

Complaint

98 F.T.C.

IN THE MATTER OF

ALDENS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3076. Complaint, Oct. 8, 1981—Decision, Oct. 8, 1981*

This consent order requires, among other things, a Chicago, Illinois mail order house to cease, in connection with the collection of debts, improperly contacting consumers or third parties. Except to advise consumers of legal remedies usually taken to collect debts, respondents are prohibited from communicating with consumers who have written the firm indicating that they will not pay the debt or wish no further contact regarding the debt. Additionally, for a five-year period, the order requires the insertion of a prescribed statement in all charge account agreements, which states that the company will limit discussions with third parties to information necessary to locate the consumer. The order also provides that should the Commission promulgate a trade regulation rule applicable to respondent's third party contacts, compliance with that rule will be considered part of the order.

Appearances

For the Commission: *Alan D. Reffkin.*

For the respondent: *Lawrence F. Henneberger and Christopher Smith, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.*

COMPLAINT

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

PARAGRAPH 1. Respondent, Aldens, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and only place of business located at 5000 West Roosevelt Road, Chicago, Illinois.

PAR. 2. Respondent is now and for some time in the past has been largely engaged in the sale of consumer products by catalog and direct mail merchandising to consumers residing throughout the United States. All orders, whether for cash or credit (extended by

respondent using its Aldens Charge Accounts), are solicited by mail through catalogs, flyers and other direct mail literature. For its fiscal year ending January 31, 1980, Aldens' sales were approximately \$ 250 million, making it the nation's fifth largest mail order company.

PAR. 3. In the ordinary course and conduct of its business, Aldens, by its agents, representatives and employees, regularly engages in the collection of consumer debts allegedly owed to Aldens for the sale, on credit, of mail order consumer products as described in Paragraph Two. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course of attempting to collect the consumer debts referred to in Paragraph Three, herein, respondent, by means of the U.S. Postal Service, has transmitted and in certain instances continues to transmit to consumers and others not necessarily responsible for the financial affairs of said consumers, unsolicited forms, letters and notices demanding payment or requesting assistance or information to aid in the collection of said consumer debts. Copies of some of the forms used by Aldens are attached hereto as Exhibits 1 through 14.

Typical and illustrative, but not necessarily all inclusive, of the statements and representations made in said forms and printed materials are the following excerpts.*

1. Prior to accepting this for final settlement I am asking our Credit people to determine why you have failed to discharge your obligation.

A review of your history indicates:

you receive income from [employer].

bank affiliations with [bank].

you have credit with [merchant].

Additionally, [name of a credit-reference/friend/relative] may be in a position to help you. Of course, as we proceed we will update and uncover current conditions.

2. I have been instructed to place your seriously past due account locally for collection.

It is possible a local investigation will be made regarding your financial status in order to determine the most expedient means of obtaining payment in full. Y

* Excerpt numbers correspond to the numbers of the exhibits from which they are extracted.

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employer, both past and present, references, neighbors, local merchants and credit bureau may all be asked to report.

3. Your name was given to us as a personal reference or relative when we opened a Credit Account for [consumer's name].

The terms under which payments were to be made have not been kept. Despite numerous requests for settlement in a friendly manner, a serious past due condition still exists.

It is our desire to avoid the necessity of legal action in the local courts. That is why we are writing to you.

Perhaps a word from you will emphasize the gravity of this situation and result in payment . . .

4. The above named person has an account with us which is seriously past due . . .

Would you be interested in contacting this party regarding a loan for \$ _____, the total amount owed us?

If you find that you cannot grant this loan, but you can complete the following questionnaire, please do so and return it to us. We will gladly reimburse you for any investigative expense.

Verified address _____ Phone _____

Place of employment _____ Phone _____

Wife's place of employment _____

Phone _____

Neighbor or relative where customer might be contacted by phone _____

5. memo to:

n. g. hodes [Alden's Collection Dept. Employee]

[from: j. l. davis, Alden's Collection Dept. Supervisor]

Re: [Consumer's Name]

In reply to your memo stating that the above named person has ignored our efforts towards a friendly settlement, I recommend one of the following methods for enforcing payment.

Contact the debtor's employer to ask his assistance in obtaining payment in full . . .

copy of this letter is being sent to the debtor to inform him of our intentions. If a full payment is not received within the next seven days, proceed with whatever action you consider the most appropriate and expedient.

The delivery of this letter at your place of employment indicates that you are fully employed, and can pay your just obligations.

aps you don't realize the seriousness of your position . . .

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We don't want to cause you unnecessary embarrassment. Nevertheless, action will be taken to collect the entire balance of \$ _____ through your employer unless you send a payment of \$ _____ today.

7. Before authorizing an agent in your locality to act on our behalf, I intend to ask your employer for assistance in arranging payment of this long overdue account. I shall contact him in approximately 10 days.

An immediate payment of \$ _____ will eliminate the need for involving your employer in this matter, as well as the possibility of legal proceedings.

I advise you to act promptly, before it is too late.

8. May we ask your assistance in obtaining payment from your employee whose name appears above?

This person has not completed payments on merchandise purchased from us . . .

If you would be kind enough to speak to your employee about this obligation, I feel sure it would make him realize the seriousness of the situation and help bring about an amicable settlement.

If our customer no longer works for you, can you give us the name and address of his present employer?

9. I sincerely hope you didn't think we were trying to unload our problems on your shoulders when we asked you to speak to the above named person about his past due indebtedness to Aldens.

From our long experience in the credit field, we know that a few words from the employer usually result in the resumption of payments. Without your assistance, our only recourse will be to place the account with a local attorney. Since we don't want to take such drastic action if it can possibly be avoided, anything you can do to influence a friendly settlement will be greatly appreciated.

If this person no longer works for you, can you give us the name and address of his new employer?

10. From our previous communications with the Military Department, it is evident that they, too, desire to be cooperative and be of assistance to military personnel having financial difficulties . . .

Your reply and payment must be sent within the next seven (7) days. Otherwise, we will appeal to your Commanding Officer for assistance. Have you considered the consequences of such action? Notice of our intention is given so that you may avoid any unpleasantness or reflection on your record.

11. SEND \$ _____ AT ONCE, UNLESS YOU RESPOND WE WILL CONTACT YOUR COMMANDING OFFICER. YOU OF COURSE REALIZE HE MAY ENFORCE THE PROVISIONS OF ARTICLE 133 OR 134 OF THE UNIFORM CODE OF MILITARY JUSTICE.

12. We are having a serious collection problem with the customer named above who we believe is under your command. When he opened his account in _____, 19____, he agreed to pay \$ _____ per month. At present his account balance is \$ _____ of which \$ _____ is past due . . .

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A substantial amount of the items purchased may have been for the support of the serviceman's dependents.

We would greatly appreciate your discussing this matter with our customer, as we are confident that such a discussion would result in the resumption of regular payments.

Any information you can give us regarding this man's problem and his plan for payments will be helpful.

13. We are wondering . . . if you received our previous letter concerning the above named person who we believe is serving under your command.

Apparently he is experiencing financial difficulties since his Open End Credit Account has become considerably past due . . . as is evident by the data shown above.

Would you kindly arrange to have this matter called to his attention . . .

14. We regret very much . . . that it was necessary to contact your Commanding Officer about your past due account.

Since the Military Department encourages a serviceman to discharge his obligations satisfactorily, this matter will undoubtedly be brought to your attention by your superior officer . . .

As soon as this [payment] is received, at your request, we will notify your Commanding Officer of your agreement to settle this account.

If you fail to cooperate, we will have no choice but to further proceed through proper military channels.

PAR. 5. In the ordinary course and conduct of its business as aforesaid, respondent has transmitted and in some instances continues to transmit to consumers and third parties in a number of States thousands of copies of Exhibits 1-14 per month via the United States Postal Service. By and through the use of Exhibits 1, 2, 5, 6, 7, 10, 11, & 14, respondent threatened and in some instances continues to threaten consumers that it will contact third parties (including, but not limited to: friends, relatives, neighbors, commanding officers, employers and supervisors) in connection with its attempt to collect allegedly delinquent consumer debts. By and through the use of Exhibits 3, 4, 8, 9, 12, & 13, Aldens contacted and in some instances continues to contact such third parties. If no reply is received from the initial third party contact, a second contact may be attempted. (Respondent frequently made and continues to make third party contacts by means of the telephone, as well.) In the course of such practices, respondent frequently divulged and in some instances continues to divulge to third parties the fact, substance, and details of consumer's alleged indebtedness.

By and through the use of these acts and practices, respondent has in the past, and is in some instances presently, acting in an

oppressive or coercive manner, thereby unfairly threatening the jobs, reputations, emotional and mental security, and individual privacy of several thousands of consumers each month.

