

Complaint

103 F.T.C.

IN THE MATTER OF

MACY'S NEW YORK, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket C-3130. Complaint, Jan. 31, 1984—Decision, Jan. 31, 1984*

This consent order requires a major New York City department store, among other things, to comply with the billing error resolution procedures of the Fair Credit Billing Act (FCBA) and the provisions of Regulation Z, which implement the FCBA. This requires the company to acknowledge a customer's *written* billing error notice within 30 days; resolve the dispute or mail an explanation as to why a statement is believed correct within 2 billing cycles; and maintain for at least 2 years, records evidencing compliance with the Act's billing error resolution procedures. The order prohibits the company from attempting to collect any amount of a bill in dispute, including any finance charge computed on such amount; failing to include on its periodic statements a notice advising customers that disputed amounts need not be paid pending resolution of the dispute; failing to forfeit the right to collect the amount in dispute up to \$50, should it fail to comply with the FCBA's billing error resolution procedures; and failing to timely credit payments to customers' accounts. Additionally, respondent must institute a comprehensive educational program for officers and employees who either establish the company's credit billing procedures or who respond to and resolve notifications of billing errors; conduct refresher courses annually for five years; and secure from such personnel a signed statement acknowledging that he/she has read the order, the FCBA, the provisions of Regulation Z, which implement the FCBA, and the educational materials explaining the Act and its requirements. Further, the company must timely establish a \$225,000 redress fund to be apportioned equally among those customers who 1) held an open-end credit account with the store during the period (Jan. 1, 1977 through Dec. 31, 1978; and 2) who sent the store a written inquiry concerning a billing error at the address designated by it for receipt of billing error notifications.

Appearances

For the Commission: *Shirley F. Sarna.*

For the respondent: *Carl D. Lobell, Weil, Gotshal & Manges, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and its implementing Regulation Z, duly promulgated by the Board of Governors of the Federal Reserve

System,* and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Macy's New York, Inc., a corporation, (hereinafter "respondent") has violated the provisions of said Acts and Regulation Z, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint:

PARAGRAPH 1. Respondent Macy's New York, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 151 West 34th Street, New York, New York.

PAR. 2. Respondent is now, and for some time has been, engaged in the purchasing, offering for sale, sale and distribution of general merchandise and related services to the public at retail.

PAR. 3. Respondent maintains, and has maintained at all times relevant hereto, a substantial course of business, including the acts and practices herein set forth, in or affecting commerce.

PAR. 4. At all times relevant hereto in the ordinary course and conduct of its business, respondent did and does regularly extend, offer to extend, arrange or offer to arrange *consumer credit* for its customers' purchases, and has been and is a *creditor* [as those terms are defined in Section 226.2(p) and (s) of Regulation Z, 12 C.F.R. 226.2(p) and (s), respectively]. The transactions involve the extension of *open end credit* [as defined in Section 226.2(x) of Regulation Z, 12 C.F.R. 226.2(x)].

Definitions: For the purpose of this complaint the following definitions are applicable:

a. *billing error* shall be defined as provided by Section 226.2(j) of Regulation Z, 12 C.F.R. 226.2(j).

b. *commerce* shall be defined as provided by Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

c. *consumer credit* shall be defined as provided by Section 226.2(p) of Regulation Z, 12 C.F.R. 226.2(p).

d. *creditor* shall be defined as provided by Section 226.2(s) of Regulation Z, 12 C.F.R. 226.2(s).

e. *customers* shall be defined as provided by Section 226.2(u) of Regulation Z, 12 C.F.R. 226.2(u).

f. *Fair Credit Billing Act* (hereinafter "FCBA") shall refer to Sections 161 through 171 of the Truth in Lending Act, 15 U.S.C. 1666-1666j, now in effect or as they may be amended.

g. *other charges* shall refer to late payment charges or other charges

* 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.

(excluding finance charges) imposed as the result of an erroneous billing.

h. *open end credit* shall be defined as provided by Section 226.2(x) of Regulation Z, 12 C.F.R. 226.2(x).

i. *proper written notification of a billing error* shall be defined as provided by Section 226.2(cc) of Regulation Z, 12 C.F.R. 226.2(cc).

j. *Regulation Z* shall refer to that version of Regulation Z, 12 C.F.R. 226, effective July 1, 1969, the implementing regulation of the Truth in Lending Act, now in effect or as it may be amended.

k. *Truth in Lending Act* shall refer to that version of the Act, 15 U.S.C. 1601 *et seq.*, now in effect or as it may be amended.

