: *Robert W. Russell, Virginia M. Conway and David G. Grimes, Jr.*

For the respondent: *Willis B. Snell, Francis M. Gregory, Jr., Michael L. Denger and Shelley Zena Green, Sutherland, Asbill & Brennan, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fair Credit Reporting Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Retail Credit Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

DEFINITIONS

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

(a) "consumer reporting agency"—any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating