

IN THE MATTER OF
RENTACOLOR, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket 9163. Complaint, Nov. 1, 1982—Final Order, April 16, 1984

This order requires two Newington, Conn. firms engaged in the public leasing of color television sets and other video equipment, among other things, to cease representing in advertising the amount of any payment, the number of payments required, or that no downpayment or other payment is required at the consummation of a lease, without also including the disclosures required by the Consumer Leasing Act and Sections 213.4 and 213.5 of Regulation M. The order additionally bars the companies from failing to properly include statutorily-required disclosures in contracts and other leasing instruments; and dismisses the complaint against the individual respondent.

Appearances

For the Commission: *Ronald G. Issac* and *Justin Dingfelder*.

For the respondents: *Basil J. Mezines* and *Michael G. Charapp*, *Stein, Mitchell & Mezines*, Washington, D.C. and *Brandon J. Hickey*, *Murtha, Cullina, Richter and Pinney*, Hartford, Conn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 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 Rentacolor, Inc., a corporation, Rentacolor U.S.A., Inc., a corporation, and Brian N. Cawley, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have 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 Rentacolor, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 3549 Atlantic Avenue, Long Beach, California.

Respondent Rentacolor U.S.A., Inc. is a corporation organized, ex-

isting, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 262 Hartford Avenue, Newington, Connecticut.

Respondent Brian N. Cawley is president of each of the corporate respondents. 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 the corporate respondent Rentacolor U.S.A., Inc. [2]

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the renting of color television sets and other video equipment to the public. The products are generally leased on a 12-month basis (although there are a few leases on a 3 or 6-month basis). The customer can terminate the lease by giving the respondents 30 days notice at any time after the initial term of the lease is over.

PAR. 3. In the ordinary course of their business as aforesaid, respondents regularly lease, or offer to lease video equipment by means of a consumer lease, as "consumer lease" is defined in Section 226.2(mm) [213.2(a)(6)] of Regulation Z[M], the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System [Cited in brackets is the revised Federal Reserve Board citation which may be used after April 1, 1981 and becomes mandatory after October 1, 1982].

PAR. 4. Subsequent to March 23, 1977, the effective date of the Consumer Leasing Act, respondents have caused to be published advertisements, as "advertisement" is defined in Section 226.2(d) [213.2(a)(2)] of Regulation Z[M], to aid, promote, or assist directly or indirectly their consumer leases. Certain of these advertisements have stated the amount of the periodic payment involved or that no downpayment is required without also stating each of the following:

1. That the transaction advertised is a lease, as required by Section 226.10(g)(1) [213.5(c)(1)] of Regulation Z[M];
2. The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required, as prescribed by Section 226.10(g)(2) [213.5(c)(2)] of Regulation Z[M];
3. The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease, as required by Section 226.10(g)(3) [213.5(c)(3)] of Regulation Z[M]; and
4. A statement of whether or not the lessee has the option to purchase the leased property and at what price and time, as required by Section 226.10(g)(4) [213.5(c)(4)] of Regulation Z[M]. [3]

PAR. 5. Subsequent to March 23, 1977, respondents, in the ordinary course of their business, have caused, and are now causing, their customers to execute lease agreements that bind the customer for a stated minimum term, usually 12 months. Respondents disclose certain cost information on the face of the lease contract above the place for the customer's signature. Certain other required lease information is disclosed on the reverse side of the lease contract.

By and through the aforementioned practice, respondents have, in certain instances:

1. Failed to make all of the required disclosures together, as required by Section 226.15(a) [213.4(a)(2)] of Regulation Z[M], on either:
 - (a) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or
 - (b) a separate statement which identifies the lease transaction;
2. Failed to disclose the total amount of the periodic payments scheduled under the lease, as required by Section 226.15(b)(3) [213.4(g)(3)] of Regulation Z[M]; and
3. Failed to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 226.15(b)(11) [213.4(g)(11)] of Regulation Z[M].

PAR. 6. Pursuant to Section 103(s) of the Truth in Lending Act, respondents' aforesaid failures to comply with Sections 226.10(g) [213.5(c)] and 226.15 [213.4] of Regulation Z[M] constitute violations of that Act and pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY

ERNEST G. BARNES, ADMINISTRATIVE LAW JUDGE

SEPTEMBER 15, 1983

PRELIMINARY STATEMENT

On November 1, 1982, the Federal Trade Commission issued its complaint in this matter alleging that the corporations Rentacolor, Inc. and Rentacolor U.S.A., Inc. (hereinafter sometimes referred to jointly as "Rentacolor") and their president, Brian N. Cawley, individually and as an officer of the aforesaid corporations (hereinafter sometimes referred to [2] collectively with Rentacolor as "respondents"), have violated Sections 226.10(g) and 226.15 of Regulation Z (12 C.F.R. 226),¹ the implementing regulation of the Truth in Lending Act

¹ As a result of Congress' enactment of the Truth in Lending Simplification and Reform Act (Title VI of the

(15 U.S.C. 1601-1667), and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

The complaint alleges that subsequent to March 23, 1977, the effective date of the Consumer Leasing Act, respondents caused advertisements to be published to aid, promote, or assist their consumer leases. The advertisements stated either the amount of the periodic payment involved or that no downpayment was required without disclosing (i) that the advertised transaction was a lease, (ii) the total amount of any payment such as a security deposit or capitalized cost reduction required at the [3] consummation of the lease or that no such payments were required, (iii) the number, amounts, due dates or periods of scheduled payments under the lease and the total of such payments, and (iv) a statement of whether or not the lessee had the option to purchase the leased property and at what price and time, as required by Section 226.10(g) of Regulation Z. (Complaint ¶ 4)

The complaint also alleges that subsequent to March 23, 1977, respondents caused their customers to execute lease agreements that bind the customer for a stated minimum term, usually 12 months, and that failed to make all of the disclosures required by Section 226.15(a) of Regulation Z on either the same page of the lease contract and above the place for the lessee's signature, or on a separate statement identifying the lease transaction. Further, that the respondents failed to disclose, as required by Section 226.15(b) of Regulation Z, the total amount of the periodic payments scheduled under the lease and whether or not the lessee had the option to purchase the leased property. (Complaint ¶ 5)

The aforesaid alleged failures of respondents to comply with the provisions of Regulation Z are charged in the complaint as violations of the Truth in Lending Act and, pursuant to Section 108 of that Act, violations of the Federal Trade Commission Act. [4]

On January 3, 1983, respondents filed an Answer to the complaint denying all of the allegations of violations of law. Respondents also averred that (1) the complaint failed to state a claim upon which relief can be granted, (2) laches bar the Commission from maintaining this action, (3) the claim for relief is barred by the statute of limitations, (4) the Commission is estopped from seeking the relief sought in this proceeding, (5) the proceeding is not in the public interest because respondents' acts and practices are and have been for some time in

Depository Institutions Deregulation and Monetary Control Act, Pub. L. No. 96-221, 94 Stat. 168) on March 31, 1980, the Board of Governors of the Federal Reserve System revised Regulation Z, effective April 1, 1981, and consolidated the consumer leasing provisions into a separate regulation, Regulation M (12 C.F.R. 213). The complaint issued in this case uses Regulation Z as the principal citation for the regulatory provisions alleged to have been violated because compliance with Regulation M did not become mandatory until October 1, 1982. Section 226.10(g) of Regulation Z has become Section 213.5(c) of Regulation M and Sections 226.15(a) and 226.15(b) of Regulation Z are now Sections 213.4(a) and 213.4(g), respectively, of Regulation M. There were no substantive changes to these or any of the other consumer leasing regulatory provisions.

the past in conformity with the Consumer Leasing Act, (6) the proceedings are not in the public interest because the alleged acts and practices have been abandoned or modified prior to issuance of the complaint with no reasonable likelihood of resumption, (7) the violations do not constitute a proper basis for the granting of any relief because they are infrequent, isolated, and *de minimus*, (8) Brian N. Cawley is not a person subject to the requirements of the Consumer Leasing Act, (9) the alleged lease transactions are not subject to the Consumer Leasing Act, (10) the alleged violations were not intentional and resulted from bona fide errors notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and (11) the alleged acts or practices were committed in good faith and in conformity with rules, regulations, or interpretations by the Federal Reserve Board, or by an official [5] or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals.

On January 21, 1983, a prehearing conference was held to clarify the issues and to establish a plan and schedule of discovery. At the hearing, counsel for the parties agreed to attempt to negotiate a stipulation of facts to expedite resolution of the matter. On April 12, 1983, counsel for the parties filed a stipulation of facts and waived the right to a formal hearing and to the introduction of documents not cited in the stipulation. The record was closed for the reception of evidence on May 16, 1983.

This proceeding is now before the Administrative Law Judge for decision based upon the complaint, the answer, the stipulation of facts and accompanying documents, proposed findings of fact and conclusions of law, and legal memoranda submitted by the parties. These submissions have been given careful consideration and, to the extent not adopted herein in the form proposed or in substance, are rejected as not supported by the record or as immaterial. After review of the entire record in this proceeding, the Administrative Law Judge makes [6] the following findings of fact and conclusions, and issues the Order set out at the end hereof.²

² The findings of fact include references to supporting evidentiary items in the record. The supporting evidence cited in each instance is not necessarily all-inclusive of the record evidence. The following abbreviations have been used:

- F. - Findings of this Initial Decision followed by the number of the finding(s) being referenced.
- Stip. - Stipulations filed by the parties followed by the number(s) of the paragraph being referenced.
- CX - Exhibits incorporated in the Stipulations followed by the number(s) of the exhibit being referenced.
- RPF - Respondents' Proposed Findings of Fact, Memorandum of Law, Conclusions of Law, and Order.
- RB - Reply Brief of Respondents To Complaint Counsel's Proposed Findings of Fact, Supporting Brief, Conclusions of Law and Order.

I. FINDINGS OF FACT

A. *Identities And Business Of Respondents*

1. Respondent Rentacolor, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of [7] the State of California. (Answer ¶ 1) It began doing business in the United States in 1973 and, at the time of issuance of the complaint herein, was doing business in California, Connecticut, Massachusetts, and Pennsylvania, with its principal office and place of business located at 3549 Atlantic Avenue, Long Beach, California. (Stip. 1) After submission of the Stipulations herein, Rentacolor, Inc. ceased doing business in California and changed its business address to 262 Hartford Avenue, Newington, Connecticut. (RPF, p. 4) Rentacolor, Inc. is the wholly-owned subsidiary of Rentacolor International, which operates television rental companies in 22 countries throughout the world. (CX 4A)

2. Respondent Rentacolor U.S.A., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut. (Answer ¶ 1) It began doing business in 1979 and currently does business in California, Pennsylvania, Maryland, Michigan, Illinois, and Connecticut, with its principal office and place of business located at 262 Hartford Avenue, Newington, Connecticut. (Stip. 2)³ [8]

3. Brian N. Cawley is the president and the chief executive officer of both Rentacolor, Inc. and Rentacolor U.S.A., Inc. He also is a member of Rentacolor's Board of Directors. He served in both capacities during the time the alleged violations cited in the complaint occurred. (Stip. 3; CX 4A) The Board of Directors formulates policy for Rentacolor and, as president, Cawley is responsible for implementing that policy. (Stip. 3)

4. Respondents are now and for some time in the past have been regularly engaged in the leasing of color television sets and other video equipment to the public for personal, family, or household use. (Answer ¶ 2; Stip. 4)

B. *Federal Trade Commission Staff Contacts With Respondents*

5. The Federal Trade Commission staff ("the staff") first contacted Rentacolor concerning its leasing business by letter of December 11, 1979. (Stip. 8) Rentacolor responded to the staff's letter with a letter from its counsel dated February 13, 1980. The documents identified as CX 2 thru CX 10, or copies thereof, were submitted as attachments to Rentacolor's letter. (Stip. 9)

³ CX 14E, a copy of a Rentacolor advertisement, lists a New Jersey telephone number for New Jersey residents to dial. The record does not establish whether this advertisement was actually disseminated.