COUNT I

Alleging violations of the Truth in Lending Act and its implementing Regulation Z, and of the Federal Trade Commission Act, the allegations of Paragraph One through Four are incorporated by reference herein as if fully set forth verbatim.

PAR. 5. Subsequent to October 28, 1975, pursuant to its extensions of consumer credit and in the ordinary course and conduct of its business, respondent has received from numerous customers proper written notification of a billing error. In a substantial number of such instances respondent, after receipt of such notification, has:

1. Contrary to and in violation of the requirements of Section 226.14(a)(1) of Regulation Z, 12 C.F.R. 226.14(a)(1), failed and does fail to take any of the following actions within 30 days after receipt of the notification:

- a. Mail or deliver to the customer a written acknowledgement;
- b. Make appropriate corrections in the customer's account and mail or deliver to the customer a written notice of the corrections; or
- c. Mail or deliver to the customer a written explanation, after having conducted a reasonable investigation, setting forth the reasons why the billing is believed to be correct.

2. Contrary to and in violation of the requirements of Section 226.14(a)(2) of Regulation Z, 12 C.F.R. 226.14(a)(2), failed and does fail to take either of the following actions within the lesser of 90 days or two complete billing cycles from the date of receipt of the notification:

- a. Make appropriate corrections in the customer's account and mail or deliver to the customer a written notice of the corrections; or
- b. Mail or deliver to the customer a written explanation, after having conducted a reasonable investigation, setting forth the reasons why the billing is believed to be correct.

3. Failed and does fail to retain for at least two years the customer's

notification of billing errors, copies of all correspondence in response thereto, and other evidence of compliance with Section 226.14(a) of Regulation Z, 12 C.F.R. 226.14(a), as required by Section 226.6(i) of Regulation Z, 12 C.F.R. 226.6(i).

PAR. 6. In a substantial number of instances subsequent to October 28, 1975, respondent, after receipt of proper written notification of a billing error, and prior to resolution of the billing dispute, has mailed and does mail subsequent periodic statements which include disputed amount(s) to the customer, but has failed and does fail to indicate on the face of the statement that payment of the amount(s) in dispute is not required pending resolution of the dispute, thereby violating the provisions of Section 226.14(b)(4) of Regulation Z, 12 C.F.R. 226.14(b)(4).

PAR. 7. In a substantial number of instances subsequent to October 28, 1975, respondent after receipt of proper written notification of a billing error and prior to resolution of the billing dispute, has begun action to collect the amount(s) indicated by the customer as being a billing error, finance or other charges computed on such disputed amount(s), thereby violating the provisions of Section 226.14(a)(2) of Regulation Z, 12 C.F.R. 226.14(a)(2).

PAR. 8. In a substantial number of instances subsequent to October 28, 1975, respondent, after receipt of proper written notification of a billing error and after resolution of a billing dispute in favor of the customer, has credited and does credit the customer's account in the disputed amount but has failed and does fail to credit any finance or other charges imposed as a result of the erroneous billing, in violation of the provisions of Section 226.14(b)(2) of Regulation Z, 12 C.F.R. 226.14(b)(2).

PAR. 9. In a substantial number of instances subsequent to October 28, 1975, respondent, having failed to comply with the requirements of Section 226.14 of Regulation Z, 12 C.F.R. 226.14, subsequently has failed and does fail to forfeit the amount indicated by the customer to be a billing error, *provided*, that amount does not exceed \$50 for each item or transaction indicated to be a billing error, thereby violating Section 226.14(f) of Regulation Z, 12 C.F.R. 226.14(f).

PAR. 10. In a substantial number of instances subsequent to October 28, 1975, respondent has failed and does fail:

1. to credit payments to the customer's account as of the date such payments are received resulting in the imposition of additional finance or other charges; and
2. to credit to the customer's account during the customer's next billing cycle those finance or other charges imposed by respondent's

failure to post the customer's payments in sufficient time to avoid the imposition of such charges,

thereby violating the provisions of Section 226.7(g) of Regulation Z, 12 C.F.R. 226.7(g).

PAR. 11. Pursuant to Section 103(s) of the Truth in Lending Act, 15 U.S.C. 1602(s), respondent's aforesaid failures to comply with the provisions of Regulation Z as set forth in Paragraphs Five through Ten constitute and have constituted violations of that Act and, pursuant to Section 108(c) thereof, 15 U.S.C. 1607(c), respondent has engaged and is now engaging in unfair or deceptive acts or practices in violation of Section 5(a)(1) of the Federal Trade Commission Act, all to the prejudice and injury of the public.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Eleven are incorporated by reference herein as if fully set forth verbatim.