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

Chairman Miller did not participate.

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FORWARDED

2030 WEST ROOSEVELT ROAD / CHICAGO, ILLINOIS 60604

May 9, 1970

Mr. Stanley, of our Credit Department was asked us to handle your seriously delinquent account as a "Collection" matter.

Prior to accepting this for final settlement I am asking our Credit people to determine why you have failed to discharge your obligation.

A review of your history indicates:

YOU RECEIVE INCOME FROM

BANK AFFILIATIONS WITH

YOU HAVE CREDIT WITH

Additionally, we may be in a position to help you. Of course, as we proceed we will update and uncover current conditions.

In any event we will begin our pursuit unless payment and satisfactory arrangements are made. If you have sincere intentions of completing your account, let me know to us concerning the added expense of full collection of your defaulted account.

H. G. Rogers
H. G. ROGERS
Collection Department

SENDER

EXHIBIT 1

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

ALDENS, INC.

797

790

Complaint

5000 WEST ROOSEVELT ROAD / CHICAGO, ILLINOIS 60641

May 16, 1978

Dear

I have been instructed to place your seriously past due account locally for collection.

It is possible a local investigation will be made regarding your financial status, in order to determine the most expedient means of obtaining payment in full. Your employer, both past and present, references, neighbors, local merchants and credit bureau may all be asked to report.

An investigation of this type followed by legal action in your local courts could seriously endanger your credit standing. You don't want this to happen . . . and neither do we.

To prevent the drastic action outlined above, send the past due amount of \$7.91 immediately.

N. G. Hodges

N. G. HODGES
Collection Department

RGH:ras

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

EXHIBIT 2

Complaint

98 F.T.C.

ALLEN

5020 WEST ROOSEVELT ROAD / CHICAGO, ILLINOIS 60641

July 18, 1972

RE:

Your name was given to us as a personal reference
of relative when we opened a Credit Account for

The terms under which payments were to be made have
not been kept. Despite numerous requests for
settlement in a friendly manner, a serious past
due condition still exists.

It is our desire to avoid the necessity of legal
action in the local courts. That is why we are
writing to you.

Perhaps a word from you will emphasize the gravity
of this situation and result in payment. Nothing
you can do certainly will be in this party's best
interests. Your cooperation towards an amicable
settlement will be appreciated.

Sincerely,

ALLEN, INC.

*H. G. Hobbs*H. G. HOBBS
Collection Department

HGH:tpc

EXHIBIT 1

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

ALDENS, INC.

790

Complaint

January 20, 1977

Household Finance Co

RE:

The above named person has an account with us which is seriously past due. Because of the expense of collecting small installments by mail, we are seeking payment in full.

Would you be interested in collecting this party regarding a loan for \$152.28, the total amount owed us?

If you find that you cannot start this loan, but you can complete the following questionnaire, please do so and return it to us. We will gladly reimburse you for any investigation expense.

Verified address _____ Phone _____

Place of employment _____ Phone _____

Wife's place of employment _____

Phone _____

Neighbor or relative where customer might be contacted by phone. _____

M. S. HOGGINS

LOAN
EXCISE

M. S. HOGGINS
Collection Department

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

EXHIBIT 4

Complaint

98 F.T.C.

June 23, 1978

MEMO TO:

W. G. HODGES

RE:

In reply to your memo stating that the above named person has ignored our efforts towards a friendly settlement, I recommend one of the following methods for enforcing payment.

1. Contact the debtor's employer to ask his assistance in obtaining payment in full.
2. Have a local investigation made to determine the extent of the debtor's assets preparatory to seeking a judgment.
3. Retain a local attorney to file suit.

A copy of this letter is being sent to the debtor to inform him of our intentions. If a full payment is not received within the next seven days, proceed with whatever action you consider the most appropriate and expedient.



JLD:11
CC:customer

J. L. DAVIS
Collection Department

EXHIBIT 5

ALDENS, INC.

801

790

Complaint

ALDENS

5000 WEST ROOSEVELT ROAD / CHICAGO, ILLINOIS 60637

189

The delivery of this letter at your place of employment indicates that you are gainfully employed, and can pay your just obligations.

Perhaps you don't realize the seriousness of your position. Your signed agreement with Aldens is legally binding. Despite this agreement, you have used our merchandise without completing your payments.

We don't want to cause you unnecessary embarrassment. Nevertheless, action will be taken to collect the entire balance of \$124.76 through your employer unless you send a payment of \$80.00 TODAY.

