

Complaint

IN THE MATTER OF
THOMAS L. BAKER, INC., ET AL.

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

Docket C-3095. Complaint, Sept. 28, 1982—Decision, Sept. 28, 1982

This consent order requires two San Diego, Calif. corporations to cease, among other things, misrepresenting or failing to disclose material facts regarding the purchase of gemstones as investments, or their liquidity. The respondents are prohibited from misrepresenting the source of graphs or charts used in promotional literature; failing to disclose the limitations associated with the certificates issued by the firms to accompany their gemstones; or representing that their price increases reflect general market increases. Respondents are required to disclose both orally and in writing, before the execution of any contract for the sale of gemstones, among other things, that gemstones are not as easy to sell as other investments; that there are risks involved in the purchase of colored gemstones; and that diamonds .04 to .60 carats may be difficult to resell. Further, respondents are required to comply with the FTC's Mail Order Merchandise Rule and ensure that all personnel receive a synopsis of the order. Additionally, American Diamond Company is exempted from making these disclosures only when the gemstones are sold as jewelry, but must disclose in writing on the sales agreement that jewelry is not sold for investment purposes.

Appearances

For the Commission: *Curtis Yee, David C. Fix and Robert D. Friedman.*

For the respondents: *Jeffrey L. Davidson, Davidson, Holmes and Anderson, Los Angeles, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Diamond Company, a corporation, Thomas L. Baker, Inc., a corporation also trading and doing business as American Diamond Company, and Thomas L. Baker, individually and as an officer of said corporations, 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Complaint

100 F.T.C.

PARAGRAPH 1. Respondent Thomas L. Baker, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondent American Diamond Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Both of the corporate respondents have their principal offices and places of business at 1205 Prospect St., Room 250, La Jolla, California.

Respondent Thomas L. Baker is an officer and director of each of the corporate respondents named herein. He formulates, directs and controls the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of said corporations.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for sometime have been, engaged in the purchasing, offering for sale, sale, and distribution of gemstones to the consumer public.

PAR. 3. 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.

PAR. 4. In the course and conduct of their aforesaid business, respondents disseminate and have disseminated promotional materials through the United States mail and have made oral sales presentations by means of telephone calls.

PAR. 5. By and through the means described in Paragraph Four, respondents have made various statements and representations with respect to the liquidity of gemstones purchased as an investment. Typical and illustrative of these statements and representations, but not all inclusive thereof, are the following:

A. Your money is now in an investment which . . . is highly liquid, can be sold virtually at will and because of international demand can be redeemed in the currency of your choice.

B. Rubies can be redeemed in the currency of your choice virtually at will.

C. Diamonds have always been accepted like cash, and you can exchange them in virtually any country in the world for the currency of your choice. Through the American Diamond Company you can buy and sell diamonds via telephone as easily as you can purchase stocks and bonds through your broker.

D. There are 14 international cash markets where one can liquidate a diamond.

E. These "liquidity diamonds," so called because of their high level of negotiability.

ty, had long been the "currency" of the diamond world—bought, sold, and used as a medium of exchange for centuries by people of all nations.

PAR. 6. Through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set out herein, respondents have represented and are representing, directly or by implication, that:

A. Diamonds and rubies are highly liquid investments which can be easily or quickly sold by an individual investor for a price comparable to what an individual investor would have to pay to purchase such gemstones from respondents or another commercial source.

B. A person can sell diamonds and rubies through respondents as easily as they can sell stocks and bonds through a stock broker.

C. There are numerous outlets available to an individual investor to sell his or her gemstones.

D. There are at anytime established, generally recognized prices for diamonds and other gemstones at which an individual can easily sell or exchange his or her gemstones.

PAR. 7. In truth and in fact:

A. Diamonds and rubies are not highly liquid investments and usually cannot be easily or quickly sold by the individual investor for a price comparable to what the individual investor would have to pay to purchase such gemstones from respondents or another commercial source. In most instances, an individual who wants to sell diamonds or rubies quickly will only be able to effect a sale at a price substantially lower than the price an individual would have to pay to purchase such gemstones from respondents or another commercial source.

B. A person cannot sell diamonds and rubies through respondents as easily as they can sell stocks and bonds through a stock broker.

C. There are only a small number of outlets available to an individual investor to sell his or her gemstones.

D. There are no established and generally recognized prices for diamonds and other gemstones at which an individual can easily sell or exchange his or her gemstones. There is no organized market where prices are established and reported. Prices are established by individual sellers, generally after evaluation and negotiation.

