

IN THE MATTER OF

THE MONEY STORE, INC., 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-3369. Complaint, Feb. 6, 1992--Decision, Feb. 6, 1992*

This consent order requires, among other things, a New Jersey-based company and its subsidiaries to pay injured consumers redress totaling more than \$1 million, and prohibits them from violating certain provisions of the Truth in Lending Act.

Appearances

For the Commission: *Chris M. Couillou.*

For the respondents: *Joseph Lefkoff, Lefkoff, Duncan, Grimes & Dermer, P.C., Atlanta, GA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Money Store Inc., The Money Store, The Money Store/California Inc., The Money Store/Connecticut Inc., The Money Store/D.C. Inc., The Money Store/Delaware Inc., The Money Store/Empire State Inc., The Money Store Financial Co. Inc., The Money Store/Georgia Inc., The Money Store Home Equity Corp., The Money Store/Kentucky Inc., The Money Store/Maine Inc., The Money Store/Maryland Inc., The Money Store/Massachusetts Inc., The Money Store/New Hampshire Inc., The Money Store/North Carolina Inc., The Money Store/Rhode Island Inc., The Money Store/Vermont Inc., M Mortgage Inc., and The Money Store/Michigan Inc., corporations, ("respondents") have violated Sections 106, 107 and 128 of the Truth in Lending Act, as amended, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.17, 226.18(d) and (g), and 226.22 of Regulation Z, as amended, 12 CFR 226.17, 226.18(d),(g), 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 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and alleges:

PARAGRAPH 1. The Money Store Inc. is a New Jersey corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

PAR. 2. The Money Store is a New Jersey corporation, with its principal place of business at 294 Morris Avenue, Springfield, New Jersey.

PAR. 3. The Money Store/California Inc. is a California corporation, with its principal place of business at 17530 Ventura Blvd., Suite 101, Encino, California.

PAR. 4. The Money Store/Connecticut Inc. is a Connecticut corporation, with its principal place of business at 1025 Silas Deane Hwy., Wethersfield, Connecticut.

PAR. 5. The Money Store/D.C. Inc. is a Virginia corporation with its principal place of business at 3750 University Blvd., Suite 2B, Kensington, Maryland.

PAR. 6. The Money Store/Delaware Inc. is a Delaware corporation, with its principal place of business at 4512 Kirkwood Highway, Wilmington, Delaware.

PAR. 7. The Money Store/Empire State Inc. is a New York corporation, with its principal place of business at 265 Glen Cove Road, Carle Place, New York.

PAR. 8. The Money Store Financial Co. Inc. is a Pennsylvania corporation, with its principal place of business at Trevoise Corporate Center, 4612 Street Road, Trevoise, Pennsylvania.

PAR. 9. The Money Store/Georgia Inc. is a Georgia corporation, with its principal place of business at 1165 Northchase Pkwy., Suite 100, Marietta, Georgia.

PAR. 10. The Money Store Home Equity Corp. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, Suite 901, Louisville, Kentucky.

PAR. 11. The Money Store/Kentucky Inc. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, Suite 901, Louisville, Kentucky.

PAR. 12. The Money Store/Maine Inc. is a Maine corporation, with its principal place of business at 201 Main Street, Westbrook, Maine.

PAR. 13. The Money Store/Maryland Inc. is a Maryland corporation, with its principal place of business at 920 Providence Road, Suite 101, Towson, Maryland.

PAR. 14. The Money Store/Massachusetts Inc. is a Massachusetts corporation, with its principal place of business at 389 Worcester Road, 2nd Floor, Framingham, Massachusetts.

PAR. 15. The Money Store/New Hampshire Inc. is a New Hampshire corporation, with its principal place of business at 981 Second Street, Manchester, New Hampshire.

PAR. 16. The Money Store/North Carolina Inc. is a North Carolina corporation, with its principal place of business at 6525 Morrison Blvd., Suite 408, Charlotte, North Carolina.

PAR. 17. The Money Store/Rhode Island Inc. is a Rhode Island corporation, with its principal place of business at 1071 Park Avenue, Cranston, Rhode Island.

PAR. 18. The Money Store/Vermont Inc. is a Vermont corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

PAR. 19. M Mortgage Inc. is a South Carolina corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

PAR. 20. The Money Store/Michigan Inc. is a Michigan corporation, with its principal place of business at 16801 Newburgh Road, Suite 103, Livonia, Michigan.

PAR. 21. In the course and conduct of their businesses, directly or through subsidiaries, 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.

PAR. 22. In the course of extending consumer credit, respondents, directly or through subsidiaries, have failed to properly disclose the payment schedule as required by Section 226.18(g) of Regulation Z, 12 CFR 226.18(g). For example and without limitation,

respondents have disclosed a monthly payment computed using the 360/360 method or similar method, although respondents frequently amortize their loans using the 365/360 method. As a result, the disclosed payments are insufficient to fully repay the extension of credit in the time period disclosed, and greater payments would be required to repay the credit extension.