Sincerely,

ALDENS, INC

N. G. Hodges

N. G. HODGES
Collection Department

NGH:cha

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

EXHIBIT 6

Complaint

98 F.T.C.

ALDENS

5000 WEST ROOSEVELT ROAD / CHICAGO, ILLINOIS 60607

It is becoming more apparent that it will be necessary to enforce payment of the money you owe Aldens through the means available to us in Illinois.

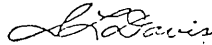
Before authorizing an agent in your locality to act on our behalf, I intend to ask your employer for assistance in arranging payment of this long overdue account. I shall contact him in approximately 10 days.

An immediate payment of \$ will eliminate the need for involving your employer in this matter, as well as the possibility of legal proceedings.

I advise you to act promptly, before it is too late.

Sincerely,

ALDENS, INC.



J. L. DAVIS
Collection Department

JLD:dl /

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

1-800-4-A-ALDENS

Complaint

May we ask your assistance in obtaining payment from your employee whose name appears above?

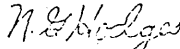
This person has not completed payments on merchandise purchased from us, even though we have offered the most lenient terms possible. We realize many people are hard pressed at times, and hesitate to discuss their problems. However, if we knew what was wrong, we would gladly cooperate.

If you would be kind enough to speak to your employee about this obligation, I feel sure it would ease his realize the seriousness of the situation and help bring about an amicable settlement.

If our customer no longer works for you, can you give us the name and address of his present employer? We will be very grateful for any assistance you are able to give us.

Sincerely,

ALDENS, INC.



W. G. HODGES
Collection Department

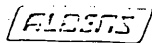
RGH:mpa
ENC:hra

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

EXHIBIT B

Complaint

98 F.T.C.



5000 WEST ROOSEVELT ROAD / CHICAGO, ILLINOIS 60647

I sincerely hope you didn't think we were trying to unload our problems on your shoulders when we asked you to speak to the above named person about his past due indebtedness to Aldens.

From our long experience in the credit field, we know that a few words from the employer usually result in the resumption of payments. Without your assistance, our only recourse will be to place the account with a local attorney. Since we don't want to take such drastic action if it can possibly be avoided, anything you can do to influence a friendly settlement will be greatly appreciated.

If this person no longer works for you, can you give us the name and address of his new employer? Thank you very much for your cooperation.

Sincerely,

ALDENS, INC.

A handwritten signature in dark ink, appearing to read "W. G. Hodges", written over the typed name.

W. G. HODGES
Collection Department

WGH:esp
ENC:brc

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

EXHIBIT 2

Complaint

July 18, 1972

Dear Sgt.

Let's be frank with each other. We've written you many times, but for some reason, unknown to us, no answer or payment has been received.

We are not hard to get along with, and we are inclined to be helpful . . . and not unreasonable. However, since you have remained silent to our request for payment, this causes us not only to mistrust you, but it is also defeating our sincere efforts to help you.

From our previous communications with the Military Department, it is evident that they, too, desire to be cooperative and be of assistance to military personnel having financial difficulties.

We are willing to help every way we can . . . within reason. But, we must have a definite understanding as to exactly what you are going to do, and not continue this present uncertainty.

Your reply and payment must be sent within the next seven (7) days. Otherwise, we will appeal to your Commanding Officer for assistance. Have you considered the consequences of such action? Notice of our intention is given so that you may avoid any unpleasantness or reflection on your record.

We await your payment and response.

M. G. Hodges

M. G. HODGES
Collection Department

WGH:bco

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

EXHIBIT 10

Complaint

98 F.T.C.

ALDEN, INC.

COLLECTION DEPARTMENT MESSAGE

CODE	AG-7	URGENT MESSAGE TO DELINQUENT DEBTOR	DATE	7/18/72
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SEND \$80.00 AT ONCE. UNLESS YOU RESPOND WE WILL
CONTACT YOUR COMMANDING OFFICER. YOU OF COURSE
REALIZE WE MAY ENFORCE THE PROVISIONS OF
ARTICLE 133 OR 134 OF THE UNIFORM CODE OF
MILITARY JUSTICE.

SENDER NAME	J. L. Davis	ADDRESS	112
CLAIM NUMBER	104	PHONE NO	864-1275 CHICAGO

EXHIBIT 11

ALDEN, INC.