PAR. 12. By failing in certain instances, after receipt of written notification from customers questioning or disputing billed charges, to correct erroneous billings to the affected accounts, respondent caused substantial numbers of customers to be deprived of the use of their money resulting in substantial harm to consumers. Therefore, the acts and practices described in Paragraphs Five through Ten were and are unfair and/or deceptive.

PAR. 13. The acts and practices of respondent set forth in Paragraph Twelve 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(a)(1) of the Federal Trade Commission Act.

COUNT III

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Four are incorporated by reference herein as if fully set forth verbatim.

PAR. 14. In the ordinary course and conduct of its business, respondent has mailed and does mail to its customers with its periodic statements, payment envelopes addressed to a post office box number which is not the same number as the post office box indicated on the face of the periodic statement to be used for proper written notification of a billing error. Notwithstanding the fact that the envelope is addressed to an address different from the one that respondent has for correspondence regarding billing errors, underneath the space for

the customer's return address, respondent has provided a box next to the words "additional correspondence enclosed."

PAR. 15. By and through its actions as alleged in Paragraph Fourteen, respondent misleads the customer into the belief that by checking the box marked "additional correspondence enclosed", the customer could properly include a letter to respondent regarding a billing complaint or error and properly invoke the provisions of the FCBA.

Therefore, the acts and practices alleged in Paragraph Fourteen are unfair, misleading and/or deceptive.

PAR. 16. In the ordinary course and conduct of its business, respondent, in a substantial number of instances, has billed and does bill its customers for property or services significantly prior to actual delivery of the property or services to the customer. If the customer does not pay the bill promptly, respondent routinely imposes finance or other charges, which charges are not removed unless the customer properly notifies respondent that there has been a billing error.

PAR. 17. By and through its actions as alleged in Paragraph Sixteen respondent has imposed a heavy burden on the customer, forcing the customer to properly notify respondent first, that there has been a billing error, that is, that the customer has been billed before delivery of property or services, and second, that an improper finance charge has been imposed. In truth and in fact, these so-called billing "errors" are routine and systematic practices and policies of respondent and they deprive the customer of the use of his or her money.

Therefore respondents acts are unfair.

PAR. 18. In the ordinary course and conduct of its business, when respondent receives and has received notification of billing errors, in writing or orally, which do not constitute proper written notification of billing errors pursuant to the provisions of the FCBA, respondent has represented, directly or by implication, that disputes have been or will be resolved.

PAR. 19. In truth and in fact in a substantial number of instances such errors were not resolved, or were resolved only after an unreasonable period of time had elapsed. Also in such instances, respondent does not disclose, and has not disclosed to these customers, that such notifications of billing errors do not preserve their rights under the FCBA.

PAR. 20. By and through its actions as alleged in Paragraphs Eighteen and Nineteen, respondent causes customers to rely on misrepresentations that their billing disputes will be resolved and deprives customers of the use of money in those instances in which the customer is correct.

Therefore, respondent's acts and practices are unfair, misleading and/or deceptive.

PAR. 21. In the ordinary course and conduct of its business, when respondent represents, directly or by implication, that disputes have been or will be resolved outside FCBA procedures, respondent implies that it has reasonable procedures to resolve billing disputes other than through the FCBA.

PAR. 22. In truth and in fact, in a substantial number of such instances, respondent fails and has failed to take any action for several months, in many instances not until the customer has notified respondent of the dispute a second time or third time; sometimes respondent has taken no action at all. Moreover, in many instances in which respondent credits or has credited such customers' accounts after resolution of the error in the customers' favor, respondent fails and has failed to credit any finance or other charges on the credited amounts.

PAR. 23. By and through its actions as alleged in Paragraphs Twenty-One and Twenty-Two, respondent unreasonably causes the customer to expend time, money and effort to have these disputes resolved and has deprived the customer of the use of his or her money in those instances in which the customer is correct.

Therefore respondent's acts and practices are unfair, misleading and/or deceptive.

PAR. 24. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and is now, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of merchandise and services of the same general kind and nature as merchandise and services sold by respondent.

PAR. 25. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute unfair methods of competition and unfair or deceptive acts and practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

Commissioners Pertschuk and Bailey voted in the negative.

