

CARTER HAWLEY HALE STORES, INC.

461

Complaint

IN THE MATTER OF

CARTER HAWLEY HALE STORES, INC.
d/b/a THE EMPORIUM and EMPORIUM-CAPWELL

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

Docket C-3133. Complaint, May 9, 1984—Decision, May 9, 1984

This consent order requires a San Francisco, Calif. retailer to comply with the billing error resolution procedures of the Truth in Lending Act (the Act) and its implementing Regulation Z. Respondent must acknowledge a customer's written billing error notice within 30 days; resolve the dispute or mail an explanation as to why a statement is believed correct within 2 billing cycles; and maintain for at least two years, records evidencing compliance with the Act's provisions. Respondent is prohibited from attempting to collect any amount of a bill in dispute, including any finance charge computed on such amount; and must forfeit the right to collect the amount in dispute up to \$50., should it fail to comply with any of the Act's requirements.

Appearances

For the Commission: *Ralph E. Stone and Earl Stackhouse.*

For the respondent: *Jeremy V. Wisot, MacFarlane, Schaefer & Haun, Los Angeles, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder by the Board of Governors of the Federal Reserve System, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Carter Hawley Hale Stores, Inc., a corporation, doing business as The Emporium and Emporium-Capwell, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Carter Hawley Hale Stores, 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 550 South Flower Street, Los Angeles.

FEDERAL TRADE COMMISSION DECISIONS

Complaint

103 F.T.C.

California. Respondent Carter Hawley Hale Stores, Inc. does business presently through a division under the name of "Emporium-Capwell" and has done business in the past through that same division under the name of "The Emporium" with the division's principal office located at 835 Market Street, San Francisco, California. Respondent Carter Hawley Hale Stores, Inc. is responsible for the formulation, control and direction of the policies, acts, and practices of its Emporium-Capwell division, including the acts and practices hereinafter set forth.

PAR. 2. Respondent Carter Hawley Hale Stores, Inc., through its aforesaid Emporium-Capwell division, advertises, sells, and distributes retail merchandise to the public.

PAR. 3. At all times relevant hereto, respondent in the ordinary course of business did and does regularly extend, offer to extend, arrange or offer to arrange "consumer credit" for its customer's purchases, and has been and is a "creditor" as those terms are defined in Section 226.2(p) and (s) of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), duly promulgated by the Board of Governors of the Federal Reserve System.¹ The transactions involve the extension of "open end credit," as defined in Section 226.2(x) of Regulation Z.

PAR. 4. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices herein set forth, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

Count I

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

PAR. 5. Subsequent to October 28, 1975, pursuant to its aforesaid extensions of credit, respondent has in many instances received from customers "proper written notification of a billing error," as defined Section 226.2(cc) of Regulation Z. In numerous such instances respondent has:

Contrary to the requirements of Section 226.14(a)(1) of Regulation Z, failed to take any of the following actions within 30 days after receipt of said notification:

Mail or deliver to the customer a written acknowledgment there-

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

b. Make appropriate corrections in the customer's account and mail or deliver to the customer a written notice of the corrections; or

c. Mail or deliver to the customer a written explanation, after having conducted a reasonable investigation, setting forth the reasons why the billing is believed to be correct.

2. Contrary to the requirements of Section 226.14(a)(2) of Regulation Z, failed to take either of the following actions within the lesser of 90 days or two complete billing cycles from the date of receipt of the notification:

a. Make appropriate corrections in the customer's account and mail or deliver to the customer a written notice of the corrections; or

b. Mail or deliver to the customer a written explanation, after having conducted a reasonable investigation, setting forth the reasons why the billing is believed to be correct.

3. Contrary to the requirements of Section 226.14(a)(2) of Regulation Z, taken or caused action, prior to the time the dispute has been resolved, to collect:

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

b. A finance charge, late payment charge, or other charge computed on such disputed amount.

4. Contrary to the requirements of Section 226.14(b)(2) of Regulation Z, failed to credit customers' accounts with the finance charges, late payment charges or other charges imposed as the result of erroneous billings.

5. Contrary to the requirements of Section 226.14(f)(1) of Regulation Z, failed to forfeit its right to collect from the customer the amount indicated to be a billing error, including any finance charge or other charges imposed thereon, up to a maximum of \$50.00 for each item or transaction indicated by the customer to be a billing error.

PAR. 6. Pursuant to Section 103(s) of the Truth in Lending Act, respondent's aforesaid failures to comply with the foregoing provision of Regulation Z constitute violations of that Act, and, pursuant to Section 108 thereof (15 U.S.C. 1607), respondent has thereby engaged in unfair and deceptive acts and practices in violation of Section 5(a)(1) of the Federal Trade Commission Act, all to the prejudice and injury of the public.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a

copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Carter Hawley Hale Stores, 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 550 South Flower Street, Los Angeles, California. Respondent Carter Hawley Hale Stores, Inc. does business presently through a division under the name of "Emporium-Capwell" and has done business in the past through that same division under the name of "The Emporium" with the division's principal office located at 835 Market Street, San Francisco, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

A. For the purposes of this Order, the terms *billing error*, *billing-error notice*, *cardholder*, *consumer credit*, and *credit card* shall be defined as these terms are defined in Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).¹

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

B. This Order shall apply only to the Emporium-Capwell division of Carter Hawley Hale Stores, Inc.

I.