Therefore, the representations set forth in Paragraph Five and

others of similar import and meaning, are false, misleading, and deceptive.

PAR. 8. In making the representations regarding liquidity set forth in Paragraph Five, and others of similar import and meaning, respondents have failed to disclose the material fact that an individual who seeks a quick sale of gemstones will in most instances only be able to obtain a sale at a price substantially lower than the price an individual would have to pay to purchase such gemstones from respondents or another commercial source.

The failure to disclose this fact clearly and conspicuously is an unfair and deceptive practice.

PAR. 9. In the further course and conduct of their aforesaid business, respondents have represented and are representing that, at the buyer's request, respondents will sell a buyer's gemstone for the buyer at respondents' then current selling price. Respondents have failed to disclose the material facts that:

A. An individual who sells his or her gemstones through respondents will be required to pay a fee of approximately 17 percent for such service.

B. An individual who attempts to sell his or her gemstones through respondents may have to wait many months before receiving the proceeds from the sale.

The failure to disclose such facts clearly and conspicuously is an unfair and deceptive practice.

PAR. 10. In the further course and conduct of their aforesaid business, respondents have offered and are offering for sale diamonds ranging in size from .04 carats to .6 carats, which they have denominated "liquidity" and "currency" diamonds. Said diamonds have been and are being sold to individual consumers accompanied by certificates issued by respondents attesting to the quality of the diamonds. In connection with the offering for sale of these diamonds, respondents have represented, and are representing, directly or by implication, that said diamonds are excellent investments, are highly liquid, and that there is little or no financial risk involved in the purchase of said diamonds. Respondents have failed to disclose the material facts that:

A. There is no active investors' market in which many of these diamonds can be sold.

B. There are few outlets for an individual investor to resell many of these diamonds and resale for all of them is made more difficult by

the lack of certification by a recognized independent gemological laboratory.

C. The principal resale outlets, other than respondents, available to individual investors for sale of many of these diamonds are retail jewelers. Many jewelers will not buy diamonds from an individual, and those that do will generally pay an individual substantially less than what the jeweler would have to pay his customary supplier for the same diamonds.

The failure to disclose such facts clearly and conspicuously is an unfair and deceptive practice.

PAR. 11. In the further course and conduct of their aforesaid business, respondents have provided and are providing certificates issued by themselves attesting to certain characteristics of the diamonds sold. Respondents have represented and are representing, directly or by implication, that with these certificates the individual can readily determine the quality and value of the diamonds purchased. In truth and in fact, an individual cannot determine the quality and value of the diamonds purchased using the certificates provided by respondents.

Respondents have failed to disclose that:

A. The information provided by respondents' certificates is not sufficient to define the characteristics of the diamonds for purposes of enabling a purchaser to reliably determine the quality and value of the diamonds purchased.

B. Certificates for diamonds issued by the company selling the diamonds generally have no recognized value as certification.

The failure to disclose such facts clearly and conspicuously is an unfair and deceptive practice.

PAR. 12. In the further course and conduct of their aforesaid business, respondents have made and are making various representations concerning the past appreciation in value of diamonds. Typical and illustrative of said representations, but not all inclusive thereof, are the following:

1. If you had invested \$10,000 in diamonds with American Diamond Company in 1975, you would have over \$50,000 today.
2. Over the past decade, the value of diamonds has increased by 800%.
3. Investment quality diamonds have appreciated 40% over the last half decade on an annualized basis.
4. No price declines in over 45 years.

PAR. 13. By and through the use of the above representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that all sizes and grades of diamonds sold by respondents have enjoyed rates of appreciation comparable to those represented in Paragraph Twelve.

In truth and in fact, diamonds of different sizes and different grades sold by respondents have not experienced rates of appreciation comparable to those set forth in Paragraph Twelve.

Therefore, the representations set forth in Paragraph Twelve and others of similar import and meaning, are false, misleading, and deceptive.

PAR. 14. Further, in making the representations set forth in Paragraph Twelve and others of similar import and meaning, respondents have failed to disclose the material facts that:

A. There are substantial differences in the past appreciation of diamonds of different carat weight, color, cut, and clarity.

B. The fact that diamonds or other gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

The failure to disclose such facts clearly and conspicuously is an unfair and deceptive practice.