001

790

Complaint

ALDEN

5000 WEST ROOSEVELT ROAD / CHICAGO, ILLINOIS 60657

January 20, 1977

COMMANDING OFFICER

RE:

We are having a serious collection problem with the customer named above who we believe is under your command. When he opened his account in July, 1976, he agreed to pay \$15.00 per month. At present, his account balance is \$395.93, of which \$27.00 is past due.

Our agreement covering this obligation requires the debtor to make regular monthly payments. A substantial amount of the items purchased have been for the support of the serviceman's dependents.

We would greatly appreciate your discussing this matter with our customer, as we are confident that such a discussion would result in the resumption of regular payments.

We realize that anyone can experience financial difficulties, but if this man will cooperate with us, we may be sure we will be reasonable in dealing with him.

Any information you can give us regarding this man's problem and his plan for payments will be helpful. In your reply please refer to case 881600000019. The required Certificate of Compliance is enclosed.

W. G. Woods

WGW:mc
Enc. 1 cert., 1 br.

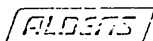
W. G. WOODS
Collection Department

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

EXHIBIT 12

Complaint

98 F.T.C.



5030 WEST ROOSEVELT ROAD / CHICAGO, ILLINOIS 60647

January 20, 1977

COMMANDING OFFICER

Balance \$244.66
 Monthly
 Payment \$10.00
 Past Due \$48.00

RE:

We are wondering . . . if you received our previous letter concerning the above named person who we believe is serving under your command.

Apparently he is experiencing financial difficulties since his Open End Credit Account has become considerably past due . . . as is evident by the data shown above.

We will be most happy to cooperate in working out some arrangement whereby he can discharge his obligation. All he has to do is to write and tell us how we can help him. Perhaps a payment and plan for repaying would be a good way to start this can on the way to re-establish his credit.

Would you kindly arrange to have this matter called to his attention giving him our assurance that we wish to cooperate in every way. Or . . . if you should have any suggestions, we would be very glad to cooperate in any manner you might suggest.

Thank you for your kind attention to this letter.

When replying please refer to our file ARSHIBAPONY1.

NGH:ncf
 ENC:bto

N. G. MCGEE
 Collection Department

EXHIBIT

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

ALDENS, INC.

809

790

Complaint

5000 WEST ROOSEVELT ROAD / CHICAGO, ILLINOIS 60607

July 18, 1972

We regret very much . . . that it was necessary to contact your Commanding Officer about your past due account.

Since the Military Department encourages a serviceman to discharge his obligations satisfactorily, this matter will undoubtedly be brought to your attention by your superior officer.

It was . . . and is . . . our intention to help you in whatever way we can. Send \$20.00 within five (5) days along with your assurance to continue payment on any reasonable terms you choose. As soon as this is received, at your request, we will notify your Commanding Officer of your agreement to settle this account.

If you fail to cooperate, we will have no choice but to further proceed through proper military channels. We sincerely hope that we may hear favorably from you in reply to this letter.

W. G. Hodges

W. G. HODGES
Collection Department

NGH:afco

MEMBER OF THE INTERNATIONAL CONSUMER CREDIT ASSOCIATION

EXHIBIT 14

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 Bureau of Consumer Protection 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; and

The respondent, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 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 Aldens, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 5000 West Roosevelt Road, in the City of Chicago, State of Illinois.

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

DEFINITION: For the purposes of this Order, the term *consumer* shall mean any natural person obligated or allegedly obligated to pay any debt.

I

It is ordered, That respondent, Aldens, Inc., a corporation, its

successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection or attempted collection of any consumer debt, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

(1) Communicating with any consumer without the prior consent of the consumer given directly to respondent at the time of the attempt to collect any debt, or the express permission of a court of competent jurisdiction if:

(a) Such communication is at any unusual time or place, or a time or place known (or which should be known) by respondent to be inconvenient to the consumer, including the consumer's place of employment, if respondent knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication; or

(b) Respondent knows the consumer is represented by an attorney acting on behalf of and in the name of the consumer with respect to such debt, and has knowledge of or can readily ascertain such attorney's name and address; *provided, however*, that respondent is permitted to communicate directly with the consumer if the attorney fails to respond, within a reasonable period of time, to a communication from respondent, or the attorney consents to direct communication with the consumer.

(2) Communicating with any consumer if the consumer has notified respondent in writing that he or she refuses to pay the debt, or wishes respondent to cease further communication, except:

(a) as reasonably necessary to inform the consumer that respondent may invoke specified remedies which are ordinarily invoked by respondent; or

(b) to advise the consumer that respondent will cease further communication.