It is ordered, That respondent Carter Hawley Hale Stores, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension by or on behalf of Emporium-Capwell, or any organization continuing the business of Emporium-Capwell, of "open end credit," including "consumer credit" extended through use of a "credit card," as those terms are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, do forthwith cease and desist from:

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

1. the customer has agreed, within such 30-day period, that the periodic statement is correct; or
2. respondent has taken, within such 30-day period, the applicable action specified in Paragraph I.B.1-3 of this Order.

B. Failing, not later than two complete billing cycles (and in no event more than 90 days) from the date of receipt of any billing-error notice, to resolve the dispute by:

1. correcting the billing error and crediting the customer's account in the full amount indicated by the customer to have been erroneously billed and related finance or other charges, as applicable, and mailing or delivering to the customer a written notification of the correction(s) as required by Section 226.13(e) of Regulation Z; or
2. correcting the billing error and crediting the customer's account by an amount different from that indicated by the customer as being erroneously billed and related finance or other charges, as applicable, and mailing or delivering to the customer a written explanation setting forth the reasons for respondent's belief that the billing error alleged by the customer is incorrect in part, accompanied by copies of documentary evidence of the customer's indebtedness if such evidence has been requested by the customer, as required by Section 226.13(f) of Regulation Z; or
3. mailing or delivering to the customer, after conducting a reasonable investigation, a written explanation that sets forth the reason(s) why respondent believes the periodic statement is correct and, if the

customer has requested, furnishing copies of documentary evidence of the customer's indebtedness, as required by Section 226.13(f) of Regulation Z;

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

C. Taking any action or causing any action to be taken, prior to the time the dispute has been resolved, as provided in Paragraph I.B. of this Order, to collect any portion of any required payment that the consumer believes is related to the disputed amount, including related finance or other charges.

D. Failing, in each instance where respondent does not comply with all applicable requirements of Section 226.13 of Regulation Z, to forfeit the right to collect from the customer the amount indicated to be a billing error, including corresponding finance and other charges imposed thereon, up to \$50.00, as required by Section 161(e) of the Truth in Lending Act, 15 U.S.C. 1666(e).

E. Failing to comply with any other requirement of Section 226.13 of Regulation Z.

F. Failing to keep evidence of compliance with Regulation Z for a period of two (2) years as required by Section 226.25(a) of Regulation Z, and to make the records available for inspection as required by Section 226.25(b) of Regulation Z.

II.

A. *It is further ordered,* That respondent distribute a copy of this Order to each of Emporium-Capwell's supervisory personnel having procedural or policy responsibilities with respect to the subject matter of this Order, and that respondent secure a signed statement acknowledging receipt of said Order.

B. *It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution of subsidiaries or divisions or any other change in the corporation which may affect compliance obligations arising out of the order.

C. *It is further ordered,* That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
GREAT LAKES CHEMICAL CORPORATION, ET. AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket No. 9155. Complaint, June 23, 1981—Decision, May 23, 1984

This consent order requires the leading producer of elemental bromine and brominated flame retardants in the U.S., to grant PPG Industries, Inc. (PPG), according to a prescribed non-exclusive licensing agreement, all the latest technology and know-how on brominated flame retardants acquired from Velsicol Chemical Corp. The order also requires Great Lakes to enter into other agreements that would govern the operation and ownership rights of Arkansas Chemicals, Inc. (ACI), a joint bromine production venture between Great Lakes and PPG. The agreements eliminate certain restrictions on PPG's use of bromine purchased from ACI; permit PPG to sell elemental bromine in the merchant market; allow PPG to use ACI bromine in the production of all brominated compounds, including flame retardants; and require Great Lakes to purchase a specified amount of bromine from ACI annually. In addition to specific record keeping and reporting requirements, the order prohibits Great Lakes from acquiring any concern engaged in the production of elemental bromine or brominated flame retardants without prior Commission approval for a period of 10 years.

Appearances

For the Commission: *John V. Lacci*, Washington, D.C.

For the respondent: *Donald W. Ruppert, Dan Vittum, Donald G. Kempp, Jr., David B. Garten, Michael W. Vary, Richard W. Young, Kirkland & Ellis*, Chicago, Ill. and *Daniel F. Attridge, Kirkland & Ellis*, Washington, D.C. for respondent Great Lakes Chemical Corporation.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents, Great Lakes Chemical Corporation ("Great Lakes"), Northwest Industries, Inc. ("Northwest"), and Velsicol Chemical Corporation ("Velsicol"), subject to the jurisdiction of the Commission, have agreed to an acquisition by Great Lakes of Velsicol's El Dorado, Arkansas facility ("El Dorado") and its bromine derivative technology and patents that, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); and it appearing that a proceeding by the Commission