PAR. 15. In the further course and conduct of their aforesaid business, respondents have used and are using in their promotional literature certain charts and graphs purporting to demonstrate the appreciation history and economic performance of diamonds as an investment. Respondents have represented and are representing, directly or by implication, that these various charts and graphs were prepared or published by sources independent of respondents.

In truth and in fact, certain of the charts and graphs used in respondents' promotional literature and attributed to independent sources were not prepared or published by those sources. Therefore, the above representations are false, misleading, and deceptive.

PAR. 16. In the further course and conduct of their aforesaid business, respondents have made representations concerning future appreciation in the price of gemstones. For example, in August, 1980 respondents represented that their "liquidity diamonds" would appreciate 40% within the next six months. At the time this and similar representations were first made and subsequently disseminated, respondents did not possess and rely upon a reasonable basis for such claims of future performance. Thus, the dissemination of

such representations was, and is, an unfair and deceptive act or practice.

PAR. 17. In the further course and conduct of their aforesaid business, respondents have made representations concerning recent price appreciations for their "liquidity diamonds." For example, in November, 1980 respondents represented that general market demand for diamonds had caused a third 5 percent price increase within a four month period, and that the price would increase again on December 8, 1980. By and through such statements and others of similar import and meaning, respondents have represented and are representing, directly or by implication, that respondents' price increases reflect general market price increases.

In truth and in fact, respondents' price increases do not reflect general market price increases, and, at the time these representations were made, the market prices for the diamonds respondents denominate "liquidity diamonds" had not risen in the manner represented by respondents. Therefore, the above representations are false, misleading and deceptive.

PAR. 18. In the further course and conduct of their aforesaid business, respondents have represented and are representing, directly or by implication, that they are major cutters, and wholesale rough brokers who cut, finish, polish and maintain an inventory of gemstones and for this reason are able to offer their clients the lowest possible prices available to the investor.

PAR. 19. In truth and in fact, respondents are not major cutters and wholesale rough brokers. They do not cut, finish, or polish their own stones and in many instances they do not have in inventory the particular stones that they sell. Therefore, the representations set forth in Paragraph Eighteen are false, misleading, and deceptive.

PAR. 20. In the further course and conduct of their business, respondents have engaged in the following acts and practices:

A. Deposited purchasers' funds into their bank accounts upon receipt of such funds and failed either to ship the merchandise ordered or to refund money for six weeks to one year.

B. Sold gemstones not in their inventory and then failed to make a good faith effort to acquire the gemstones sold in order to effect delivery within a reasonable time.

C. Appropriated purchasers' funds received from the sale of gemstones for purposes other than effecting prompt delivery of gemstones sold.

D. In instances where purchasers' undelivered gemstones had appreciated in value after sale, attempted to persuade such purchas-

ers to accept gemstones which had not experienced as much appreciation.

E. In instances where they have resold purchasers' gemstones through their liquidation service and received the funds from such sale, failed to promptly forward the proceeds of the sale to the seller.

F. Failed to answer letters of inquiry from customers and made inadequate and untrue responses to customers who inquired about late delivery.

The acts and practices set forth above are deceptive and unfair.

PAR. 21. In the further course and conduct of their aforesaid business, respondents have represented and are representing that they could and would deliver gemstones purchased within a specific or reasonable period of time. Further, respondents have represented and are representing, directly or by implication, that they could and would deliver to purchasers a gemstone with specifically defined characteristics.

PAR. 22. In truth and in fact, in a substantial number of instances, respondents have failed to deliver purchased gemstones within the specific time represented or within a reasonable period of time. Further, in a substantial number of instances, respondents have failed to deliver to purchasers gemstones with characteristics comparable to those specified in the purchase agreement. Therefore, the representations set forth in Paragraph Twenty-One are false, misleading, and deceptive.

PAR. 23. 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. 24. The use by respondents of the aforementioned false, misleading, unfair and deceptive statements, representations, acts and practices, directly or by implication, and the failures of respondents to disclose the aforementioned material facts, has had, and now has, the capacity and tendency to mislead members of the 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' gemstones by reason of said erroneous and mistaken belief.

PAR. 25. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal

Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission has initiated an investigation of certain acts and practices of the respondents Thomas L. Baker, Inc. and American Diamond Company [hereinafter referred to as respondents], and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, 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 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 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, and having duly considered any comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules; and

The respondents having filed a petition for reorganization under Chapter 11 of the Bankruptcy Code (11 U.S.C. 362) on October 23, 1981; and

The respondents and complaint counsel having thereafter submitted to the Commission a revised Agreement Containing Consent Order; and

The Commission having considered and accepted the revised Agreement; and

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 Thomas L. Baker, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4455 Morena Boulevard, San Diego, California.