6. The staff subsequently contacted Rentacolor by letter dated March 6, 1980, to request that Rentacolor provide additional information concerning its operations and its corporate affiliations. (Stip. 10) Rentacolor's counsel [9] responded to this staff inquiry by letter dated March 21, 1980. (Stip. 11) Rentacolor's counsel sent the staff drafts of four new Rentacolor ads by letter dated March 27, 1980. The ads are identified as CX 14B-E. (Stip. 15)

7. On April 11, 1980, the staff met with Rentacolor's counsel and Brian N. Cawley to discuss Rentacolor's lease contract forms and its advertisements, and its plans for revising them. (Stip. 16) By letter dated April 23, 1980, Rentacolor's counsel sent the staff four more Rentacolor ads for its perusal. The ads are identified as CX 15B-E. (Stip. 17)

8. By letter of September 9, 1981, the staff again contacted Rentacolor. (Stip. 20) The documents identified as CX 19 thru CX 23 were mailed to the staff by Rentacolor's counsel under date of September 14, 1981, in response to the staff's letter of September 9, 1981. (Stip. 21)

9. On December 16, 1981, the staff met with Rentacolor's counsel and Brian N. Cawley in Washington, D.C. (Stip. 31) The Commission's complaint issued on November 1, 1982.

C. Respondents' Lease Contracts

10. From September 1979 to August 1980 and from August 1981 to the present, Rentacolor transacted lease agreements from [10] three to twelve months in duration. The majority of these lease agreements were for a minimum contractual period of twelve months. From August 1980 thru July 1981, Rentacolor transacted lease agreements solely for three months in duration. (Stip. 5; CX 4)

11. Rentacolor offers true operating leases. The contracts do not give the consumer the option to purchase the leased property. (Stip. 6; *see* CXs 5-6). Rentacolor charges an installation fee when the leased property is installed in the customer's home. The fee varies depending on the type of unit leased. (Stip. 7; *see* CX 6A)

12. Rentacolor U.S.A., Inc. uses and has always used the same lease contract forms that Rentacolor, Inc. uses. (Stip. 29)

13. Prior to August 1980, Rentacolor used the lease contract form identified as CX 5 to execute lease agreements with its customers. During this period, no other contract form was used. (Stip. 22; *see* CXs 6-10) Rentacolor began using the lease contract form identified as CX 22A-B in August 1980. (Stip. 23) Rentacolor began using the disclosure statement identified as CX 23 in July 1980. Prior to that time, no such disclosure statement was used. (Stip. 24) [11]

D. Respondents' Advertisements

14. Rentacolor U.S.A., Inc. and Rentacolor, Inc. use the same advertisements to promote their business. (Stip. 30)

15. CX 2, referring to a Rentacolor address in Wethersfield, Connecticut, and CX 3, referring to a Rentacolor address in New Britain, Connecticut, were mailed by Rentacolor to the staff by letter dated February 13, 1980. (Stip. 9; F. 5)

16. The advertisement identified as CX 11 was published in *The Washington Post TV* magazine for the week of December 2, 1979. (Stip. 12) The advertisement identified as CX 12 was published in *The Washington Post TV* magazine for the week of March 2, 1980. (Stip. 13) The advertisement identified as CX 13 was published in *The Washington Post TV* magazine for the week of March 30, 1980. (Stip. 14)

17. CX 14B-E are drafts of Rentacolor advertisements mailed by Rentacolor to the staff by letter dated March 27, 1980. (F. 6) By letter dated April 23, 1980, Rentacolor sent the staff four Rentacolor advertisements, which have been identified as CX 15B-E. (Stip. 17)

18. The advertisement identified as CX 15E was published in *The Washington Post TV* magazine for the week of May 11, 1980. CX 16 is a copy of the advertisement as published. (Stip. 18) [12]

19. The advertisement identified as CX 17 was published in *The Washington Post TV* magazine for the week of September 6, 1981. (Stip. 19) The advertisement identified as CX 20 was published in *The Hartford Courant TV Week* (CX 20A) and *The Detroit News TV* magazine (CX 20B) for the week of September 13, 1981, and in *TV Guide* magazine for the Washington, D. C. metropolitan area for the week of September 12-18, 1981 (CX 20). (Stip. 25) The advertisement identified as CX 21 was published in *The Washington Post TV* magazine (CX 21A) and *The Boston Globe TV* magazine (CX 21B) for the week of September 13, 1981. CX 20 and CX 21 differ only with respect to the positioning of the ad copy. (Stip. 26) The advertisement identified as CX 24 was published in *TV Guide* magazine for the Washington, D.C. metropolitan area for the week of October 10-16, 1981. (Stip. 27)

20. The advertisement identified as CX 25 was published in *The Philadelphia Inquirer TV Week* for the week of March 14, 1982. CX 24 and CX 25 differ from CX 20 and CX 21, respectively, only in that the former refer specifically to "a 19" TV." (Stip. 28)

21. On October 1, 1981, Rentacolor instructed its advertising agency to modify all ads which failed to include the [13] monthly lease charge so as to include the monthly lease charge. If the president of the advertising agency were to testify, he would state that he immediately instructed his staff to make the change requested by Rentacolor in such ads, that the change was immediately made for advertising to

appear in all publications except *The Philadelphia Inquirer TV Week*, and that the failure to make the change in *The Philadelphia Inquirer TV Week* was the result of inadvertence. Complaint counsel neither admit nor deny the truth of said president's prospective testimony. (Stip. 32)

E. Respondents' Lease Contract Terms

22. The consumer lease contracts identified as CX 6 thru CX 10 were executed during January and February, 1980, using respondents' standard lease contract form, CX 5. This contract form was used from September 1979 to August 1980. (Stip. 5, 9, 22; CX 4) The contracts obligate the lessee to lease the property for a minimum period of twelve months. (See e.g., Item 10 of CX 6B) Item 10 of these contracts provides as follows:

Renter may terminate this Agreement after twelve months of signing this Agreement by giving not less than four weeks' written notice of such intention to terminate; provided, however, that the date of termination must coincide with a date on which a payment hereunder is due and the [14] Apparatus must be returned to Owner on or before such termination date in a condition satisfactory to Owner; provided further, that any and all rental payments accruing on or before such termination date shall be paid by Renter prior thereto. The termination of this Agreement shall not affect any right Owner may have hereunder arising out of any act or omission of Renter occurring prior to the termination hereof.

There is no other provision for termination of the lease. Respondents have stipulated that these contracts are consumer lease contracts, as defined in Section 213.2(a)(6) of Regulation M, the implementing regulation of the Consumer Leasing Act [Section 226.2(mm) of Regulation Z]. (Stip. 9; Stip. 1, n. 1) Respondents have also stipulated that a majority of the lease agreements transacted during the period September 1979 to August 1980 and from August 1981 to the present were for twelve months duration. (Stip. 5)

23. On the contracts in use from September 1979 to August 1980, the place for the lessee's signature is located at the bottom of the front page of the contracts. (See, e.g., Item 6 of CX 6A) There is no place for the lessee's signature on the back page of the contracts.

24. On the front page of the contracts, respondents give a brief description of the leased property (Item 3, CX 6A), disclose the number and amount of the monthly payments scheduled [15] under the lease (Item 5, CX 6A), and disclose the initial payment due under the lease. (Item 4, CX 6A) The initial payment is due prior to or at the time the contract is executed. (Item 2, CX 6B) An installation charge is imposed as part of the initial payment. (Item 4, CX 6A; Stip. 7)

25. On the back page of the contracts, respondents describe their

responsibility for servicing and maintaining the leased property. (Item 4, CX 6B) This information is not disclosed on the front page of the contracts. (CX 6A)

26. On the back page of the contracts, respondents disclose a 10% penalty on rent installments that have not been paid within 10 days of the due date (Item 2, CX 6B), and a \$25 charge as liquidated damages in the event the lessee defaults. (Item 12, CX 6B) This information is not disclosed on the front page of the contracts. (CX 6A)

27. On the back page of the contracts, respondents state the conditions under which they may terminate the lease prior to the end of the scheduled lease term. (Items 11 and 12, CX 6B) This information is not disclosed on the front page of the contracts. (CX 6A)

28. Respondents fail to state in the contracts, the total amount of the monthly payments scheduled under the lease (CXs 6-[16]10), and whether or not the lessee has the option to purchase the leased property. (CXs 6-10)

29. Rentacolor began using the disclosure statement identified as CX 23 in July 1980. (Stip. 24) There is no contention that this disclosure statement does not comply with the Consumer Leasing Act.

F. Respondents' Advertising Disclosures

30. The Federal Trade Commission staff first contacted Rentacolor concerning its leasing practices by letter of December 11, 1979 (Stip. 8), which was subsequent to publication of the advertisement in *The Washington Post TV* magazine for the week of December 2, 1979, identified as CX 11. (Stip. 12) CX 11 is captioned "TEN REASONS WHY TV RENTAL IS A BETTER BUY THAN BUYING." One such reason given is that there is "No Downpayment." The ad also states, "Rental starts as low as \$14.95 a month on a yearly basis." CX 11 does not state the number of payments scheduled under the advertised transaction, nor does it state the total amount of such payments. Further, there is no disclosure of whether the lessee has the option to purchase the advertised property, nor is there a statement identifying the advertised transaction as being a lease. Finally, there is nothing indicating that a charge is imposed for installing the advertised property. [17]

31. In response to the staff's letter of December 11, 1979, respondents submitted, by letter of February 13, 1980, copies of two Rentacolor advertisements, identified as CX 2 and CX 3. (Stip. 9) CX 2 depicts a Rentacolor employee delivering a television to a house where four men are standing inside the door, apparently preparing to watch a football game on the Rentacolor television. The advertisement states in part:

Sit back and enjoy all the action without a care. . . . There's no down payment . . . All repairs are free and done in home . . .

Monthly rental rates start at \$14.95 a month,* and that's all you pay.

*On a yearly basis.

The ad does not identify the advertised transaction as a lease. The ad does not state the number of payments scheduled under the transaction, nor does it state the total amount of such payments. There is no disclosure of whether the lessee has the option to purchase the advertised property, and there is no disclosure of an installation charge.

32. CX 3 depicts a frowning man standing over a television and a caption, "If It Breaks Down, Call Us." The advertisement states: [18]

If the set ever needs repair we'll come to your home immediately. . . .

Prices start at \$14.95 a month.

The advertisement does not state the total amount of any payment due upon consummation of the advertised transaction or that no such payment is required. The ad does not identify the advertised transaction as a lease. The ad does not state the number of payments scheduled under the transaction nor does it state the total amount of such payments. There is no disclosure of whether the lessee has the option to purchase the advertised property.

33. CX 2 shows an address for Rentacolor at 5 Hillcrest Avenue, Wethersfield, Ct., and lists two telephone numbers. CX 3 shows an address for Rentacolor at 116 Main Street, New Britain, Ct., and lists two telephone numbers. The record does not establish whether these two advertisements were ever disseminated.