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 New York Regional Office proposed to present to the Commission for its consideration and

which, if issued by the Commission, would charge respondent with violations of the Truth in Lending Act and the Regulation promulgated thereunder and violations of the Federal Trade Commission Act; and

The respondent, its 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 said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such an 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, Macy's New York, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 151 West 34th Street, New York, New York.

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

Definitions: For purposes of this order* the following definitions shall apply:

a. *billing error* shall be defined as provided by Section 226.13(a) of Regulation Z, 12 C.F.R. 226.13(a).

b. *billing error notice* shall be defined as provided by Section 226.13(b) of Regulation Z, 12 C.F.R. 226.13(b).

c. *commerce* shall be defined as provided by Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

d. *consumer credit* shall be defined as provided by Section 226.2(a)(12) of Regulation Z, 12 C.F.R. 226.2(a)(12).

* All reference 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.

e. *credit card* shall be defined as provided by Section 226.2(a)(15) of Regulation Z, 12 C.F.R. 226.2(a)(15).

f. *customer* shall mean *cardholder* which shall be defined as provided by Section 226.2(a)(8) of Regulation Z, 12 C.F.R. 226.2(a)(8).

g. *Fair Credit Billing Act* (hereinafter "FCBA") shall refer to Sections 127(a)(7), 127(b)(10), 161, 162 and 164 of the Truth in Lending Act, 15 U.S.C. 1637(a)(8), 1637(b)(11), 1666, 1666(a) and 1666(c), now in effect or as they may be amended.

h. *open end credit* shall be defined as provided by Section 226.2(a)(20) of Regulation Z, 12 C.F.R. 226.2(a)(20).

i. *other charges* shall refer to late payment charges or other charges (excluding finance charges) imposed as the result of an erroneous billing.

j. *reasonable investigation* shall refer to that investigation required by Section 226.13(f) of Regulation Z, 12 C.F.R. 226.13(f).

k. *Regulation Z* shall refer to that version of Regulation Z, 12 C.F.R. 226, effective October 1, 1982, the implementing regulation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, now in effect or as it may be amended.

l. *Truth in Lending Act* shall refer to that version of the Act, 15 U.S.C. 1601 *et seq.*, now in effect or as it may be amended.

I.

It is ordered, That respondent Macy's New York, Inc., a corporation, its successors and assigns or any other entity continuing its business, and respondent's officers, agents, representatives and employees acting as such, directly or through any corporation, subsidiary, division or other device, in connection with any extension of open end credit, including but not limited to consumer credit extended on an account by use of a credit card, shall forthwith cease and desist from:

A. Failing, within thirty (30) days after receipt of a billing error notice, to mail or deliver a written acknowledgement thereof to the customer, as required by Section 226.13(c)(1) of Regulation Z, unless:

1. the customer has agreed, within such thirty (30) day period, that the periodic statement is correct; or

2. respondent has taken the applicable action specified in Paragraph I.B.1-3 of this order within such thirty (30) day period.

B. Failing, not later than two (2) complete billing cycles and in no event more than ninety (90) days from the date of receipt of a billing error notice as required by Section 226.13(c) of Regulation Z to resolve the dispute by:

1. correcting the customer's account in the full amount indicated by

the customer to have been erroneously billed and mailing or delivering to the customer a notification of correction(s), in the manner required by Section 226.13(e) of Regulation Z; or

2. correcting the customer's account, after having conducted a reasonable investigation, by a differing amount from that indicated by the customer as being erroneously billed, and mailing or delivering to the customer an explanation of the change(s), accompanied by copies of documentary evidence of the customer's indebtedness if such evidence is requested by the customer, in the manner required by Section 226.13(f) of Regulation Z; or

3. mailing or delivering, after having conducted a reasonable investigation, a written explanation or clarification to the customer setting forth, to the extent applicable, the reason(s) why respondent believes the amount(s) was correctly shown on the periodic statement, and, if the customer so requests, furnishing copies of documentary evidence of the customer's indebtedness, in the manner required by Section 226.13(f) (1&2) of Regulation Z.

Provided, however, That respondent need not perform the actions specified in Paragraph I.B. if the customer has agreed, not later than two (2) complete billing cycles (and in no event more than ninety (90) days) from the date of receipt of the billing error notice, that the periodic statement is correct.