Respondent American Diamond Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4455 Morena Boulevard, San Diego, California.

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.

It is ordered, That respondent Thomas L. Baker, Inc., a corporation, respondent American Diamond Company, a corporation, their successors and assigns, and their officers, and respondents' agents, representatives, brokers, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the purchasing, advertising, offering for sale, sale or distribution of any diamond, ruby, or any other precious or semi-precious stone, (hereinafter gemstones) 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:

(a) A diamond or ruby or other gemstone is an investment which can be easily or quickly sold by an individual investor for a price substantially the same as what an individual would have to pay to purchase such gemstone from respondent(s) or another commercial source.

(b) A person can sell a diamond or ruby or other gemstone through respondent(s) as easily as he or she could sell a stock or bond through a stock broker.

(c) There is at any time an established, generally recognized market price for a diamond or other gemstone at which an individual could easily sell or exchange his or her gemstone(s).

2. Misrepresenting in any manner, directly or by implication, the ease with which an individual can resell a diamond, ruby or other gemstone or the price an individual is likely to receive upon such resale.

3. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any gemstone(s), the following information:

(a) Gemstones are not as easy to sell as many other investments. If you seek a quick sale of a gemstone you will in many instances only be able to get a price substantially lower than the current selling price of the gemstone.

(b) If you resell your gemstones through [name company] you will be required to pay liquidation/consignment fees of [insert fees].

(c) If you try to resell your gemstones through [name company] you may in some instances have to wait a substantial period of time before the gemstones are sold. In addition, a sale on consignment is not completed until thirty (30) days after the gemstones have been delivered to the new purchaser. This allows the new purchaser the right to inspect and return the gemstones.

(d) There are substantial differences in the past appreciation of gemstones of different weight, color, cut and clarity. Also, the fact that particular gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

Provided, however, That if respondents do not offer a resale service for gemstones the following disclosures shall be made in lieu of those required by Paragraphs 3(b) and (c) of this order:

(b) If you resell your gemstone through a company handling such resales, you may be required to pay substantial liquidation/consignment fees.

(c) If you try to resell your gemstones through a company handling such resales, you may in some instances have to wait a substantial period of time before the gemstones are sold.

4. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any diamond(s), ranging in size from .04 to .60 carats, the following information:

(a) [Name company] is the principal place for you to resell these diamonds. Resale for profit to other outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

(b) Resale through outlets other than [name company] may be

made more difficult by the lack of certification by a recognized independent gemological laboratory.

(c) The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell through anyone other than [name company].

Provided, however, That if respondents do not offer a resale service for gemstones the following disclosures shall be made in lieu of these required by Paragraphs 4(a), 4(b), and 4(c) of this order:

(a) The principal place for you to resell these diamonds is to outlets such as retail jewelers. Resale for profit to outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

(b) Resale of these diamonds may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

(c) The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell these diamonds.

5. Misrepresenting in any manner, directly or by implication, the past appreciation in value of any diamond(s) or other gemstone(s).

6. Making any representation, directly or by implication, concerning the past appreciation of any diamond(s), or other gemstone(s) without:

(a) Disclosing, clearly and conspicuously, the type of diamond or other gemstone, in terms of size, color, cut, clarity, or other relevant characteristic, to which the past appreciation representation relates; and

(b) Having a reasonable basis upon which to make the claim.

7. Misrepresenting in any manner directly or by implication, the source of any graph or chart or of any information depicted in any promotional material or other presentation relating to the sale of any gemstone(s).

8. Making any representation, directly or by implication, in any advertising or sales promotional material or orally during the course

of any sales presentation, concerning the future appreciation of any diamond(s) or other gemstone(s) unless at the time of such representation respondents possess and rely upon a reasonable basis for the representation.

9. Failing to maintain accurate records, which may be inspected by Commission staff members upon reasonable notice, which:

(a) Consist of documentation in support of any representation concerning the past or future appreciation of any diamond or other gemstone included in any advertising or sales promotional material disseminated by respondents, insofar as the text of such representation is prepared, or is authorized and approved, by any person who is an officer or employee of respondents or by any advertising agency engaged for such purpose by respondents; and

(b) Provide the basis upon which respondents relied as of the time the representation was made.