34. The advertisement identified as CX 12 was published in *The Washington Post TV* magazine for the week of March 2, 1980. (Stip. 13) CX 12 depicts a Rentacolor employee polishing the screen of a television in a room where a man is sitting back in a chair smiling, with a pipe in his mouth and slippers on his feet. The caption reads, "Rent a New Color TV. And You'll Be Set For Life." The ad also states: [19]

Famous name color sets starting as low as \$14.95 a month.* That one monthly payment covers everything. There's no downpayment or financing with Rentacolor.

*Based on 12 months.

The advertisement does not identify the advertised transaction as a lease; it does not state the number of payments scheduled under the transaction nor does it state the total amount of the monthly pay-

ments scheduled under the lease; it does not disclose whether the lessee has the option to purchase the advertised property; and there is no disclosure of an installation charge.

35. The advertisement identified as CX 13 was published in *The Washington Post TV* magazine for the week of March 30, 1980. (Stip. 14) The caption reads:

Rent a New Color TV. And Give Up Down Payments For Good.

The ad also states:

Call Rentacolor and spring for a new set for as little as \$14.95 a month.*

*Based on yearly rental.

The ad does not identify the advertised transaction as a lease; it does not state the number of payments scheduled under the transaction, nor the total amount of such payments. There is no disclosure of whether the lessee has the option to purchase the advertised property, and there is no disclosure of an installation charge. [20]

36. The advertisements identified as CX 14B-E were sent to the FTC staff by respondents' counsel by letter dated March 27, 1980. (Stip. 15) The ads each state "No Down Payment" is required, and each discloses a monthly payment of \$16.95. The ads do not identify the advertised transaction as a lease, and there is no disclosure of an installation charge. The record does not establish whether these advertisements were ever disseminated. CX 14B has a telephone number which indicates a location in the Washington, D.C. area. (See CX 13, which has the same telephone number, and was disseminated in *The Washington Post TV* magazine - Stip. 14.) CX 14E has a telephone number listed for New Jersey residents to dial.

37. On April 11, 1980, the staff met with Rentacolor's counsel and Brian N. Cawley to discuss respondents' lease contract forms and their advertisements and their plans for revising them. (Stip. 16) The advertisements identified as CX 2, CX 3, and CXs 11-14 were available to the staff and respondents at the time of the meeting.

38. The advertisements identified as CX 15B-E were sent to the staff by respondents' counsel with letter dated April 23, 1980. (Stip. 17) These advertisements make no disclosure of an [21] installation charge. The record does not establish whether the advertisements identified as CX 15B, CX 15C, and CX 15D were ever disseminated. CX 15E is identical to CX 16, which was disseminated in *The Washington Post TV* magazine for the week of May 11, 1980. (Stip. 18)

39. By letter of September 9, 1981, the FTC staff contacted respond-

ents again. (Stip. 20) This followed publication of the advertisement, identified as CX 17, in *The Washington Post TV* magazine for the week of September 6, 1981. (Stip. 19) CX 17 is captioned, "How to afford a \$750 Video Cassette Recorder." The ad discloses a monthly payment of \$39.95. The ad does not disclose the total amount of any payment due at consummation of the transaction or that no such payment is required.

40. The advertisements identified as CX 19 through CX 23 were mailed by respondents' counsel to the staff by letter dated September 14, 1981, in response to the staff's letter of September 9, 1981. (Stip. 21) The advertisement identified as CX 20A was published in *The Hartford Courant TV Week* for the week of September 13, 1981; CX 20B was published in *The Detroit News TV* magazine for the week of September 13, 1981; CX 20 was published in *TV Guide* magazine for the Washington, D.C. metropolitan area for the week of September 12-18, 1981. (Stip. 25) The advertisement identified as CX 21A was published [22] in *The Washington Post TV* magazine for the week of September 13, 1981; and the advertisement identified as CX 21B was published in *The Boston Globe TV* magazine for the week of September 13, 1981. (Stip. 26) CX 20 and CX 21 differ only with respect to the positioning of the ad copy. CX 20, CX 20A, CX 20B, CX 21, CX 21A, and CX 21B are captioned, "Why buy a new TV when renting is just 66¢ a day?" The ads all state:

With Rentacolor, there's no down payment, . . . you simply make monthly no interest payments.

The ads do not disclose the amount of the monthly payments scheduled under the lease. Also, the ads do not disclose that a charge is imposed at the beginning of the lease for installation, or that no such charge is due.

41. The advertisement identified as CX 24 was published in *TV Guide* magazine for the Washington, D.C. metropolitan area for the week of October 10-16, 1981. (Stip. 27) The advertisement identified as CX 25 was published in *The Philadelphia Inquirer TV Week* for the week of March 14, 1982. (Stip. 28) CX 24 and CX 25 are captioned, "Why buy a 19" TV when renting is just 66¢ a day?" The ads state:

With Rentacolor, there's no down payment . . . you simply make monthly no interest payments.

CX 24 and CX 25 differ from CX 20 and CX 21 only in that the caption in CX 24 and CX 25 refers specifically to a 19" TV. [23] (Stip. 28) Thus, CX 20, CX 20A, CX 20B, CX 21, CX 21A, CX 21B, CX 24 and CX 25 do not disclose the amount of the monthly payments scheduled under

the lease, and the ads do not disclose that a charge is imposed at the beginning of the lease for installation, or that no such charge is due.

42. Respondents' advertisements were designed to aid, promote, and assist leases for personal, family, or household purposes. (See, e.g., the illustrations in CX 12 and CX 16) CX 11 mentions "Service In Home," and "As long as you have Rentacolor in your home. . . ." (See also, CX 12, CX 13 ["service . . . in home"], CX 16 ["Immediate In-Home Service"], CX 17 [". . . start watching your favorite movies at home"], CX 20, CX 20A, CX 20B, CX 21, CX 21A, CX 21B, CX 24, CX 25 ["instant in-home service"])

II. CONCLUSIONS

A. Summary of the Proceedings

Respondents Rentacolor, Inc., Rentacolor U.S.A., Inc., and Brian N. Cawley, individually and as an officer of the respondent corporations, are engaged in the business of leasing television sets and other video equipment to the public. These [24] lease transactions constitute consumer leases of personal property for personal, family, or household purposes, as "consumer lease" is defined in Section 226.2(mm) of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System, and respondents have so stipulated. (Stip. 4, 5, 9; CXs 6-10; F. 22)

Respondents are charged in the complaint with causing customers to execute consumer lease agreements that:

1. Failed to make all of the required disclosures together, as required by Section 226.15(a) [213.4(a)(2)] of Regulation Z[M], on either:

(a) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or

(b) a separate statement which identifies the lease transaction;

2. Failed to disclose the total amount of the periodic payments scheduled under the lease, as required by Section 226.15(b)(3) [213.4(g)(3)] of Regulation Z[M]; and

3. Failed to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 226.15(b)(11) [213.4(g)(11)] of Regulation Z[M].

(Complaint ¶ 5)

The complaint further charges that respondents have caused to be published advertisements, as "advertisement" is defined in [25] Section 226.2(d) [213.2(a)(2)] of Regulation Z[M], to aid, promote, or assist directly or indirectly their consumer leases. Certain of these adver-

tisements have stated the amount of the periodic payment involved or that no downpayment is required, without also stating each of the following:

1. That the transaction advertised is a lease, as required by Section 226.10(g)(1) [213.5(c)(1)] of Regulation Z[M];
2. The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required, as prescribed by Section 226.10(g)(2) [213.5(c)(2)] of Regulation Z[M];
3. The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease, as required by Section 226.10(g)(3) [213.5(c)(3)] of Regulation Z[M]; and
4. A statement of whether or not the lessee has the option to purchase the leased property and at what price and time, as required by Section 226.10(g)(4) [213.5(c)(4)] of Regulation Z[M].

(Complaint ¶ 4)

Pursuant to Section 103(s) of the Truth in Lending Act, respondents' alleged failures to comply with Sections 226.10(g) [213.5(c)] and 226.15 [213.4] of Regulation Z[M] are charged as violations of that Act and, pursuant to Section 108 thereof, violations of the Federal Trade Commission Act. [26]

The record in this proceeding consists of a stipulation of facts together with documentary exhibits which have been incorporated into the stipulation. The parties waived the right to a formal hearing and to the introduction of any documents not cited in the stipulation, and rely upon the stipulation and the documents incorporated therein, together with their findings of fact and supporting legal briefs. (Stip., Introductory ¶) Respondents have stipulated that Rentacolor, Inc. and Rentacolor U.S.A., Inc. have used the same lease contracts and the same advertisements in the operation and promotion of their business. (Stip. 29, 30) Rentacolor charges an installation fee when the leased property is installed in the customer's home. The fee varies depending on the type of unit leased. (Stip. 7)

The Consumer Leasing Act (Section 183 of the Truth in Lending Act and Section 226.10(g) of Regulation Z, which implements the Truth in Lending Act) provides that any consumer lease advertisement that states the amount or number of any payments, or that any or no downpayment is required, must also disclose certain additional information. The information required to be disclosed is (1) that the advertised transaction is a lease; (2) the total amount of any payment required at consummation of the lease or that no such payment is required; (3) the number, amounts, due dates or periods of scheduled [27] payments and the total of such payments; (4) a statement of

whether or not the lessee has the option to purchase the property and at what price and time; and (5) a statement of the amount or method of determining the amount of any end of term liabilities imposed upon the lessee.

The Consumer Leasing Act also requires that written disclosures of costs and terms be made prior to consummation of any lease contract. Section 182 of the Truth in Lending Act and Section 226.15(b) [Section 213.4(g)] of Regulation Z[M] spell out the necessary disclosures, which include such items as a description of the leased property, the total amount of any incidental fees payable by the lessee during the lease term, the number and amount of periodic payments and the total of such payments, and the amounts and methods of determining the amounts of any end of term liabilities. Included also are descriptions and costs of any insurance involved in the lease, identification of express warranties, responsibility for maintenance, and any security interest retained by the lessor. Section 226.15(a) [Section 213.4(2)] of Regulation Z[M] requires that these lease disclosures be made *together* on either the lease contract and *above the place for the lessee's signature*, or on a separate statement that identifies the lease transaction. [28]

Subsequent to March 23, 1977, to and including July 1980, respondents, in connection with their consumer leases, have caused their customers to execute consumer lease contracts. Respondents did not provide their customers with any other consumer lease disclosures during this period. (Stip. 22, 24) On the front page of the consumer lease contracts (CXs 5-10), respondents disclose:

- (1) a brief description of the leased property, as required by Section 226.15(b)(1) of Regulation Z;

- (2) the total amount of the initial payment due at consummation of the lease, as required by Section 226.15(b)(2) of Regulation Z; and

- (3) the number and amount of the monthly payments scheduled under the lease, as required by Section 226.15(b)(3) of Regulation Z.

The place for the lessee's signature is located at the bottom of the front page of the contract. (*See, e.g.*, CX 6A)

The information disclosed on the face of the contracts, as aforesaid, is not disclosed on the back of the contracts. On the back of the contracts, respondents disclose:

- (1) a description of their responsibility for servicing and maintaining the leased property, as required by Section 226.15(b)(8) of Regulation Z;

- (2) the amounts of the charges for delinquency, default, or late

payment, as required by [29] Section 226.15(b)(10) of Regulation Z; and

(3) the conditions under which respondents may terminate the lease prior to the end of the scheduled term, as required by Section 226.15(b)(12) of Regulation Z.

The above information disclosed on the back of the contracts is not disclosed on the face of the contracts.

Thus, by the use of the aforementioned lease contracts, respondents have:

(1) failed to make all of the required disclosures together, as required by Section 226.15(a) of Regulation Z, on either:

(a) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or

(b) a separate statement which identifies the lease transaction;

(2) failed to disclose the total amount of the monthly payments scheduled under the lease, as required by Section 226.15(b)(3) of Regulation Z; and

(3) failed to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 226.15(b)(11) of Regulation Z.