C. Failing to retain for at least two (2) years evidence of compliance with the provisions of the FCBA, as implemented by the applicable provisions of Regulation Z, as required by Section 226.25(a) of Regulation Z. Evidence of compliance shall include but not be limited to: a) customer billing error notices and attachments thereto; and b) copies of all respondent's correspondence in response. *Provided, however,* That respondent need not retain copies of standard form responses so long as respondent adequately identifies the forms used and the dates of mailing with respect to each customer's billing error notice.

D. Taking or causing any action, after receipt of a billing error notice, but prior to the time the dispute has been resolved as provided in Paragraph I.B. of this order, to collect:

1. any portion of an amount indicated in the customer's notification as being a billing error; or

2. any finance or other charge computed on such disputed amount, in violation of Section 226.13(d)(1) of Regulation Z. *Provided, however,* That after receipt of a billing error notice respondent may include disputed amounts on subsequent periodic statements if respondent has provided the statement specified in Paragraph I.E. of this order.

E. Failing, after receipt of a billing error notice, and prior to resolu-

tion of the dispute, to indicate on or with the periodic statement that payment of the amount(s) in dispute pursuant to the provisions of Regulation Z is not required pending respondent's compliance with the provisions of Section 226.13 of Regulation Z, when mailing or delivering subsequent periodic statements which include disputed amount(s), as required by Section 226.13(d)(1) of Regulation Z.

F. Failing, after resolution of a billing error in favor of the customer pursuant to the provisions of Regulation Z, to credit any finance or other charges imposed as a result of the erroneous billing, as required by Section 226.13(e)(1) & (f)(3) of Regulation Z.

G. Failing to credit payments to customers' accounts as required by Section 226.10 of Regulation Z.

H. Failing to forfeit the right to collect the amount indicated by the customer to be a billing error and corresponding finance and other charges, providing that amount does not exceed \$50, in instances when respondent fails to comply with the requirements of Section 226.13 of Regulation Z, as required by Section 161(e) of the Truth in Lending Act.

I. Failing to comply with any of the provisions of the Fair Credit Billing Act, as implemented by the applicable provisions of Regulation Z, 12 C.F.R. 226.6(d), 226.7(k), 226.9(a), 226.10, 226.13 and 226.25.

J. Failing to implement, within one hundred eighty (180) days after service of this order, an initial educational program, a full and complete description of which will have been received by and filed with the Commission as a supplemental report of compliance pursuant to Part VI of this order, for all of respondent's officers and employees who are responsible for establishing respondent's consumer credit billing policies and procedures, and also for those whose primary function is to respond to and resolve customers' written notifications of billing errors. The initial educational program shall consist of:

1. Furnishing to each such officer and employee a copy of this order, a copy of the FCBA and those portions of Regulation Z which implement the FCBA, and written educational materials which explain the FCBA and the provisions of Regulation Z which implement the FCBA, as they apply to respondent's credit billing and billing adjustment practices, including but not limited to Sections 226.6, 226.7, 226.9, 226.10, 226.13 and 226.25; and

2. Informing orally each such officer and employee, at a general meeting or otherwise, of the provisions of this order and of the duties of respondent and its officers and employees under the FCBA and the provisions of Regulation Z which implement the FCBA. Respondent shall submit a written agenda of its oral presentation to its employees

as part of the supplemental report of compliance filed pursuant to Part VI of this order; and

3. Securing a signed statement from each such officer that she or he has read this order, the FCBA, the provisions of Regulation Z which implement the FCBA, and the educational materials described in Paragraph J.1. and has received the instructions described in Paragraph J.2. A copy of each such statement shall be retained for at least three (3) years and shall be made available for inspection by a duly authorized representative of the Commission upon request.

K. Failing to provide the documents described in Paragraph J.1. hereof to each officer or employee who within five (5) years after the service of this order is given the responsibilities described in Paragraph J. hereof and to require each such officer to sign within twenty (20) days of the assumption of said responsibilities a statement that she or he has been so instructed. A copy of each such statement shall be retained for at least three (3) years and shall be made available upon request for inspection by a representative of the Commission.

L. Failing to conduct a refresher educational program at least once a year for five (5) years after acceptance of this order for all officers and employees having the responsibilities described in Paragraph J. hereof, for the purposes of explaining the requirements of the FCBA and the provisions of Regulation Z which implement the FCBA and explaining the responsibilities of such officers and employees in conformity with this order. Respondent shall:

1. Inform orally each such officer and employee, at a general meeting or otherwise, of the requirements of the FCBA and Regulation Z as they pertain to respondent's credit billing and billing adjustment practices.