10. Misrepresenting in any manner, directly or by implication, that respondents' own price increases reflect general market price increases.

11. Representing, directly or by implication, that:

(a) Respondents are "sight" buyers of diamonds from DeBeers Central Selling Organization.

(b) Respondents are wholesale rough brokers of diamonds or other gemstones.

(c) Respondents maintain an inventory of the gemstones they sell unless at the time such representation was made respondents actually had in their possession or on consignment the exact gemstones about which the representation was made.

12. Misrepresenting in any manner, directly or by implication, the business activities engaged in by respondents, including how respondents' pricing compares to price levels at various positions on the gemstone distribution chain such as cutter or wholesale levels.

13. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any colored gemstone, the following information:

(a) If your gemstone is re-certified, it may receive a different grade. This may affect its value. There are two reasons for this. First, colored gemstone grading is, in part, subjective. Second, procedures used for grading colored gemstones may change.

(b) A colored gemstone which receives a higher grade on a

certificate is not necessarily more valuable than one receiving a lower grade. Dealers in colored gemstones may differ significantly in their assessment of the value of particular gemstones and will often rely on personal inspection in setting a value for a gemstone instead of relying only on a certificate.

(c) The above characteristics of colored gemstone grading and valuation are a risk you should consider before investing in colored gemstones.

14. Failing to comply with Federal Trade Commission Rule concerning Mail Order Merchandise, 16 C.F.R. 435.

15. Failing to answer, and to answer promptly, inquiries by or on behalf of any customer regarding any purchase made from respondents.

16. Failing to deliver a gemstone with the specific characteristics ordered unless a customer has agreed in writing to a substitution.

17. Failing to deliver the proceeds of a gemstone sale which the respondents have made on behalf of a previous customer or other party to such customer or party within 10 working days of completion of sale.

II.

It is further ordered, That the oral affirmative disclosures required by Paragraphs 3, 4, and 13 of this order need not be made by respondents if gemstones are sold for jewelry and in the sales agreement so identified and the following disclosure is made on the front page of the sales agreement covering each such sale:

Items designated as jewelry grade are not sold by [name of company] for investment purposes and no representation is made that such items are investment quality or suitable for investment.

III.

It is further ordered, That the written affirmative disclosures required by Paragraphs 3, 4, and 13 of this order shall be made in the manner described below:

RISK FACTORS YOU SHOULD CONSIDER IF YOU ARE PURCHASING GEMSTONES AS AN INVESTMENT

1. Gemstones are not as easy to sell as many other investments. If you seek a quick sale of a gemstone you will in many instances

only be able to get a price substantially lower than the current selling price of the gemstone.

2. There are substantial differences in the past appreciation of gemstones of different weight, color, cut and clarity. Also, the fact that particular gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

[If respondents offer a resale service for gemstones:]

3. If you resell gemstones through [name company] you will be required to pay liquidation/consignment fees of [insert fees].

4. If you try to resell your gemstones through [name company] you may in some instances have to wait a substantial period of time before the gemstones are sold. In addition, a sale on consignment if not completed until thirty (30) days after the gemstones have been delivered to the new purchaser. This allows the new purchaser the right to inspect and return the gemstones.

[If respondents do not offer a resale service for gemstones:]

3. If you resell your gemstones through a company handling such resales, you may be required to pay substantial liquidation/consignment fees.

4. If you try to resell your gemstones through a company handling such resales, you may in some instances have to wait a substantial period of time before the gemstones are sold.

FOR PURCHASERS OF DIAMONDS .04-.60 CARATS IN SIZE

[If respondents offer a resale service for gemstones:]

5. [Name company] is the principal place for you to resell these diamonds. Resale for profit to other outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

6. Resale through outlets other than [name company] may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

7. The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to

enable a purchaser to resell through anyone other than [name company].

[If respondents do not offer a resale service for gemstones:]

5. The principal place for you to resell these diamonds is to outlets such as retail jewelers. Resale for profit to outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

6. Resale of these diamonds may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

7. The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell these diamonds.

FOR PURCHASERS OF COLORED GEMSTONES

8. If your gemstone is re-certified, it may receive a different grade. This may affect its value. There are two reasons for this. First, colored gemstone grading is, in part, subjective. Second, procedures used for grading colored gemstones may change.