Subsequent to March 23, 1977, respondents have caused advertisements to be published, as "advertisement" is defined in [30] Section 226.2(d) [Section 213.5(c)] of Regulation Z[M]. (F. 42) Advertisements were published in Massachusetts (CX 21B), where only Rentacolor, Inc. does business (Stip. 1, 2), in Michigan (CX 20B) and in the Washington, D.C. metropolitan area (CXs 11-13, CXs 16-17, CXs 20-21, CX 21A, and CX 24) where only Rentacolor U.S.A., Inc. does business (Stip. 1, 2), and in Connecticut and Pennsylvania, where both Rentacolor, Inc. and Rentacolor U.S.A., Inc. do business. (Stip. 1, 2; CX 20A, CX 25)

Some of these advertisements stated the amount of the required monthly payment (CXs 11-12, CXs 16-17), and some advertisements stated that no downpayment was required (CXs 11-13, CX 16, CX 20, CX 20A, CX 20B, CX 21, CX 21A, CX 21B, CXs 24-25), thus triggering the disclosure requirements of Section 226.10 of Regulation Z (Section 213.5(c) of Regulation M).

By and through these advertisements, respondents have:

(1) failed to disclose that the advertised transaction is a lease, as required by Section 226.10(g)(1) of Regulation Z (*see* CXs 11-13);

(2) failed to disclose the total amount of the payment due at consum-

mation of the lease or that no such payments were required, as prescribed by Section 226.10(g)(2) of Regulation Z (see CX 17);

(3) failed to disclose the amount of the installation charge as part of the [31] payment due at consummation of the lease, as required by Section 226.10(g)(2) of Regulation Z (see CXs 11-13, CXs 16-17, CX 20, CX 20A, CX 20B, CX 21A, CX 21B, CXs 24-25);

(4) failed to disclose the number of monthly payments due under the lease, as required by Section 226.10(g)(3) of Regulation Z (see CXs 11-13 and CX 17);

(5) failed to disclose the amount of the monthly payments due under the lease, as required by Section 226.10(g)(3) of Regulation Z (see CX 20, CX 20A, CX 20B, CX 21A, CX 21B, CXs 24-25);

(6) failed to disclose the total amount of the monthly payments due under the lease, as required by Section 226.10(g)(3) of Regulation Z (see CXs 11-13); and

(7) failed to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 226.10(g)(4) of Regulation Z (see CXs 11-13).

The Federal Trade Commission staff first contacted respondents on December 11, 1979, following publication of a Rentacolor advertisement in *The Washington Post TV* magazine for the week of December 2, 1979. (Stip. 8, 12; CX 11) Respondents responded to the staff letter with a letter dated February 13, 1980, enclosing some advertisements and lease contracts, together with a written statement about respondents' leasing activities. (Stip. 9) The staff subsequently contacted respondents by letter dated March 6, 1980, requesting additional information, and respondents responded by letter dated March 21, [32] 1980. (Stip. 10, 11) By letter dated March 27, 1980, respondents sent the staff drafts of four new Rentacolor advertisements, CX 14B-E. (Stip. 15) On April 11, 1980, the staff met with respondent Brian N. Cawley and respondents' counsel to discuss respondents' lease contract forms and their advertisements, and their plans for revising them. (Stip. 16) By letter dated April 23, 1981, Rentacolor's counsel sent the staff four more Rentacolor ads for its perusal, CX 15B-E. (Stip. 17)

The staff next contacted respondents by letter of September 9, 1981. This letter was sent to respondents subsequent to publication of an advertisement in *The Washington Post TV* magazine for the week of September 6, 1981, identified as CX 17. (Stip. 19, 20) CX 17 does not disclose the total amount of any payment due at consummation of the transaction, or that no such payment is required. Respondents' counsel responded to the staff's letter with a letter dated September 14 1981, enclosing advertisements identified as CXs 19-23. (Stip. 21)

The staff again met with Rentacolor's counsel and Respondent Brian N. Cawley on December 16, 1981. (Stip. 31) This followed publication of an ad in the *TV Guide* magazine for the Washington, D.C. metropolitan area for the week of October 10-16, 1981 (Stip. 27; CX 24), which did not disclose the amount of [33] the monthly payments scheduled under the lease, and did not disclose that a charge is imposed at the beginning of the lease for installation or that no such charge is due.

The advertisement identified as CX 25 was published in *The Philadelphia Inquirer TV Week* for the week of March 14, 1982. (Stip. 28) This advertisement, identical in substance to CX 24, did not disclose the amount of the monthly payments scheduled under the lease, and did not disclose that a charge is imposed at the beginning of the lease for installation or that no such charge is due.

The Commission's complaint issued on November 1, 1982.

B. Jurisdiction

Section 108(c) (15 U.S.C. 1607(c)) of the Truth in Lending Act (15 U.S.C. 1601-1667) provides that except to the extent that enforcement of the Act is specifically committed to some other Government agency, the Federal Trade Commission shall enforce its requirements, and a violation of any requirement imposed under the Act shall be deemed to be a violation of the Federal Trade Commission Act. (15 U.S.C. 41-58) Section 108(c) provides further that all of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the Truth in Lending Act, [34] regardless of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

Section 103(s) (15 U.S.C. 1602(4)) of the Truth in Lending Act⁴ provides that any reference to any of the Act's requirements or provisions includes reference to the regulations promulgated under the Act by the Board of Governors of the Federal Reserve System; in this case, Regulation Z.

No statute of limitations attaches to administrative proceedings brought under Section 5 of the Federal Trade Commission Act or by the Commission under the Truth in Lending Act, *Commercial Programming Unlimited, Inc.*, FTC Docket No. 9029 (Jan. 8, 1976) (order denying respondents' motion to dismiss complaint), and neither equitable estoppel nor laches is a defense to an action brought by the government in the public interest. *Horizon Corporation*, 97 F.T.C. 464,

⁴ As a result of the enactment of the Truth in Lending Simplification and Reform Act, which took effect on April 1, 1982, Section 103(s) became Section 103(x), but there was no substantive change in the provision. (See, n. 1, *supra*, at 2)

772, 860 (1981); *SKF Industries, Inc.*, 94 F.T.C. 6, 83 n. 8 (1979); *Utah Power & Light Co. v. United States*, 243 U.S. 389, 408-09 (1917); *Times-Picayune Publishing Co. v. United States*, 345 [35] U.S. 594, 623-24 (1953); *United States v. Firestone Tire & Rubber Co.*, 374 F.Supp. 431, 433 (N.D. Ohio 1974).

C. Respondents' Violations of the Consumer Leasing Act

The Consumer Leasing Act (Pub. L. No. 94-240, 90 Stat. 257, 15 U.S.C. 1667) was enacted on March 23, 1976 as an amendment to the Truth in Lending Act. The Act took effect on March 23, 1977.

Congress had found that there was a growing trend toward leasing durable goods for personal use as an alternative to buying on credit and that these leases had been offered without adequate cost disclosures. It is the purpose of the Act "to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements." (90 Stat. 257; 15 U.S.C. 1601(b))

Leases often provide for monthly payments less than would be available if similar property were purchased on credit. Additionally, many leases require no downpayment or similar [36] charge. This raises the possibility that lease advertisements might mislead consumers by selectively emphasizing one or more of these features. S. Rep. No. 590, 94th Cong., 2d Sess. 5 (1976) To prevent this from happening, Congress has provided in the Consumer Leasing Act that the required disclosures in consumer leases must be set out "accurately and in a clear and conspicuous manner." (15 U.S.C. 1667(a)) The disclosures in advertisements promoting consumer leases must be stated "clearly and conspicuously." (15 U.S.C. 1667(c)) Regulation M, issued by the Board of Governors of the Federal Reserve System to implement the Act, requires that the consumer lease disclosures be made "clearly, conspicuously, in meaningful sequence . . ." and "together on (i) either the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or (ii) a separate statement which identifies the lease transaction." (Section 213.4(a)(1)(2)) Regulation M requires that the disclosures in consumer lease advertisements be made "clearly and conspicuously." (Section 213.5(c))

In *Thomka v. A.Z. Chevrolet, Inc.*, 619 F.2d 246 (3rd Cir. 1980), the court analyzed the consumer lease disclosure requirements of the Truth in Lending Act as applied to a car leasing agreement. The court

found that numerous provisions in the agreement did not comply with the requirement of Section 226.6(a) of Regulation Z that the mandated disclosures be made [37] in a "clear and conspicuous manner." *Id.*, at 249. In reversing the decision of the district court, the Court of Appeals observed that the lower court had "ignored" the requirement of Section 226.15(a)(1) of Regulation Z that all of the required disclosures be made on the same page and above the place for the lessee's signature. *Ibid.* The court said that the district court was mistaken in assuming that the "clear and conspicuous" requirement was satisfied where the information had to be gleaned by reference to more than one paragraph of the agreement, and more than one page. The court specifically cited the failure of the agreement to state "clearly or explicitly" whether or not the lessee had the option to purchase the leased property, as required by Section 226.15(b)(11) of Regulation Z, and said, in effect, that when the consumer must look at more than one paragraph of the agreement, scattered over two pages, to understand an item of information required to be disclosed by the Regulation, he is not informed in a "clear and conspicuous manner." *Ibid.*

The Rentacolor lease contract (CX 5), in use until August 1980, like the lease agreement in *Thomka*, failed to make all of the required disclosures on the same page, above the place for the lessee's signature, as required by Section 226.15(a)(1) of Regulation Z. Whether or not the lessee has the option to purchase the leased property cannot be gleaned from the [38] disclosures found in Rentacolor's contracts prior to August 1980, or from its advertisements. (CXs 5-10, CXs 11-13) The Rentacolor lease contracts and certain Rentacolor advertisements (CXs 11-13) failed to disclose the total amount of the monthly payments scheduled under the lease, as required by Section 226.15(b)(3) and Section 226.10(g)(3), respectively, of Regulation Z. Rentacolor advertisements also failed to disclose that an installation charge was due at the commencement of the lease contract, and the amount of such charge. (CXs 11-13, CX 17, CX 21, CX 21A, CX 21B, CXs 24-25)

Furthermore, certain Rentacolor advertisements (CX 20, CX 20A, CX 20B, CX 21A, CX 21B, CXs 24-25) failed to disclose the amount of the monthly payments scheduled under the lease, as required by Section 226.10(g)(3) of Regulation Z. Even though the monthly payment might have been determinable in some cases by dividing the yearly amount by the number of months in a year, the lease contracts and advertisements still fail the "clear and conspicuous" test because the law requires the disclosure of an amount, *i.e.*, a dollar figure. As the court said in *Thomka*, "The 'total amount paid' means [the consumer] does not have to do the addition, but that the total amount is noted in one lump figure." 619 F.2d at 249.

The record is clear, respondents' advertisements and lease contracts, alone and in combination, failed to provide in a [39] clear and conspicuous manner, much of the information mandated by the Consumer Leasing Act and Regulation Z. The requirements of the Act and the implementing Regulation Z are unequivocal about the disclosures to be made and how they are to be made. These mandated requirements, although technical in nature, cannot be ignored, and there is no reasonable discretion to deviate from them.