2. If necessary to explain the requirements of, or any amendments to, the FCBA or to the provisions of Regulation Z which implement the FCBA, furnish each such officer or employee with written educational materials in addition to those described in Paragraph J.1. Such additional written materials shall be retained for a period of three (3) years and shall be made available upon request for inspection by a Commission representative.

M. Respondent shall not have liability under Part I of this order for any act in good faith done or omitted in conformity with any rule, regulation or interpretation thereof regarding the FCBA by the Federal Reserve Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe.

II.

Definitions: For purposes of Part II of this order:

a. *eligible customer* shall mean each and every person who held an open end credit account with respondent and who, during the period January 1, 1977 through December 31, 1978, sent a written inquiry concerning a billing error to respondent at P.O. Box 1516, New York, N.Y. In each and every instance, eligibility shall be determined without reference to the validity of the underlying claim.

b. any duty which is required to be performed on a specified day and which falls upon a non-business day shall be performed on the next following business day.

It is further ordered, That respondent Macy's New York, Inc., a corporation, its successors and assigns or any other entity continuing its business, and respondent's officers, agents, representatives and employees acting as such, directly or through any corporation, subsidiary, division or other device, in connection with open end credit accounts created or maintained in connection with the sale of merchandise or services to the public, in or affecting commerce, shall:

A. Submit to the New York Regional Office of the Federal Trade Commission ("NYRO"), on or before the forty-fifth (45th) day after the date this order is served on respondent ("date of service"), a list or compilation of the names and addresses of all persons identified by respondent as eligible customers.

B. Add to its compilation of eligible customers each and every person on file with NYRO who is an eligible customer and who is not included in respondent's compilation. NYRO shall provide the names of each such eligible customer to respondent on or before the fiftieth (50th) day after the date of service.

C. Submit to NYRO, on or before the sixtieth (60th) day after the date of service, a notarized affidavit, executed by a Senior Vice President of respondent, to the effect that respondent has made or has caused to be made a good faith search of documents relating to billing error disputes in its customer service departments, including those handling the general merchandise, bill adjustments, furniture, and rugs and floor coverings departments, in order to locate the names and addresses of all eligible customers under Part II of this order.

D. Deposit, on or before the tenth (10th) day after the date of service, the sum of two hundred twenty-five thousand dollars (\$225,000) into an account at a banking institution to be agreed upon between respondent and NYRO. The principal amount of said bank account shall be available only for the payment of refunds under Part II of this order. No charges against this amount shall be made for administra-

tive costs, which costs shall be paid by respondent. Respondent shall retain any interest accrued on this account, if any.

E. On or before the fifty-fifth (55th) day after the date of service, make or cause to be made a search of its active open end credit files and shall obtain the address used for mailing or delivery or periodic statements ("billing address") for each and every eligible customer who has an active open end credit account with respondent.

F. On or before the sixtieth (60th) day after the date of service, mail or cause to be mailed by first class mail to each eligible customer who does not have an active open end credit account with respondent, at his or her last known billing address, (1) a notification ("Notification") in the language, manner and form set forth in Appendix A; together with, (2) a self-addressed, postage prepaid response form in the language, manner and form set forth in Appendix B.

G. Designate a separate mailing address which shall be used solely for purposes of receiving the response forms pursuant to Paragraph II.F. of this order.

H. With respect to each Notification returned undelivered, ascertain or cause to be ascertained whether the mailing address appearing on such Notification has been accurately transcribed from respondent's records. Respondent or its designee shall thereafter, on or before the ninety-fifth (95th) day after the date of service, correct any addresses inaccurately transcribed and mail or cause to be mailed all returned Notifications in the same manner and form set forth in Paragraph II.F. of this order.

I. On or before the one hundred twentieth (120th) day after the date of service, apportion or cause to be apportioned equally the sum of two hundred twenty-five thousand dollars (\$225,000) among the eligible customers for whom respondent has obtained a current mailing address pursuant to Paragraphs II.E., II.F. and II.H., and mail, or cause to be mailed by first class mail, a refund by check to each such eligible customer. Each refund shall be accompanied by a letter in the language, manner and form set forth in Appendix C.

J. With respect to each mailed refund which is returned undelivered, ascertain or cause to be ascertained whether the mailing address appearing on each such refund is accurately transcribed from the current mailing addresses obtained by respondent pursuant to Paragraphs II.E., II.F. and II.H. Respondent or its designee shall thereafter correct any addresses inaccurately transcribed and shall thereafter mail or cause to be mailed all the returned refunds in the same manner and form set forth in Paragraph II.I. of this order.