9. A colored gemstone which receives a higher grade on a certificate is not necessarily more valuable than one receiving a lower grade. Dealers in colored gemstones may differ significantly in their assessment of the value of particular gemstones and will often rely on personal inspection in setting a value for a gemstone instead of relying only on a certificate.

10. The above characteristics of colored gemstone grading and valuation are a risk you should consider before investing in colored gemstones.

This notice shall appear in all written advertising and promotional material used to sell any gemstone(s) except newspaper and magazine advertisements and one-page promotional material whose sole purpose is to solicit a prospective customer to request further information. The title "RISK FACTORS YOU SHOULD CONSIDER IF YOU ARE PURCHASING GEMSTONES AS AN INVESTMENT" shall be printed in no smaller than ten (10) point boldface type. The remainder of the notice shall be printed in type no smaller

than the smallest type otherwise in the advertising or no smaller than eight (8) point type, whichever is larger. The capitalization, punctuation and wording of the text and headings must be exactly as shown above.

This notice must also appear on the front page of all sales agreements or on a separate sheet of paper given to customers before they sign the sales agreement. The separate sheet may not contain any other writing. The notice required in this subparagraph shall be in the form set forth as follows:

1. At the bottom of the notice shall be the language "I have read this notice and understand what it says" and a place for the buyer's signature.
2. The text of the notice must be printed in no smaller than 9-point type and the heading "RISK FACTORS YOU SHOULD CONSIDER IF YOU ARE PURCHASING GEMSTONES AS AN INVESTMENT" must be 2 type points larger and boldface. The capitalization, punctuation and wording of the text and headings must be exactly as shown above.
3. The whole notice, from the word "RISK" to the words "what it says," must be printed in gothic, astron, avant garde, eras, frutiger, gill sans, grotesque, heldustry, helvetica, kabel, antique, optima, univers, vogue, americana, american typewriter, newtext, or quorum type in blue, blue-black, or black ink on white or buff background. If the notice is printed on the front page of a sales agreement on which other information is emphasized by the use of colored type, the notice must then be printed in the most conspicuous colored type used.
4. The whole notice from the word "RISK" to the space for the customer's signature, must be boxed with lines 2 points thick if the notice appears on the front page of a sales agreement.

The disclosures in Paragraph 4 only have to be made if the promotional material or contract relates to the sale of diamonds of .04 carats to .60 carats in size. The disclosures in Paragraph 13 only have to be made if the promotional material or contract relates to the sale of colored gemstones.

It is further ordered, That each customer be given at the time of sale a fully filled-in and legible copy of the sales agreement. Respondents shall keep a fully filled-in and legible copy of each sales agreement for three years after signing.

IV.

It is further ordered, That respondents herein shall notify the Commission at least 30 days prior to any change in the structure of any of the corporate respondents involving dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary, or any other change in the respective corporation which may affect compliance obligations arising out of this order.

V.

It is further ordered, That respondents distribute a synopsis of this order to all operating divisions of said corporations, and to present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondents secure from each such person a signed statement acknowledging receipt of said order.

VI.

It is further ordered, That respondents herein shall, within ninety (90) 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
THOMAS L. BAKER

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

Docket C-3096. Complaint, Sept. 28, 1982—Decision, Sept. 28, 1982*

This consent order requires a San Diego, Calif. corporate officer to cease, among other things, misrepresenting or failing to disclose material facts regarding the purchase of gemstones as investments, or their liquidity. The respondent is prohibited from misrepresenting the source of graphs or charts used in promotional literature; failing to disclose the limitations associated with the certificates issued by the firms to accompany their gemstones; or representing that their price increases reflect general market increases. Respondent is required to disclose both orally and in writing, before the execution of any contract for the sale of gemstones, among other things, that gemstones are not as easy to sell as other investments; that there are risks involved in the purchase of colored gemstones; and that diamonds .04 to .60 carats may be difficult to resell. Further, respondent is required to comply with the FTC's Mail Order Merchandise Rule and ensure that all personnel receive a synopsis of the order.

Appearances

For the Commission: *Curtis Yee, David C. Fix and Robert D. Friedman.*

For the respondent: *Jeffrey L. Davidson, Davidson, Holmes and Anderson, Los Angeles, Calif.*

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent Thomas L. Baker [hereinafter referred to as respondent], and the respondent having been furnished 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, his attorney, 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 the complaint, a statement that the

* Complaint previously published at 100 F.T.C. 461 (1982).