The applicable standard for determining compliance with the Truth in Lending Act is "strict compliance" with the Act's requirements. In *Smith v. Chapman*, 614 F.2d 968 (5th Cir. 1980), a case involving the credit provisions of the Truth in Lending Act, the court, in responding to the defendant's claim of "substantial compliance," explained: "Only adherence to a strict compliance standard will promote the standardization of terms which will permit consumers readily to make meaningful comparisons of available credit alternatives." *Id.* at 971. See also, *Beauty-Style Modernizers, Inc.*, 83 F.T.C. 1761, 1779 (1974) ("There is no such thing as 'substantial' compliance with the Truth in Lending Act and the regulation that implements it. Either you are or you aren't."), and *Certified Building Products, Inc.*, 83 F.T.C. 1004, 1041 (1973).

Further, a "strict compliance" standard means there is no need to find deception or consumer injury in order to establish [40] liability for a violation, *Chapman*, 614 F.2d at 971, and it is not a defense in such a proceeding to show that the public has not been injured by the challenged practice. *American Aluminum Corp.*, 84 F.T.C. 21, 51 (1974). Thus, in *Dzadovsky v. Lyons Ford Sales, Inc.*, 593 F.2d 538 (3rd Cir. 1979), the Third Circuit rejected the argument that the Act is not violated if there is no allegation that consumers have been deceived or suffered financial loss because of inaccurate Truth in Lending disclosures. The court said, "It is clear, however, that such injury need not be alleged. One of the legislative purposes of the Act is to enable consumers to compare various available credit terms. Any proven violation of the disclosure requirements of the Act is presumed to injure a borrower by frustrating that purpose." *Id.* at 539 (footnote omitted).

Following the example of the credit provisions of the Truth in Lending Act, Congress enacted the Consumer Leasing Act expressly "to protect consumers against inadequate and misleading leasing information." 90 Stat. 257. In considering the appropriate legislation to achieve this purpose, it was stated that important aspects of lease contracts were often not explained clearly; consequently, consumers were unable to compare the advantages or disadvantages of one lease arrangement with another or to compare a lease arrangement to a

retail [41] credit sale. *Hearings on H.R. 4657 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking, Currency and Housing*, 94th Cong., 1st Sess. 1 (1975) (statement of Chairman Frank Annunzio). Congress, in passing the Consumer Leasing Act, predetermined that certain lease terms and information were so invaluable to consumers' ability to make an informed decision regarding leasing that their omission was inherently injurious. Thus, arguments addressed to the "technical" or "*de minimus*" nature of the violation are to no avail in this proceeding. As the court stated in *Gennuso v. Commercial Bank & Trust Co.*, 566 F.2d 437, 443: "Any misgivings about the technical nature of the requirements under the [Truth in Lending] Act or Regulation [Z] should be addressed to Congress and the Federal Reserve Board, not to this Court."

D. Respondents' Defense Arguments

Respondents contend that the Consumer Leasing Act (*i.e.*, the consumer leasing provisions of the Truth in Lending Act) did not apply to their business prior to August 1980 because respondents "did not offer a lease for a period of time exceeding four months." (RPF p. 16; RB, pp. 3-5) Respondents base their argument on the fact that the lease contract form [42] used prior to August 1980 (CX 5) does not expressly state that the lessee *must* keep the equipment for twelve months, or for any specific period of time.⁵

Respondents point out that the face of the contracts in evidence (*see, e.g.*, CX 6A), identifies no minimum required rental period. The reverse side of the contracts, however, does contain a provision (Number 10) which provides: "Renter may terminate this agreement after twelve months of signing this Agreement by giving not less than four weeks' written notice of such intention to terminate. . . ."

Respondents contend that this provision should be read to establish only a procedure for cancelling after twelve months (*i.e.*, with four weeks notice); it does not say one must keep the television for twelve months. By inference, a customer had the right under this contract to return the equipment at any time and pay amounts owed for the period the equipment was held. Respondents state that this was the interpretation that Rentacolor placed on its contracts; that it accepted televisions returned to it; and that it instituted no legal action for rental payments for any minimum period. (*See* CX 4) Consequently, according to respondents, the language of the [43] contracts, the practice of respondents, and the use of the contracts by respondents all

⁵ Section 226.2(mm) of Regulation Z defines a "consumer lease" as "a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family or household purposes, for a period of time exceeding four months . . ." (emphasis added)

clearly prove that there was no requirement that a customer keep the equipment rented for any specific period. (RPF, pp. 16-18; RB, pp. 3-5)

Respondents' contention with respect to how the lease contracts were interpreted internally in their business operations is self-serving, and the argument which they make in respect to the lease contracts is contrary to the stipulations entered into in this proceeding. Respondents have stipulated that the lease contracts which they transacted in January and February 1980 (*see* CXs 6-10) are "consumer lease contracts" (Stip. 9), as defined by the implementing regulation of the Consumer Leasing Act. (Stip. n. 1, p. 1; *see* F. 22) Respondents have also stipulated that the majority of the lease contracts they have transacted from September 1979 to August 1980 and from August 1981 to the present were for a "minimum contractual period of twelve months." (Stip. 5; *emphasis added*)

A stipulation made in court or preparatory to trial, by a party or his attorney, conceding for the purposes of the trial the truth of some alleged fact, has the effect of a confessory pleading, in that the fact is thereafter to be taken for granted; so that the one party need offer no evidence to prove it, and the other is not allowed to disprove it. [44] IX Wigmore on *Evidence*, Section 2588 at 586 (3d. ed. 1940). The vital feature of a judicial admission is universally conceded to be its *conclusiveness* upon the party making it, *i.e.*, the prohibition of any further dispute of the fact by such party, and of any use of evidence to disprove or contradict it. *Id.*, Section 2590 at 587; *see also, Hill v. FTC*, 124 F.2d 104, 106 (5th Cir. 1941).

In the absence of fraud, inadvertence, or mistake, parties to stipulations and agreements entered into in the course of judicial proceedings are estopped to take positions inconsistent therewith. 31 C.J.S. Estoppel Section 120; *Markow v. Alcock*, 356 F.2d 194, 198 (5th Cir. 1966). *See also, Turner v. Woodard*, 259 Fed. 737 (1st Cir. 1919); *Schwartz v. Pattiz*, 41 F.R.D. 456 (E.D. Mo. 1967), *aff'd, Pattiz v. Schwartz*, 386 F.2d 300 (8th Cir. 1968).

While there is strong authority supporting the conclusiveness of a judicial stipulation voluntarily entered into, and despite the fact that respondents' argument is inconsistent with the actual language of the stipulations and what is the obvious intent of the stipulations, respondents' argument will be considered since it is grounded on respondents' interpretation of the language, Item 10, of lease contracts which are part of the stipulations. [45]

Even if respondents had not stipulated that the majority of their contracts were for a minimum contractual period of twelve months, the weight of the evidence would nevertheless compel the conclusion that respondents' leases obligated the lessee to lease the equipment for a minimum twelve-month period. The lease contract used prior to

August 1980 expressly provided the lessee a right to terminate the agreement twelve months after signing it. (Item 10 of CX 5B) There is no provision in the lease that states or even suggests that the lessee has a right to terminate the lease at will or at any time prior to the expiration of twelve months. In fact, under the contracts lessees could be liable for \$25 as liquidated damages in the event of a breach of the contract. (See e.g., Item 12, CX 6)

Under the doctrine of *expresso unius est exclusio alterius* ("the expression of one thing is the exclusion of another"), when certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. *Little v. Town of Conway*, 171 S.C. 27, 31, 171 S.E. 447, 448 (1933). Applying the doctrine to the instant case, the compelling inference is that by stating the manner in which the lessee could terminate the lease at the end of the twelve-month period, and no other, respondents intended that the lessee would not be entitled to terminate at any time prior to the end of the twelve-month term. If the lessee had a right to [46] terminate the contract in less than twelve months, it would make no sense for respondents *not* to specify the method by which this could be done when they have specified the method for termination at the end of twelve months. Therefore, the clear import of the contract language is that respondents' lease contracts were terminable only upon the completion of the twelve-month term; thus, they were for a fixed and binding duration and may not be considered terminable at will. See, *Besco, Inc. v. Alpha Portland Cement Co.*, 619 F.2d 447, 448 (5th Cir. 1980) (contract not terminable at will because document established duration by defining those events which would permit termination); *Consolidated Laboratories, Inc. v. Shandon Scientific Co.*, 413 F.2d 208, 210 (7th Cir. 1969) (contract terminable upon occurrence of an event is not terminable at will).

Assuming *arguendo* that respondents did take back leased equipment prior to the end of the twelve-month period and did not institute suit to collect unpaid rental installments, this in no way expands upon the language of the lease contract for the benefit of all customers, or enlightens those customers who may have desired to but did not attempt to return the equipment prior to the expiration of the twelve-month period because of the contract language.

Finally, respondents cite three cases to support their argument that the Consumer Leasing Act does not apply "where [47] there is no requirement that a party rent the personal property for more than four months . . .", *Lemay v. Stroman's, Inc.*, 510 F.Supp. 921 (E.D. Ark. 1981); *Dodson v. Remco Enterprises, Inc.*, 504 F.Supp. 540 (E.D. Va. 1980); *Smith v. ABC Rental Systems of New Orleans*, 491 F.Supp. 127 (E.D. La. 1978). (RPF p. 16) These cases, which concern the applicability

ty of the Truth in Lending Act to "rent-to-buy" agreements, involve contracts that *expressly* provided for a rental period of less than four months,⁶ and therefore are clearly distinguishable from the facts in this proceeding.

E. The Remedy

Having determined that respondents have violated the Consumer Leasing Act and Regulation Z [M], it is necessary to consider an appropriate remedy. It is well established that "the Commission has wide discretion in its choice of a remedy [48] deemed adequate to cope with unlawful practices" and that, so long as the remedy selected has a "reasonable relation to the unlawful practices found to exist," the court will not interfere. *Jacob Seigel Co. v. FTC*, 327 U.S. 608, 611 (1946); *see also, FTC v. Cement Institute*, 333 U.S. 683, 726 (1948); *FTC v. Colgate Palmolive Co.*, 380 U.S. 374, 392 (1965); *L.G. Balfour Co. v. FTC*, 442 F.2d 1 (7th Cir. 1971). Having established a violation, the Commission must "be allowed effectively to close all roads to the prohibited goal, so that the order may not be by-passed with impunity." *FTC v. Rubberoid Co.*, 343 U.S. 470, 473 (1952); *see also, FTC v. National Lead Co.*, 352 U.S. 419, 431 (1957).

Respondents contend that no order should issue because respondents have worked hard to bring their practices in line with the staff's view, and that respondents have been in substantial compliance with the law since July 1980, except for technical defects. (RPF, pp. 18-19; RB, pp. 6-10) Respondents argue that the previous acts are unlikely to be repeated in the future, making entry of a cease and desist order unnecessary. (RPF, p. 20) Respondents further state that the unlawful practices have been voluntarily discontinued or abandoned, that a substantial period of time has elapsed since the acts were last committed, that circumstances indicate respondents were acting in good faith in discontinuing the unlawful practices [49] with no intention of resuming the practices, and that there is no direct proof of a likelihood of resumption of such practices. (RPF, pp. 20-21) According to respondents, the picture that develops from this record is that of companies intent on compliance with the law. (RPF, p. 22) Finally, if an order is deemed necessary, only a declaratory order should enter, with the Commission taking this opportunity to indicate its intention to enforce the law against companies that do not voluntarily comply

⁶ In *Lemay v. Stroman's, Inc.*, 510 F.Supp. 921 (E.D. Ark. 1981), the agreement contained a clearly stated provision binding the customer to a rental of only one week. In *Dodson v. Remco Enterprises, Inc.*, 504 F.Supp. 540 (E.D. Va. 1980), the contract stated that "the initial rental period shall be one month." *Id.* at 541. "Renter may terminate this agreement at the end of any rental period by return of the property to owner." *Id.* at 542. The contract in *Smith v. ABC Rental Systems of New Orleans, Inc.*, 491 F.Supp. 127 (E.D. La. 1978) stated explicitly that it was a week-to-week rental agreement only, which was "terminable by either party at any time." *Id.* at 128.

with the law and which do not show an intention of complying with the law in the future. (RPF, p. 23)

Respondents also contend that no order should be entered against respondent Brian N. Cawley, individually. (RPF, pp. 24-26; RB, pp. 10-13) According to respondents, the Board of Directors of Rentacolor formulates and directs policy which respondent Cawley merely implements. (RPF, p. 26) Any order entered against the corporate respondents would automatically bind the officers responsible for the conduct of corporate affairs. Respondents contend the record establishes no basis for an order against respondent Cawley, individually, and unless the record affirmatively shows some reason for issuing an order against individuals in their individual capacity, no such order should be entered.

