

Complaint

101 F.T.C.

IN THE MATTER OF

THE COMPETITIVE EDGE, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND THE TRUTH IN LENDING ACT

Docket C-3111. Complaint, June 9, 1983—Decision, June 9, 1983

This consent order requires an Albuquerque, N.M. advertising agency, among other things, to cease failing to make clear and conspicuous credit disclosures in T.V. advertisements promoting consumer credit. The order requires that credit terms be displayed in the video portion of the ad for at least five seconds, and that rates of finance charges be quoted as an "annual percentage rate." The agency is also prohibited from using certain credit terms in advertisements promoting credit sales unless those advertisements also include statutorily required information in the manner prescribed by the Truth In Lending Act and its implementing Regulation Z.

Appearances

For the Commission: *George R. Bellack.*

For the respondent: *Paull Mines, Poole, Tinnin & Martin*, Albuquerque, N.M. and *Christopher Smith, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Competitive Edge, Inc. (hereinafter sometimes referred to as "respondent"), a corporation, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Competitive Edge, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Mexico, with its office and principal place of business located at Number 3 American Financial Center, 2400 Louisiana Boulevard, N.E., Albuquerque, New Mexico.

PAR. 2. Respondent is now, and for some time has been, engaged in the business of creating, producing, and causing dissemination of

advertisements for its clients, as "advertisement" is defined in Section 226.2(d) of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.¹

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent created, produced and caused the dissemination of advertisements to be broadcast on television at various times during January and February 1981. Certain of these advertisements were designed to aid, promote, or assist directly or indirectly the extension of consumer credit, as "consumer credit" is defined in Section 226.2(p) of Regulation Z.

PAR. 4. In certain of the advertisements referred to in Paragraph Three above, respondent used an advertising format in which the credit terms required by Section 226.10(d)(2) of Regulation Z were presented in the video portion of the advertisement. The required disclosures were displayed for an insufficient time for the viewer to read the credit terms, thereby detracting from the clarity and conspicuousness of the required disclosures.

PAR. 5. In certain of the advertisements referred to in Paragraph Three above, the annual percentage rate was not stated as "annual percentage rate," using that term, as required by Section 226.10(d)(1) of Regulation Z.

By means of such advertisements, respondent, The Competitive Edge, Inc. violated Section 226.10(d)(2) of Regulation Z, which requires credit disclosures to be made clearly and conspicuously, and Section 226.10(d)(1) of Regulation Z which requires the finance charge to be stated as "annual percentage rate", using that term. Pursuant to Section 103(s) of the Truth in Lending Act, respondent's aforesaid failures to comply with Regulation Z constitute a violation of that Act and, pursuant to Section 108(c) thereof, respondent has thereby violated the Federal Trade Commission Act.

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 Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Truth in Lending Act and the implementing regula-

¹ All reference to the Truth in Lending Act and Regulation Z contained in this Complaint shall refer to the Truth in Lending Act as amended to March 23, 1976 and Regulation Z as amended to March 23, 1977.

tions promulgated thereunder and of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described 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, The Competitive Edge, Inc., is a corporation Organized, existing and doing business under and by virtue of the laws of the State of New Mexico, with its office and principal place of business located at Number 3 American Financial Center, 2400 Louisiana Boulevard, N.E., in the City of Albuquerque, State of New Mexico.
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

I. *It is ordered*, That respondent The Competitive Edge, Inc., 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 any television advertisement to promote, directly or indirectly, any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*,¹ do forthwith cease and desist from:

¹ All references to the Truth in Lending Act and Regulation Z contained in this Order shall refer to the Truth in Lending Act as amended to March 31, 1980, and Regulation Z as amended to April 1, 1981.

1. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, unless the following terms are also stated, as required by Section 226.24 (c)(2) of Regulation Z:

- (a) the amount or percentage of the downpayment;
- (b) the terms of repayment; and
- (c) the "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

The terms which are required by Section 226.24(c)(2) of Regulation Z are subject to the general "clear and conspicuous" standard set forth in Section 226.17(a)(1) of Regulation Z and Section 226.24-1 of the Official Federal Reserve Board Staff Commentary on Regulation Z.

2. Failing to disclose the terms required by Section 226.24(c)(2) of Regulation Z in the video portion of any television advertisement subject to this order for at least five (5) seconds' duration.

3. Failing in an advertisement which states a rate of finance charge to state the rate as an "annual percentage rate," using that term as required by Section 226.24(b) of Regulation Z.

II. It is further ordered, That:

1. Respondent shall distribute a copy of this order to the most senior person employed in each of its operating divisions and to each person having decision-making authority to determine all or part of the contents of an advertisement which is subject to this order, and shall secure from each such person a signed statement acknowledging receipt of said order.

2. 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 this order.

3. Respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
SCOTT PAPER COMPANY

VACATING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 6559. Modified Order, May 8, 1964—Vacating Order, June 22, 1983*

This order reopens the proceeding and vacates in its entirety the Commission's order issued on May 8, 1964 (65 F.T.C. 638). The Commission has determined that order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding 10 years.

ORDER VACATING CEASE AND DESIST ORDER ISSUED ON MAY 8, 1964

By a petition filed on February 24, 1983, Scott Paper Company ("Scott") requests that the Commission reopen the proceeding in Docket No. 6559 and vacate the order issued by the Commission on May 8, 1964 [65 F.T.C. 638]. Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comments. No comments were received.

Upon consideration of Scott's petition and supporting materials, and other relevant information, the Commission finds that the public interest warrants reopening and vacating the order.

In *Columbian Rope Company*, Docket No. C-1794 [100 F.T.C. 531], the Commission determined that order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding ten years. In most cases, the Commission believes that such prior approval provisions will have served their remedial and deterrent purposes after ten years and that the findings upon which such provisions are based should not be presumed to continue to exist for a longer period of time. The perpetual prior approval provision in this case has been outstanding for 18 years. No particular circumstances warrant an exception from this general policy. Therefore, the Commission, in the exercise of its discretion, finds that it is appropriate to vacate the order.

Accordingly, *it is ordered*, that this matter be, and it hereby is reopened and that the order in Docket No. 6559, issued by the Commission on May 8, 1964, be and it is hereby vacated.

* Original Commission Order issued Dec. 16, 1960 (57 F.T.C. 1415).