K. On or before the two hundredth (200th) day after the date of service, file with NYRO a report in writing setting forth the manner and form in which it has complied with Part II of this order.

L. Maintain for two (2) years after the date of the last act required by Order II, records and documents evidencing its compliance with Part II of this order.

III.

It is further ordered, That respondent Macy's New York, Inc., a corporation, its successors and assigns or any other entity continuing its business, and respondent's officers, agents, representatives and employees, acting as such, directly or through any corporation, subsidiary, division or other device, in connection with open end credit accounts created or maintained in connection with the sale of merchandise or services to the public, in or affecting commerce, shall forthwith cease and desist from:

A. Including the statement "additional correspondence enclosed" or a statement to that effect on preaddressed envelopes mailed or delivered to customers for the payment of the customers' bills, unless the words "Billing error notices must be mailed to (address used by respondent for receipt of billing error notices).", or substantially similar words, are included immediately adjacent to any such statement. *Provided, however,* That when only using the words "order enclosed" or "address change enclosed" or words to that effect, on such preaddressed envelopes, respondent need not set forth the notice required by this paragraph.

B. Billing its customers prior to delivery for furniture, broadloom carpeting, mattresses, or major appliances delivered from respondent's warehouse distribution center. *Provided, however,* That (1) when delivery of merchandise is deferred at the request of a customer, respondent may bill the customer at the time the merchandise is available for delivery; and (2) nothing in this paragraph shall prohibit respondent from billing customers for any deposits required by respondent and agreed to by the customer prior to delivery of the merchandise.

C. Failing to post in a prominent location in each area designated by respondent for bill adjustments in each of its stores, a sign to be displayed to the public which is not smaller in dimension than twenty-four (24) inches by thirty-six (36) inches, and which sets out, clearly and conspicuously, the information provided in Appendix D.

D. Failing, in instances in which respondent provides a telephone number on the periodic statement, to include clearly and conspicuously on that part of each periodic statement which is retained by the customer, a notice, adjacent to such telephone number, in substantially the following language: "If you telephone us with a billing inquiry,

you do not protect your rights under federal law. To do so, write to us at the address indicated on this statement or accompanying statement for billing inquiries."

IV.

It is further ordered, That, in the event that respondent Macy's New York Inc., a corporation, its successors and assigns or any other entity continuing its business, provides customer complaint resolution procedures, in addition to those specifically required by the FCBA, or causes customers to waive or forfeit their rights under the FCBA, it shall forthwith cease and desist from:

A. Representing, directly or by implication, that it will resolve disputes regarding billing errors within a reasonable period of time after receipt of written notifications of such billing errors, unless respondent in fact resolves such disputes within a reasonable period of time.

For purposes of this Part of the Order, *written notifications of billing errors* shall mean (1) written notifications of billing errors made at the area designated by respondent for bill adjustments on a form which shall be provided by respondent for that purpose; or (2) written notifications of billing errors (other than those reported to respondent through a billing error notice pursuant to the provisions of the FCBA) addressed to respondent as follows: a) address disclosed by respondent on its billing statement for receipt of payments from customers; or b) Macy's, New York, New York or Macy's at its Herald Square store.

Written notifications shall not include any written inquiries directed to any individual by name, title or position, other than chairman of the board or president or those addressed to the customer service department.

For purposes of this Part of the order the term *resolve* shall mean (1) correcting the customer's account in the amount of the error; (2) after a reasonable investigation, correcting the customer's account by a differing amount from that indicated by the customer as being erroneously billed, and mailing to the customer a written explanation of the change(s); or (3) after a reasonable investigation, setting forth to the customer, in writing, the reasons why respondent believes that the amount was correctly shown on the customer's periodic statement. *Provided, however,* That if the customer makes a billing inquiry at the area designated by respondent for bill adjustments and the billing error is resolved at that time, any explanations or notifications of correction may be conveyed orally to the customer at that time.

B. Failing to credit any finance or other charges imposed as a result of an erroneous billing in each instance in which: (1) respondent has resolved a billing error dispute in favor of the customer; and (2) notification of the billing error was in writing addressed to any of the locations specified in Paragraph IV.A of this order but not reported to respondent through a billing error notice pursuant to the provisions of the FCBA.

V.