The record in this proceeding is not as supportive of respondents' arguments as they would have it. First, [50] respondents' violations of the Consumer Leasing Act cannot be passed off as mere technicalities. Congress was concerned that consumers were being misled as to the true costs of leasing by lessors' failure to disclose important information about lease terms and costs. The Consumer Leasing Act was adopted "to provide consumers with meaningful information about the component and aggregate costs of consumer leases, so that they can make better informed choices between leases and between leases and credit sales." S. Rep. No. 590, 94th Cong., 2d Sess. 2 (1976).

The disclosure violations committed by respondents go to the heart of the purpose of the Consumer Leasing Act; *e.g.*, respondents' failure to disclose in their advertisements the amount of the installation charge, as required by Section 226.10(g)(2) of Regulation Z, deprived consumers of valuable information in determining the initial payment necessary to enter into such an agreement and whether it was to their advantage to do so. The failure to disclose in advertisements the number of payments scheduled under the transaction and the total amount of such payments, as required by Regulation Z, might mislead consumers as to the advantage or disadvantage of leasing. Similarly, respondents' failure to provide all of the required disclosures on the same page above the place for the [51] lessee's signature, as required by Section 226.15(a) of Regulation Z, may have confused consumers or led them to overlook important information concerning their rights under the contract (such as when they had the right to terminate the lease).

These violations cannot be lightly dismissed as "technical." The law recognizes no distinction between technical and substantive violations of the Act and Regulation Z. *Certified Building Products, Inc.*, 83 F.T.C. 1004, 1041 (1973). In fact, such violations have been considered to present "a flagrant failure to provide in a clear and conspicu-

ous manner much of the information mandated by the Act and Regulation Z." *Thomka v. A.Z. Chevrolet, Inc.*, 619 F.2d 246, 250 (3rd Cir. 1980).

Second, respondents' assertion that discontinuance of the challenged practices was voluntary and unlikely to be resumed is not convincing. Respondents had ample opportunity to acquaint themselves with the Consumers Leasing Act prior to any Commission intervention. The law had been enacted (March 23, 1976) more than three years before the alleged violations were first noted. It was in effect (March 23, 1977) for over two years prior to December 1979, as was Regulation Z, implementing the Act. The Board of Governors of the Federal Reserve System [52] routinely issued staff opinion letters and other documents explaining its requirements, as did the Federal Trade Commission.

The staff first contacted respondents by letter dated December 11, 1979. Respondents replied two months later, by letter dated February 13, 1979. The staff contacted respondents again by letter dated March 6, 1980, and respondents responded by letter dated March 21, 1980. On April 11, 1980, the staff met with respondents' counsel and respondent Cawley. Thereafter, respondents sent the staff a letter dated April 23, 1980.

Respondents did not conform lease contract disclosures with the requirements of the Consumer Leasing Act until August 1980, over seven months after the initial contact by the staff.

During the period December 1979 after the staff had contacted respondents, until the meeting with the staff on April 11, 1980, advertisements were disseminated which did not conform to the requirements of the Act. (CXs 12-13; see F. 34, 35) After the meeting with the staff on April 11, 1980, advertisements were disseminated during the week of May 11, 1980, that failed to make all required disclosures. (CX 15E, CX 16; see F. 38) During the week of September 6, 1981, CX 17, a non-complying advertisement was disseminated. (F. 39) The [53] staff then contacted respondents by letter dated September 9, 1981. (Stip. 20) Respondents responded to staff's letter with a letter dated September 14, 1981. (Stip. 21) Nevertheless, during September and October 1981, non-complying advertisements were disseminated. (F. 40, 41)

The staff again met with respondents' counsel and respondent Brian N. Cawley, on December 16, 1981. Thereafter, during the week of March 14, 1982, a non-complying advertisement was disseminated in *The Philadelphia Inquirer TV Week*. (F. 41)

Respondents explain this latter advertisement (CX 25) as an "inadvertence." (RPF, p. 22, n. 10)⁷ In October 1981, respondents' advertis-

⁷ Assuming *arguendo* that the March 14, 1982 non-complying advertisement was an inadvertence, respondents
(footnote cont'd)

ing agency was instructed to modify all advertisements which failed to include the monthly lease charge to include the monthly lease charge. The president of the advertising agency would testify that he immediately instructed his staff to make the changes in the advertisements, that changes were made in all advertisements except the advertisement that appeared in *The Philadelphia Inquirer TV Week*, and that the failure to make that change was the result of inadvertence. (Stip. 32) [54]

Respondents apparently would shift responsibility for complying with the law to their advertising agency, and explain their agent's failure to comply with instructions as an "inadvertence." This is impermissible. It was respondents' responsibility to assure that their advertisements were in compliance with the Consumer Leasing Act, and to the extent their agent may have committed an inadvertence, respondents are liable for the acts of their agent.

Thus, the record does not support a picture of a company that voluntarily discontinued the challenged practices, or a company that was intent on complying with the law. Rather, the picture presented is one of much foot-dragging by respondents before and after contact by the staff, a marked degree of inattentiveness or indifference with respect to the legal requirements applicable to what is apparently respondents' principal business - leasing. In any event, it is obvious that whatever the steps taken by respondents to effect compliance with the law, they were both dilatory and inadequate.

The Commission should not be required to continue to monitor respondents' leasing practices so as to advise them everytime they violate the law. A cease and desist order will place the burden of complying with the law where it should be - on respondents.

It is settled this discontinuance or abandonment of a practice does not prevent the issuance of a cease and desist order directed to such practice. *Giant Food, Inc.*, 61 F.T.C. [55] 326 (1962). This principle is particularly applicable to situations where the discontinuance was not entirely voluntary but occurred only after the Commission had begun an investigation into such practices, where respondent continues in the same line of business, and where there is no guarantee that the practices may not be resumed. *Coro, Inc.*, 63 F.T.C. 1164, 1201 (1963), *modified and aff'd*, *Coro, Inc. v. FTC*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965); *Fedders Corp.*, 85 F.T.C. 38, 72-73 (1975), *aff'd*, 529 F.2d 1938 (1976), *cert. denied*, 429 U.S. 818 (1976); *Marlene's Inc. v. FTC*, 216 F.2d 556, 559 (7th Cir. 1954); *Galter v. FTC*, 186 F.2d 810, 812-13 (7th Cir. 1951); *Eugene Dietzen Co. v. FTC*, 142 F.2d 321, 330 (7th Cir. 1944), *cert. denied*, 323 U.S. 730 (1944);

were still violating the Consumer Leasing Act in October 1981, over twenty-two months after respondents were first contacted by the staff. (See CX 24; F. 41)

P.F. Collier & Sons Corp. v. FTC, 427 F.2d 261, 275 (6th Cir. 1970); *Perma-Maid v. FTC*, 121 F.2d 282 (6th Cir. 1941).

In *Zale Corp.*, 78 F.T.C. 1195, 1240 (1971), the Commission stated its position:

It is well established that the mere fact that the offending practices have been discontinued prior to the issuance of a complaint does not provide, by itself, the requisite assurance that an order is unnecessary and not in the public interest. As the courts have noted, it is the timing and circumstances of the claimed abandonment which is of importance to the issue of the necessity for an order. Where, as here, the abandonment took place only after the Commission's hand was on the respondent's shoulder, the courts are clear that abandonment of the practices under such circumstances will not support a conclusion that the practices will not be resumed. (Footnote omitted) [56]

Accord, J. M. Sanders Jewelry Co., 85 F.T.C. 250, 265 (1975).

F. Individual Liability of Brian N. Cawley

The complaint names Brian N. Cawley as respondent in his individual capacity and as officer of the respondent corporations. Cawley is a "person" subject to the requirements of the Truth in Lending Act and Regulation Z because the Act and Regulation apply to any person, as "person" is defined by Section 226.2(bb) of Regulation Z, that offers consumer leases to residents of any state, as "state" is defined in Section 226.2(hh) of Regulation Z. This includes foreign companies or individuals operating in the United States whether or not the lessor is chartered in the United States or a foreign country. Federal Reserve Board Official Staff Commentary on Regulation M, Comment 213.1-1⁸

It is now axiomatic that to prevent erosion of its orders, the Commission has the authority to name individually the officers, directors, and the stockholders of corporations when [57] they have participated in or controlled the acts or practices giving rise to the complaint. *FTC v. Standard Education Society*, 302 U.S. 112 (1937); *Rayex Corp. v. FTC*, 317 F.2d 290 (2d Cir. 1963); *Standard Distributors v. FTC*, 211 F.2d 7 (2d Cir. 1954); *Virginia Mortgage Exchange*, 87 F.T.C. 182, 203 (1976). Cawley, in his capacities as President and Chief Executive Officer and a Director of the corporate respondents (Stip. 3), directly participated in the practices in question. He was present on two occasions at discussions with the FTC staff concerning Rentacolor's lease contracts and advertisements. (Stip. 16, 31) Even if he did not have complete authority over respondents' leasing operations, he certainly was made aware of the requirements of the Consumer Leasing Act,

⁸ While the Official Staff Commentary is meant to interpret the leasing regulations promulgated as Regulation M, effective April 1, 1981, the Commentary makes it clear that there has been no change in regulatory coverage or applicability since the consumer leasing provisions were issued as part of Regulation Z. See "References" to Comment 213.1.

and he was in a position to take whatever steps were necessary to assure that respondents' activities complied with the law. Absent some showing to the contrary, it must be concluded that Cawley was the person primarily responsible for the inadequate manner in which respondents responded to the staff's concerns, and thus for respondents' failure to bring their leasing activities into compliance with the law in a prompt and effective manner.

Cawley has directed the operations of the corporate respondents for the entire period covering the record violations. (Stip. 3) Previously he had 15 years of experience in the television rental business in England before he assumed [58] his position as president and a member of the Board of Directors of respondent corporations in the United States. (CX 4A) Acting as agent for Rentacolor International, Rentacolor, Inc.'s foreign parent (CX 4A), Cawley could easily dissolve the respondent corporations, form a new corporation under a different name, or go in business for himself. The Commission, with such a possibility in mind, stated in *Coran Bros. Corp.*, 72 F.T.C. 1, 25 (1967):

The public interest requires that the Commission take such precautionary measures as may be necessary to close off any wide "loophole" through which the effectiveness of its orders may be circumvented. Such a "loophole" is obvious in a case . . . where the owning and controlling party of an organization may, if he later desires, defeat the purposes of the Commission's action by simply surrendering his corporate charter and forming a new corporation, or continuing the business under a partnership agreement or as an individual proprietorship with complete disregard for the Commission's action against the predecessor organization.