(3) Failing to comply with the terms of the following statement which shall appear as a contract provision in all of respondent's charge account agreements for a period of five (5) years, beginning no later than six (6) months after this Order becomes final:

In the course of collecting or attempting to collect any debt arising from this charge agreement, Aldens will not discuss or threaten to discuss my debt with any person other than me or my attorney, without my written consent (given at the time of the attempt to collect) unless permitted by a court. However, Aldens may contact other

persons without mentioning any debt, if that is necessary to locate me. This provision does not limit Aldens' right to contact its attorneys or debt collection and credit reporting agencies, when permitted by law.

(a) This provision shall be printed clearly and conspicuously in the same size type as are the other provisions of the agreement.

(b) The term "collecting or attempting to collect any debt," as used in the above statement, shall not include contacts by respondent:

(1) with a credit reporting agency for the purpose of reporting or obtaining information;

(2) with a debt collection agency engaged or being engaged to collect the debt in question;

(3) with any person with the written consent of the consumer, given at the time of the attempt to collect;

(4) with its own attorneys;

(5) with third persons for the purpose of acquiring location information as provided in paragraph 3(c) of this Order; or

(6) which are reasonably necessary to effectuate a post-judgment judicial remedy.

(c) When contacting third persons to determine the location of the consumer, respondent shall:

(1) request information only as to the consumer's home address, home phone number, and place of employment;

(2) identify itself and state the purpose of the contact (i.e., Aldens is trying to locate the consumer) without stating that the consumer owes any debt; and

(3) not communicate more than once with any such person, unless it is reasonably believed to be necessary.

(d) Upon the expiration of the five (5) year period provided for in Paragraph (3) of this Order, respondent shall continue to comply with the terms of the statement contained in that paragraph.

II

It is further ordered, That:

(4) In the event that the Federal Trade Commission promulgates a valid trade regulation rule applicable to respondent's third party contact activities, then compliance with that rule shall be deemed compliance with Paragraph (3) of this Order.

(5) Respondent shall deliver a copy of this Order to cease and

desist to all present and future personnel of its collection staff who are engaged in the preparation or use of materials and procedures to be used in connection with the training of personnel or the actual day-to-day operation of respondent's collection activities, and shall secure a signed statement acknowledging receipt of said Order from each such person.

(6) Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the 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.

(7) Respondent 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.

Chairman Miller did not participate.

Modifying Order

98 F.T.C.

IN THE MATTER OF

COOGA MOOGA, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SECS.
5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2925. Order, Aug. 9, 1978—Modifying Order, Oct. 15, 1981*

In response to the Commission's adoption of the material connection Endorsement Guide, this order reopens the proceeding and modifies the Commission's order issued on August 9, 1978 (43 FR 40804, 92 F.T.C. 310) by deleting the words "any financial interest in the sale of the product or service which is the subject of the endorsement or" from the definition of material connection contained in Paragraph I.D. This modification relieves the petitioners of the obligation of disclosing any financial interest they may have in the sale of an endorsed product.

ORDER REOPENING THE PROCEEDING AND MODIFYING CEASE AND
DESIST ORDER

Charles E. "Pat" Boone and Cooga Mooga, Inc., (hereinafter "Petitioners") have filed, pursuant to Rule 2.51 of the Commission's Rules of Practice, a Petition to Reopen, Modify, Alter or Set Aside Parts of Consent Order (hereinafter "Petition"). The Petition seeks the modification or elimination of two provisions of the Commission's Order of August 9, 1978. The Order concerns petitioners' representations as advertisers and as endorsers, and requires them to contribute a pro rata share to a restitution program for purchasers of Acne-Statin, a product endorsed by petitioners.

The first issue raised by the Petition concerns the "material connection" disclosure provision of Paragraph I.D. of the Order. This provision requires petitioners, when they act as endorsers, to disclose "any financial interest in the sale of the product or service which is the subject of the endorsement or any familial connection between the endorser and the advertiser or its advertising agency." Petitioners argue that this provision unfairly discriminates against them because no other celebrity endorser is required to disclose such interest. Petitioners further contend that the Order provision conflicts with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising." 16 C.F.R. Part 255 (1980). In addition, they maintain that the material connection disclosure requirement is harmful to small business and infringes petitioners' First Amendment rights.

The Petition does not present any evidence of changed circumstances regarding the familial connection portion of the material