

IN THE MATTER OF  
HEILIG-MEYERS COMPANY, ET AL.

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

*Docket C-3269. Complaint, Nov. 20, 1989—Decision, Nov. 20, 1989*

This consent order requires, among other things, a Richmond, Va. corporation to calculate and disclose accurately the annual percentage rates (APRs) that it discloses in connection with future extensions of consumer credit subject to the Truth in Lending Act. The order also requires respondents to make adjustments to the accounts of customers to whom it disclosed APRs that were understated by more than 1/4 of one percentage point, except for accounts where the amount of the adjustment is less than one dollar.

*Appearances*

For the Commission: *Chris M. Couillou.*

For the respondents: *Larry D. Sharp, McGuire, Woods, Battle & Boothe, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Heilig-Meyers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heilig-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc., corporations, ("respondents") have violated Sections 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1606 and 1638, and Sections 226.17, 226.18 and 226.22 of Regulation Z, 12 C.F.R. 226.17, 226.18 and 226.22, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, issues this complaint pursuant to Section 108 of the Truth in Lending Act, 15 U.S.C. 1607, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and alleges:

PARAGRAPH 1. Heilig-Meyers Company is a Virginia corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 2. Heilig-Meyers Company of Georgia is a Georgia corporation,

with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 3. Heilig-Meyers Company of North Carolina is a North Carolina corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 4. Heilig-Meyers Company of Tennessee is a Tennessee corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 5. Sterchi Brothers Store, Inc., is a Delaware corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 6. Respondents are engaged in the offering for sale and sale of furniture and other home furnishings.

PAR. 7. In the course and conduct of their businesses, respondents regularly extend credit to consumers primarily for personal, family or household purposes (hereinafter referred to as "consumer credit"), which credit is subject to a finance charge or payable by written agreement in more than four installments (not including down payment) and with regard to which consumers are initially obligated to repay respondents by the terms of their written agreements with respondents.

PAR. 8. In the course of extending consumer credit, respondents have disclosed annual percentage rates to consumers in Alabama, Georgia, Kentucky, Tennessee and Florida that were more than 1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 C.F.R. 226.22 (hereinafter referred to as "disclosure errors"), in transactions that did not include one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment).

PAR. 9. The disclosure errors committed by respondents resulted from a clear and consistent pattern or practice of violations.

PAR. 10. Respondents' acts and practices as herein alleged were in violation of Sections 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1606 and 1638, and Sections 226.17, 226.18 and 226.22 of Regulation Z, 12 C.F.R. 226.17, 226.18 and 226.22.

PAR. 11. Pursuant to Sections 107, 108(c) and 128 of the Truth in Lending Act, 15 U.S.C. 1606, 1607(c) and 1638, respondent's aforesaid failures to comply with Regulation Z constitute violations of that Act and the Federal Trade Commission Act. 15 U.S.C. 41 et seq.

Commissioners Calvani and Strenio dissenting as to the issuance of the Decision and Order accompanying this complaint.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 107 of the Truth in Lending Act, 15 U.S.C. 1606, and Sections 226.17, 226.18 and 226.22 of Regulation Z, 12 C.F.R. 226.17, 226.18 and 226.22, and the Federal Trade Commission Act, 15 U.S.C. 41 et seq.; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said acts and regulation, 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:

PARAGRAPH 1. Heilig-Meyers Company is a Virginia corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 2. Heilig-Meyers Company of Georgia is a Georgia corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 3. Heilig-Meyers Company of North Carolina is a North

Carolina corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 4. Heilig-Meyers Company of Tennessee is a Tennessee corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 5. Sterchi Brothers Store, Inc., is a Delaware corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia.

PAR. 6. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

#### ORDER

##### I.

*It is ordered,* That respondents Heilig-Meyers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heilig-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc., their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension to any consumer of credit primarily for personal, family or household purposes, which credit is subject to a finance charge or payable by written agreement in more than four installments (not including down payment) and with regard to which the consumer is initially obligated to make repayment by the terms of a written agreement, do forthwith cease and desist from failing to calculate accurately and disclose clearly, conspicuously and accurately on the face of that written agreement the cost of credit expressed as a yearly rate as required by Sections 226.18(e) and 226.22 of Regulation Z, 12 C.F.R. 226.18(e) and 226.22, and to use the term "annual percentage rate" to describe that rate, as required by Section 226.18(e) of Regulation Z.

##### II.

*It is further ordered,* That within thirty days of the date of service of this order, respondents shall make adjustments to the current or past accounts of each customer in Alabama, Florida, Georgia, Kentucky and Tennessee, who was extended credit after February 28, 1986, and before August 1, 1987, in Alabama, before May 1, 1987, in

Florida, before April 1, 1987, in Georgia, before October 1, 1987, in Kentucky, and before May 1, 1987, in Tennessee, and to whom respondents, in connection with such extension of credit, disclosed an annual percentage rate that was miscalculated by more than 1/4 of 1 percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 C.F.R. 226.22, in transactions that did not include one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment), to assure that to the extent such customer has already paid or will pay any finance charges under the terms of a written agreement in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement plus a tolerance of 1/4 of 1 percentage point so that the net result is that such customer is not required to pay any finance charges in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement, plus a tolerance of 1/4 of 1 percentage point. For purposes of this section, respondents shall not be required to make adjustments to the accounts of customers where the amount of the adjustment is less than one dollar. Adjustment shall be made to the account of each customer under this section by mailing a check in the amount of the adjustment due to the current or last known address of each such customer.