Failure to name Cawley individually would result in such a loophole; hence, the public interest requires that the Commission take the precautionary measure of including him in its order. Proof that he intends to evade the order is unnecessary. *Id.*, at 24. "[T]he opportunity to evade is the loophole that must be closed." *Carpets "R" Us, Inc.*, 87 F.T.C. 303, 320 (1976). See also, *Virginia Mortgage Exchange, supra*. [59]

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over respondents and the subject matter of this proceeding.
2. The complaint herein states a cause of action and this proceeding is in the public interest.
3. Subsequent to March 23, 1977, respondents have transacted "consumer leases" as defined in Section 226.2(mm) of Regulation Z, that failed to comply with Section 226.15 of Regulation Z.
4. Subsequent to March 23, 1977, respondents have caused "adver-

tisements" as defined in Section 226.2(d) of Regulation Z to be published that failed to comply with Section 226.10(g) of Regulation Z.

5. Respondents, by violating Sections 226.15 and 226.10(g) of Regulation Z, have violated the Truth in Lending Act by virtue of Section 103(s) of the Act, and, pursuant to Section 108(c) thereof, respondents have thereby violated the Federal Trade Commission Act.

6. The Order entered hereinafter against corporate respondents Rentacolor, Inc. and Rentacolor U.S.A., Inc., and [60] Brian N. Cawley, individually, is appropriate and necessary to remedy the violations of law which have been found to exist.

ORDER

I

It is ordered, That respondent Rentacolor, Inc., a corporation, Rentacolor U.S.A., Inc., a corporation, their successors and assigns, and their officers, and Brian N. Cawley, individually and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any consumer lease or arrangement for a consumer lease, or any advertisement to aid, promote, or assist directly or indirectly any consumer lease, as "consumer lease" and "advertisement" are defined in Regulation M (12 C.F.R. 213), do forthwith cease and desist from:

A. Representing in any advertisement, directly or by implication, the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, unless all of the [61] following items are disclosed as applicable, as required by Section 213.5(c) of Regulation M:

- (1) that the transaction advertised is a lease;
- (2) the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;
- (3) the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;
- (4) a statement of whether or not the lessee has the option to purchase the leased property and at what price and time; and
- (5) a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a [62] statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property

and its realized value at the end of the lease term, if the lessee has such liability.

B. Failing to make all of the required disclosures prior to consummation of the transaction, as required by Section 213.4(a)(2) of Regulation M, together on either:

(1) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or

(2) a separate statement which identifies the lease transaction.

C. Failing to disclose the total of the periodic payments scheduled under the lease, as required by Section 213.4(g)(3) of Regulation M.

D. Failing to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 213.4(g)(11) of Regulation M. [63]

E. Failing, in any consumer lease transaction or advertisement, to make all the disclosures required by Sections 213.4 and 213.5 of Regulation M in the manner prescribed by Sections 213.4 and 213.5 of Regulation M.

II

It is further ordered, That the corporate respondents distribute a copy of this Order to all operating divisions of said corporations and to present or future personnel, agents, or representatives of said corporations 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 thereof.

III

It is further ordered, That the corporate respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor [64] corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of this Order.

IV

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or

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

V

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this Order, [65] file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

OPINION OF THE COMMISSION

By MILLER, *Chairman*:

This matter is before the Commission on appeal from an initial decision¹ of Administrative Law Judge Ernest G. Barnes. Judge Barnes sustained the allegations of the Commission's complaint against all three respondents named therein: Rentacolor, Inc., Rentacolor U.S.A., Inc., and Brian N. Cawley, as an officer of said corporations and individually (respondents are hereinafter referred to collectively as "Rentacolor" or "the company"). The evidence before the ALJ was limited to facts stipulated by agreement of the parties and to documents submitted with the stipulation agreement. Judge Barnes found that Rentacolor had violated the Consumer Leasing Act (15 U.S.C. 1667 *et seq.*) ("the CLA"),² Regulation Z (12 C.F.R. 226) and [2] Regulation M (12 C.F.R. 213) promulgated thereunder,³ and the Federal Trade Commission Act (15 U.S.C. 45). In particular, he found

¹ The following abbreviations are used herein:

- I.D.F. - Initial Decision Finding No.
- I.D. - Initial Decision Page No.
- RB - Respondent's Appeal Brief Page No.
- RRB - Respondent's Reply Brief Page No.
- Stip. - Stipulation No.
- CX - Exhibit No.

² The CLA (Pub. L. 94-240, 15 U.S.C. 1667 *et seq.*) was signed into law as an amendment of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) on March 23, 1976 and became effective on March 23, 1977.

³ Prior to April 1, 1981, the CLA was implemented by consumer leasing provisions contained in the Federal Reserve Board of Governors' Regulation Z (12 C.F.R. 226), which implements the Truth in Lending Act. The consumer leasing provisions were removed from Regulation Z by the Board and redesignated as Regulation M (12 C.F.R. 213), effective April 1, 1981, without any substantive changes being made to those provisions. The Commission's complaint allegations covered periods before and after April 1, 1981 and therefore cited to both Regulation Z and Regulation M.

that the company had failed to make several disclosures required by the CLA and its implementing regulations and to make certain disclosures in the manner required in connection with Rentacolor's advertising and leasing of color television sets and other video equipment to the public. The order issued by Judge Barnes would require Rentacolor to disclose certain information in accord with the specific requirements of the CLA and Regulation M and would impose the order's requirements upon respondent Cawley as an officer of the respondent corporations and individually.

The record on appeal is limited to that which was before the ALJ and to written briefs filed on appeal. Oral argument was waived. Rentacolor makes essentially the same contentions here as it did below: (1) that complaint counsel failed to show by a preponderance of the evidence that Rentacolor was subject to the requirements of the CLA during the period of its alleged violations; (2) that the company's prompt and good-faith compliance with the Act since July 1980 requires that no order be [3] issued; and (3) that, in any event, no order should be issued against Cawley in his individual capacity.

We find Rentacolor's first two contentions to be without merit, as did Judge Barnes, but we believe the evidence insufficient to support an order against Cawley individually. Accordingly, we adopt Judge Barnes's findings, conclusions, and initial decision except as qualified or changed by this opinion and we adopt his order except as to Cawley in his individual capacity.

*I. Alleged Failure of Complaint Counsel To Show that
Rentacolor Was Subject To the CLA*

The CLA applies only to consumer leases that bind lessees to keep the leased equipment "for a period of time exceeding four months. . . ." 15 U.S.C. 1667(1). Rentacolor asserts that prior to August 1980, it leased to the public on a month-to-month basis only. However, the facts set forth in Stipulation 5 are contrary to Rentacolor's contention.

Stipulation 5, in relevant part, states:

From September 1979 to August 1980 and from August 1981 to the present Rentacolor had available and transacted lease agreements from three to twelve months in duration. The majority of these lease agreements were for a minimum contractual period of twelve months (Emphasis added). [4]

Rentacolor does not challenge the ALJ's reliance upon these facts. We find them sufficient to reject the company's argument and adopt the ALJ's findings on this point.⁴

⁴ Stipulation 9 states, in part, that certain Rentacolor contracts executed during January and February 1980 are consumer lease contracts." Footnote 1 of the stipulation agreement defines the term "consumer lease" by refer-

(Footnote continues . . .)

Notwithstanding the facts set out in Stipulation 5, Rentacolor argues that until August 1980, the company leased to the public on a month-to-month basis because its lease form in use until then (CX-5; Stip. 22) contained no provision specifying a minimum term for the lease⁵ but did include a provision that [5] expressly required the customer to pay a monthly rental fee (RB 16-17). From this Rentacolor argues that its pre-August 1980 leasing agreements must be construed as imposing only a month-to-month term in accordance with court decisions holding that the term of a lease of real property for an unspecified period may be implied from the intervals at which rent is paid (RB 17-18).

Rentacolor's reliance upon decisions involving real property leases is misplaced. We are dealing here with leases, not of real property, but of personal property, to which the law governing contracts applies. It is hornbook contract law that the intent of the contract must be deduced from the instrument as a whole and from the surrounding circumstances. *Williston On Contracts*, Third Edition, Section 610B (1961). We think it clear from the terms of the Rentacolor lease and from the surrounding circumstances that the company intended that the majority of its leases were to run, not month-to-month, but year-to-year.⁶

The company's advertisements frequently promoted monthly rental rates on a "yearly" or "12-month" basis (CX 2, 11, 12, 13), thus inviting the public to enter into leasing agreements of a year's duration. Rentacolor's leases calculated a customer's payments in terms of the "First Year" through the "Fifth and subsequent yrs" (CX 6a - CX 10a), which clearly suggests, [6] contrary to Rentacolor's contention, that the company intended its leases to run far longer than one

ence to Section 213.2(a)(6) of Regulation M which, in turn, defines "consumer lease" to mean "a contract . . . for a period of time exceeding four months. . . ." Rentacolor contends that Footnote 1 was not intended by the parties to be used to interpret Stipulation 9 but was merely meant to describe the company's practices that are involved in the Commission's proceeding. Thus, according to Rentacolor, the term "consumer lease contracts" used in Stipulation 9 is not synonymous with Regulation M's definition of "consumer lease" (RB 19, n.3; RRB 2-4). Rentacolor's contention as to the significance of Footnote 1 creates enough doubt as to prompt us not to rely upon Stipulation 9 as a second ground for rejecting the company's argument on the basis of the stipulation agreement. However, as noted above, we find the unchallenged facts of Stipulation 5 to be an adequate basis for rejecting the company's argument.

⁵ By contrast, the lease form that Rentacolor began using in August 1980 (CX-22 (a-b); Stip. 23) does contain a provision specifying a minimum term "for a period of 2M months" (CX-22(a), Item 2), with the number of months apparently inserted at the time the lease is executed. Moreover, Rentacolor's Disclosure Statement (CX-23), which the company began using for the first time in July 1980 (Stip. 24), provides that the customer "may not terminate the lease prior to the end of the lease term (CX-23, Item 12(a))." From August 1980 thru July 1981 Rentacolor transacted lease agreements solely for three months in duration (Stip. 5); its leasing activities were therefore not subject to the CLA during that period, and the evidence of record does not concern that period. However, in August 1981 Rentacolor again began transacting lease agreements up to twelve months in duration (Stip. 5), and the company does not contest that it became subject to the Act at that time.

⁶ Even if we were dealing here with leases of real property, we would reach the same conclusion. Such leases are regarded as contracts to which contract law generally applies. *Thompson On Real Property*, Section 1046 (1980 Replacement); 51C C.J.S. 232. The interval between payments of rent does not control the duration of the term of the lease where the provisions of the lease or other circumstances indicate otherwise. *Thompson On Real Property*, *supra*, Section 1088; 51C C.J.S. 232.

month. Precisely how much longer is answered by Item 10 on the back of the Rentacolor contracts (CX 6b-CX 10b):

Renter may terminate this agreement after twelve months of signing this agreement by giving not less than four weeks written notice of such intention to terminate. . . .

Rentacolor's explanations of the significance of this provision as "simply confirm[ing] that the lease *may* extend more than one year on a month to month basis (RB 19)", or as "simply to protect both the customer and Rentacolor in the event the lease should extend so long (*Id.*)," or as "simply reinford[ing] respondents' position that no particular method of termination is required when the equipment is held for less than a year (RRB 5)" are strained and unconvincing. We agree with Judge Barnes that since the Rentacolor lease contained no provision expressly allowing the customer to terminate the agreement in less than twelve months, and, in fact, expressly conferred a right of termination only after twelve months, the compelling inference is that the contract was intended to bind the customer to a twelve-month lease (I.D. 44-46).