It is further ordered, That respondent shall 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 any successor corporation or corporations, or any other change in the corporation, including the creation or dissolution of subsidiaries, which may affect compliance obligations arising out of this order.

VI.

It is further ordered, That 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, and within one hundred eighty (180) days after service upon it of this order, file with the Commission a written supplemental report setting forth a full and complete description of the initial educational program required by this order.

Commissioners Pertschuk and Bailey voted in the negative.

APPENDIX A

(Macy's Letterhead)

(Date)

(Name)
(Address)

Re: Refund for Eligible Macy's
Credit Card Customers per
Macy's/Federal Trade Commission
Consent Agreement

Dear Customer:

Macy's New York, Inc. has entered into a Consent Agreement with the Federal Trade Commission regarding the Fair Credit Billing Act. As part of the Agreement, Macy's has established a fund of \$225,000 which will be divided equally among customers who

wrote to our billing inquiry address during the years 1977 and 1978. Our records indicate that you are eligible for such a refund.

The purpose of this letter is to make certain that Macy's has your present mailing address. Please complete the attached address verification form and return it within twenty-five (25) days in the enclosed prepaid envelope. Only those who complete and return this response form within 25 days after the above date will receive a refund. The refund will be mailed to you within 90 days of our receipt of the response form.

Very truly yours,

MACY'S NEW YORK, INC.

BY _____

(Name)

Vice President

APPENDIX B

(Response form)

Please mail my refund to:

Name _____

Address _____

(Street)

(City)

(State) (Zip Code)

APPENDIX C

(Macy's Letterhead)

(Date)

Re: Refund for Eligible Macy's
Credit Card Customers per
Macy's/Federal Trade Commission
Consent Agreement

Dear Customer:

Macy's New York, Inc. has entered into a Consent Agreement with the Federal Trade Commission regarding the Fair Credit Billing Act. As part of this Agreement, Macy's has established a fund of \$225,000 which has been divided equally among customers who wrote to our billing inquiry address during the years 1977 and 1978.

Our records indicate that you are eligible for such a refund. Therefore, please find enclosed your check in the amount of _____.

Very truly yours,

MACY'S NEW YORK, INC.

By _____

(Name)

Vice President

APPENDIX D

IF YOU HAVE A BILLING COMPLAINT

TO PROTECT YOUR RIGHTS UNDER FEDERAL LAW
YOU MUST *WRITE* WITHIN 60 DAYS OF THE DATE OF THE BILL

Macy's Address

Box # _____

Include:

- (a) your name and account number;
- (b) the dollar amount of the suspected error;
- (c) why you believe there is a possible mistake.

IN THE MATTER OF

THE PROCTER & GAMBLE COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2059. Consent Order, Oct. 8, 1971—Modifying Order, Feb. 3, 1984

This order reopens the proceeding and modifies the Commission's order issued on Oct. 8, 1971 (79 F.T.C. 589), *modified* Feb. 26, 1974 (83 F.T.C. 1354), to ensure that consumers receive necessary information regarding promotions involving chance while allowing the company to publicize such promotions more effectively and efficiently. The modified order changes the disclosure requirements for broadcast and print advertising, and includes a "trigger" modeled on that in the Commission's Games of Chance Rule. The "trigger" would require certain disclosures in print advertisements which "refer in any manner to prizes or their number or availability."

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On May 2, 1983 Procter & Gamble Company, respondents in the above captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and modify the consent order entered therein. By letter dated October 21, 1983, petitioner agreed to modify its original proposal.

The order relates to alleged unfair and deceptive practices by Procter & Gamble in connection with any use of a "sweepstakes" or other similar promotional device involving chance. Paragraphs A(1) and B(1)(2)(3) and (4) of the order require petitioner to disclose in all advertising and promotional material: (1) the total number of prizes to be awarded, (2) the exact nature of the prizes, their approximate retail value, and the number of each, (3) the geographic area or states in which any such device is used, and (4) the date the device is initiated and the date the device is to end. Other provisions of the order prohibit petitioner from failing to award all of the prizes as represented, from falsely representing that prizes have already been purchased, from failing to furnish a list of winners on request, and from misrepresenting any aspect of any promotional device involving chance. Procter & Gamble seeks modification only of the disclosure requirements contained in paragraphs A(1) and B(1)(2)(3) and (4) of the order.

Petitioner requests the establishment of different disclosure requirements for broadcast and print advertising, and the lessening of the requirements for both types of ads. In place of the current broad-