### III.

*It is further ordered,* That respondents shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order.

### IV.

*It is further ordered,* That respondents shall distribute a copy of this order to each of their officers and to the managers of respondents' stores whose customers are due adjustments or refunds under this order.

### V.

*It is further ordered,* That respondents shall notify the Commission at least thirty days prior to any proposed change in corporate form

such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other changes in the corporations of respondents, including the creation or dissolution of subsidiaries, which may affect compliance obligations arising out of the order.

## VI.

*It is further ordered,* That respondents shall, within sixty days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner in which they have complied with this order, including, but not limited to, a full accounting as to the amounts of adjustments and refunds that have been made.

Commissioners Calvani and Strenio dissenting.

### DISSENTING STATEMENT OF COMMISSIONER ANDREW J. STRENIO, JR.

I have voted against this consent agreement because it contains two major deficiencies. First, the consent allows Heilig-Meyers Co. ("Heilig") to deduct 0.25% from its refunds to consumers who allegedly paid more in interest than the annual percentage rates ("APRs") Heilig specified in its installment contracts.<sup>1</sup> Second, the consent allows Heilig to keep all redress dollars intended for qualified consumers who are not located.

#### The 0.25% Deduction

Section 108(e)(1)(B)(i) of The Truth-in-Lending Act (15 U.S.C. 1607(e)(1)(B)(i)) provides that in determining whether an APR disclosure error has occurred, and in calculating any adjustment, a tolerance not to exceed 0.25% will be applied. It has been argued that this language means the Commission should deduct 0.25% from any consumer redress for an asserted overcharge. However, such an interpretation would allow creditors to keep a portion that may be large in the aggregate of the allegedly ill-gotten gains they have acquired.

In my view, the better interpretation is that Congress intended to "tolerate" differences in actual versus stated APRs of up to 0.25% without requiring restitution. Presumably, this margin for error would

<sup>1</sup> Heilig, to its credit, has sent redress checks that do not subtract the 0.25%. My objection is to the consent agreement which allows Heilig to subtract 0.25% and which could thereby create an ill-advised precedent for the FTC.

reduce the burden of administering redress cases. But, once differences exceed 0.25%, complete restitution should be collected. This reading of the law enhances compliance and makes injured consumers whole.

#### The Retention of Uncollected Refunds

The agreement also requires Heilig to make restitution to consumers by mailing checks to their current or last-known addresses. I believe Heilig will implement this requirement in good faith. Nonetheless, some portion will never be collected by consumers because, for example, they may have moved and no longer qualify to have their mail forwarded. Under the consent agreement, Heilig presumably would be allowed to keep these undelivered amounts.

In my view, however, uncollected redress funds should not be retained by a distributing party. Such a practice weakens deterrence and may provide a disincentive for locating eligible consumers. Instead, any uncollected redress funds should either be paid if possible to some organization that may benefit the class or type of consumers involved here, or into the United States Treasury for general taxpayer relief.

#### Conclusion

Since the consent is flawed in both these respects, I respectfully dissent from the majority's decision to accept it.

IN THE MATTER OF  
OCCIDENTAL PETROLEUM CORPORATION, ET AL.

*Docket 9205. Interlocutory Order, November 22, 1989*

ORDER

Pending appeal from the Initial Decision, complaint counsel and the respondents have jointly moved that the Commission (1) modify the order of the Administrative Law Judge by substituting divestiture of Occidental's Burlington, New Jersey ("Burlington North"), plant for divestiture of Tenneco's Pasadena, Texas, plant and (2) accept the order, as modified, in final disposition of this matter. Various other modifications consistent with the substitute divestiture also are proposed. The motion is denied.

The principal arguments for the substitute divestiture, as presented in the briefs of the parties, are that (1) an immediate settlement and early divestiture will provide some relief from Occidental's allegedly unlawful acquisition of the polyvinyl chloride ("PVC") business of Tenneco in the near future and (2) the Administrative Law Judge's opinion cannot stand on appeal.

A settlement may in some circumstances be acceptable, partly because it will provide relief immediately, as against the uncertainty of any relief after all appeals are exhausted. Given the relative merits of the Burlington North and Pasadena plants, however, the substitute divestiture appears highly unlikely to achieve the remedial purposes envisioned by the Initial Decision. The Pasadena plant is a modern, low cost, large reactor suspension PVC plant, with an annual capacity (before the acquisition) of approximately 750 million pounds. Burlington North is a small, high cost, small reactor mass PVC plant, with an annual capacity of approximately 120 to 140 million pounds. The proposed substitute divestiture proposes a remedy far different from that required by the Administrative Law Judge in his Initial Decision and contemplated by the complaint. If the substitute divestiture were more comparable to the remedy required by the Administrative Law Judge, the prospect of an early settlement might outweigh the interest in obtaining a more substantial remedy. Here, however, the disparity is too great.

Occidental also argues in support of the substitute divestiture that the Administrative Law Judge's conclusion of a violation of law in the