II. *Alleged Voluntary Discontinuance*

Rentacolor argues that no order should be issued because: 1) the company acted promptly and in good faith to correct alleged violations of the law (RB 24); 2) it "moved decisively" in this direction "in April 1980" (RB 23); 3) it commenced advertising in line with the requirements of the CLA "as early as [7] May 1980" (*Id.*); 4) it was "in full compliance" with staff's view of the Act "by July 1980" (RB 3, 20-21, and 24); 5) any alleged violations which occurred after July 1980 were merely "technical" or "inadvertent" and were "quickly remedied" (RB 4, 12, 20 and 23); 6) all alleged violations "have long since been voluntarily discontinued" (RRB 9); and 7) its corrective actions justify an inference that any previous practices, if found unlawful, are not likely to be repeated in the future (RB 24).

The record does not support any of these claims. We note, first of all, that Rentacolor does not even claim to have complied with the CLA before the Commission began its investigation in December 1979. Indeed, the company argues that its leasing activities were not subject to the Act at that time, and the evidence confirms the company's noncompliance: the only Rentacolor lease form in use at that time (CX-5; Stip. 22) did not comply with the law (I.D.F. 22-28; I.D. 26-29, 37-41); and the company's advertisements published around the time of the commencement of our investigation also failed to comply with the law (I.D.F. 30-32; I.D. 24-25, 29-31, 38).

Even the onset of the Commission's investigation in December 1979

failed to stir Rentacolor into compliance with the CLA with any deliberate speed. The company's "decisive move" of April 1980 entailed a meeting with Commission staff, but nothing more (Stipulation 16). That meeting was preceded and followed by several months' exchange of written correspondence (I.D.F. 5-6, 17) during which Rentacolor made available copies of its leases and advertisements, which reflected the company's continuing [8] failure to comply with the Act both before and after the April meeting (I.D.F. 5-7, 15-18, 31-38; I.D. 29-32, 35-41). Rentacolor does not cite, nor can we discover, any evidence to support its claim that it commenced advertising in line with the requirements of the Act "as early as May 1980." Indeed, the evidence is to the contrary (I.D.F. 18-20, 38-42; I.D. 30-33, 38). Nor was the company "in full compliance" with the CLA "by July 1980," as it claims. What corrective action it finally took at that time—nearly seven months after our investigation began—only partially satisfied the Act's requirements: the company adopted for the first time a disclosure statement for use with its contracts (I.D.F. 13).⁷ However, this corrective action did not bring Rentacolor's advertising practices into line with the Act.

Despite the Commission's previous efforts to secure Rentacolor's compliance with the CLA, the company's advertisements in September and October 1981 and one in March 1982, while satisfying more of the Act's requirements than previous ads, nevertheless failed to fully comply with the Act. (Compare I.D.F. 15-18, 30-38 with I.D.F. 19 and 39-41). We reject the company's contention that these deviations were "technical" and ought not be regarded as vitiating its "substantial efforts" to [9] comply (RB 20). As we said in *Beauty Style Modernizers, Inc.*, 83 F.T.C. 1761, 1779 (1974):

There is no such thing as "substantial" compliance with the Truth in Lending Act and the regulation that implements it. Either you are or you aren't. The purpose of that statute is to permit the ordinary consumer, without regard to the degree of his commercial sophistication, to receive the kind of credit information that will allow him effectively to compare the credit terms being offered in the marketplace and thus to "shop" for the most favorable terms available. (15 U.S.C. 1601.) Only uniform terms, universally used, would allow the kind of credit comparison mandated by the Act.

See also, James v. City Home Service, Inc., 712 F.2d 193, 194 (5th Cir. 1983); *Smith v. Chapman*, 614 F.2d 968, 971 (5th Cir. 1980); *Certified Building Products, Inc.*, 83 F.T.C. 1004, 1041 (1973).

At least one violation, moreover, continued throughout the Commission's investigation, and on the basis of the record we cannot be

⁷ Regulation Z (now Regulation M) provided an option for the making of disclosures with respect to a lease agreement covered by the CLA: such disclosures could be made on one page of the agreement above the place for the consumer's signature or on a separate disclosure statement. 12 C.F.R. 226.15(a) (now 12 C.F.R. 213.4(a)(2)). Rentacolor chose the second option.

certain that it has been discontinued even now, *i.e.*, the failure to disclose the total amount the consumer must pay at the consummation of the lease (I.D.F. 30-36, 38-41; I.D. 29-33, 38-41). Even if it were clear that Rentacolor had discontinued all challenged practices after the Commission had begun its investigation, that would not preclude entry of an order. *Fedders Corp. v. FTC*, 529 F.2d 1398 (2d Cir.) *cert. denied*, 429 U.S. 818 (1976); *P.F. Collier & Sons Corp. v. FTC*, 427 F.2d 261 (6th Cir. 1970); *Coro, Inc. v. FTC*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965); *Galter v. FTC*, 186 F.2d 810 (7th Cir.) *cert. denied*, 342 U.S. 818 (1951). Rentacolor's history of begrudging and inadequate compliance with the CLA only [10] after Commission intervention does not inspire confidence that without an order to cease and desist the company would pursue a future course of full compliance. From the record before us, a cognizable danger of recurrent violation is apparent. *United States v. W.T. Grant Co.*, 345 U.S. 629 (1953).

III. Individual Liability of Respondent Cawley

We find the evidence insufficient to support an order against respondent Cawley in his individual capacity. While we agree with Judge Barnes that such an order is justifiable where an executive officer of the respondent company is found to have personally participated in or controlled the challenged acts or practices,⁸ we find the evidence insufficient to support such findings. Cawley's participation in two meetings with the Commission staff concerning Rentacolor's leasing agreements and advertising practices does not demonstrate his personal participation in or control of those practices. Similarly, the fact that "[Rentacolor's] Board of Directors formulates policy for Rentacolor and, as president, Cawley is responsible for implementing that policy (Stip. 3)" does not demonstrate the [11] requisite degree of control necessary to establish personal responsibility.

The lack of evidence on two other factors adds weight to our decision: there is no evidence that Cawley has sufficient control over the respondent corporations to defeat an order against them by dissolving the corporations and forming a new one; nor is there any evidence suggesting that Cawley has the financial resources or backing necessary for him to enter the leasing business on his own. In light of all the evidence, we find personal liability inappropriate in this case.

After the record in this case closed, respondent Cawley filed an affidavit stating that he had resigned as President and Director of

⁸ As Judge Barnes found, it is "axiomatic that the Commission has the authority to name individually the officers, directors, and the stockholders of corporations when they have participated in or controlled the acts or practices giving rise to the complaint. *FTC v. Standard Education Society*, 302 U.S. 112 (1937); *Rayex Corp. v. FTC*, 317 F.2d 290 (2nd Cir. 1963); *Standard Distributors v. FTC*, 211 F.2d 7 (2nd Cir. 1954); *Virginia Mortgage Exchange*, 87 F.T.C. 182, 203 (1976)." (I.D. 56-67).

both Rentacolor companies; he had no present affiliation with, and no present intent of becoming affiliated with, either of the Rentacolor companies; and he had no present intent of reentering the T.V. rental business. In the accompanying order, the Commission granted Cawley's motion to file this affidavit. However, our decision regarding his personal liability is not based on the information included in this affidavit. Indeed, we believe it is entirely appropriate for the Commission to enter an order against an individual respondent even though that individual no longer has any affiliation with the corporate respondent. *Crown Tuft, Inc.*, 93 F.T.C. 1085, 1086 (1977) (order denying motion to modify or vacate consent order); *Raymond Lee Organization*, 92 F.T.C. 489, 637-639 (1978).

FINAL ORDER

This matter has been heard by the Commission upon respondents' appeal from the initial decision and upon briefs in support thereof and in opposition thereto. Oral argument was waived. The Commission, for the reasons stated in the accompanying Opinion, has granted the appeal in part and denied it in part.

After the record closed, respondent Brian N. Cawley submitted a motion requesting leave to file an affidavit. *It is ordered*, That respondent Cawley's affidavit be placed on the record.

It is further ordered, That the initial decision of the administrative law judge be adopted as the Findings of Fact and Conclusions of Law of the Commission except where inconsistent with the attached Opinion and that the complaint as to respondent Brian N. Cawley be dismissed.

It is further ordered, That the following Order to Cease and Desist be entered: [2]

ORDER

I

It is ordered, That respondents Rentacolor, Inc., a corporation, and Rentacolor U.S.A., Inc., a corporation, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any consumer lease or arrangement for a consumer lease, or any advertisement to aid, promote, or assist directly or indirectly any consumer lease, as "consumer lease" and "advertisement" are defined in Regulation M (12 C.F.R. 213), do forthwith cease and desist from:

A. Representing in any advertisement, directly or by implication, the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, unless all of the following items are disclosed as applicable, as required by Section 213.5(c) of Regulation M: [3]

- (1) that the transaction advertised is a lease;
- (2) the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;
- (3) the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;
- (4) a statement of whether or not the lessee has the option to purchase the leased property and at what price and time; and
- (5) a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

B. Failing to make all of the required disclosures prior to consummation of the transaction, as [4] required by Section 213.4(a)(2) of Regulation M, together on either:

- (1) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or
- (2) a separate statement which identifies the lease transaction.

C. Failing to disclose the total of the periodic payments scheduled under the lease, as required by Section 213.4(g)(3) of Regulation M.

D. Failing to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 213.4(g)(11) of Regulation M.

E. Failing, in any consumer lease transaction or advertisement, to make all the disclosures required by Sections 213.4 and 213.5 of Regulation M in the manner prescribed by Sections 213.4 and 213.5 of Regulation M. [5]

II

It is further ordered, That the respondents distribute a copy of this Order to all operating divisions of said corporations and to present or future personnel, agents, or representatives of said corporations 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 thereof.

III

It is further ordered, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 corporations which may affect compliance obligations arising out of this Order.

IV

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this Order, file with [6] the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Modifying Order

103 F.T.C.

IN THE MATTER OF

G.R.I. CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8828. Consent Order, Feb. 11, 1972—Modifying Order, April 20, 1984*

This order reopens the proceeding and modifies a consent order entered on Feb. 11, 1972 (80 F.T.C. 155), which required a direct mail marketing firm, among other things, to cease disseminating advertisements and promotional materials which falsely guarantee or misrepresent the quality or price of any drug, food or beauty preparation. The order further required respondent to clearly and conspicuously disclose, in close proximity to any offer used to enroll consumers in a plan in which other items would be shipped regularly at additional charges, the full details and conditions of that plan, and to repeat them each time the offer was mentioned in the ad. Under the modifying order, the company must clearly and conspicuously disclose near any "free" or special offers that acceptance of the offer places further obligations on the consumer. Except where a coupon or similar form of acceptance is included, respondent need only disclose details of such obligations once elsewhere in the ad.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On December 23, 1983, G.R.I. Corporation, [hereinafter G.R.I. or respondent] respondent 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 order entered therein.

The order, which was entered in 1972, covers the offering for sale, sale, or distribution of "Bio-Rich Beauty Cream," "Over Fifty Capsules," and "Beauty Kits," or any food, drug, or cosmetic.

The order, among other things, prohibits the respondent from falsely guaranteeing its products, misrepresenting the quality of its products in any way, misrepresenting various quality aspects of its products, misrepresenting various aspects of its prices, or attempting to collect for merchandise which has been refused or returned. Paragraph 1(a) of the order prohibits respondent from representing that "[a]ny product is offered free or under any other terms where the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless all of the conditions of the plan are disclosed clearly and conspicuously and within close proximity to the 'free' or other offer."

G.R.I. now seeks to modify the order, by adding a provision to