PAR. 23. In the course of extending consumer credit, respondents, directly or through subsidiaries, have disclosed finance charges to consumers that were more than \$10 below the exact finance charge in transactions involving amounts financed of more than \$1000 (hereinafter referred to as "finance charge disclosure errors") in violation of Section 226.18(d) of Regulation Z, 16 CFR 226.18(d). Repayment of these extensions of consumer credit would require payment of finance charges greater than those disclosed.

PAR. 24. In the course of extending consumer credit, respondents, directly or through subsidiaries, have disclosed annual percentage rates to consumers that were more than 1/8 of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22 (hereinafter referred to as "annual percentage rate disclosure errors"). These extensions of consumer credit 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). Repayment of these extensions of consumer credit would require payment at annual percentage rates greater than those disclosed.

PAR. 25. The finance charge and annual percentage rate disclosure errors committed by respondents resulted from a clear and consistent pattern or practice of violations.

PAR. 26. Respondents' acts or practices as alleged herein were in violation of Sections 106, 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.17, 226.18(d) and (g), and 226.22 of Regulation Z, 12 CFR 226.17, 226.18(d), (g), and 226.22.

PAR. 27. Pursuant to Sections 106, 107, 108(c) and 128 of the Truth in Lending Act 15 U.S.C. 1605, 1606, 1607 (c) and 1638, respondents' aforesaid failures to comply with Regulation Z constitute violations of that Act.

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 Sections 106, 107 and 128 of the Truth in Lending Act, as amended, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.17, 226.18(d) and (g), and 226.22 of Regulation Z, as amended, 12 CFR 226.17, 226.18(d),(g), and 226.22, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45;

The respondents, their attorney, 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 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. The Money Store Inc. is a New Jersey corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.
2. The Money Store is a New Jersey corporation, with its principal place of business at 294 Morris Avenue, Springfield, New Jersey.

3. The Money Store/California Inc. is a California corporation with its principal place of business at 17530 Ventura Blvd., Suite 101, Encino, California.

4. The Money Store/Connecticut Inc. is a Connecticut corporation, with its principal place of business at 1025 Silas Deane Hwy., Wethersfield, Connecticut.

5. The Money Store/D.C. Inc. is a Virginia corporation, with its principal place of business at 3750 University Blvd., Suite 2B, Kensington, Maryland.

6. The Money Store/Delaware Inc. is a Delaware corporation, with its principal place of business at 4512 Kirkwood Highway, Wilmington, Delaware.

7. The Money Store/Empire State Inc. is a New York corporation, with its principal place of business at 265 Glen Cove Road, Carle Place, New York.

8. The Money Store Financial Co. Inc. is a Pennsylvania corporation, with its principal place of business at Trevoise Corporate Center, 4612 Street Road, Trevoise, Pennsylvania.

9. The Money Store/Georgia Inc. is a Georgia corporation, with its principal place of business at 1165 Northchase Pkwy., Suite 100, Marietta, Georgia.

10. The Money Store Home Equity Corp. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, Suite 901, Louisville, Kentucky.

11. The Money Store/Kentucky Inc. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, Suite 901, Louisville, Kentucky.

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18. The Money Store/Vermont Inc. is a Vermont corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

19. M Mortgage Inc. is a South Carolina corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

20. The Money Store/Michigan Inc. is a Michigan corporation, with its principal place of business at 16801 Newburgh Road, Suite 103, Livonia, Michigan.

21. 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 The Money Store Inc., The Money Store, The Money Store/California Inc., The Money Store/Connecticut Inc., The Money Store/D.C. Inc., The Money Store/Delaware Inc., The Money Store/Empire State Inc., The Money Store Financial Co. Inc., The Money Store/Georgia Inc., The Money Store Home Equity Corp., The Money Store/Kentucky Inc., The Money Store/Maine Inc., The Money Store/Maryland Inc., The Money Store/Massachusetts Inc., The Money Store/New Hampshire Inc., The Money Store/North Carolina Inc., The Money Store/Rhode Island Inc., The Money Store/Vermont Inc., M Mortgage Inc., and The Money Store/Michigan Inc., their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension of credit to any consumer 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, do forthwith cease and desist from failing to disclose clearly, conspicuously and accurately the dollar amount the credit will cost the consumer and the cost of credit expressed as a yearly rate as required by Section 128(a)(3)-(4) of the Truth in Lending Act, 15 U.S.C. 1638(a)(3)-(4), and Sections 226.18(d)-(e) and 226.22 of Regulation Z, 12 CFR 226.18(d)-(e) and 226.22, and from failing to use the term "finance charge" to describe the dollar amount the credit will cost and the term "annual percentage rate" to describe the cost of credit expressed as a yearly rate, as required by Section 128(a)(3)-(4) of the Truth in Lending Act, 15 U.S.C. 1638(a)(3)-(4), and Section 226.18(d)-(e) of Regulation Z, 12 CFR 226.18(d)-(e).

II.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, in connection with the extension of consumer credit, which credit is subject to a finance charge or payable by written agreement in more than four installments, do forthwith cease and desist from failing to disclose clearly, conspicuously and accurately the number, amounts, and timing of payments scheduled to repay the obligation, as required by Section 128(a)(6) of the Truth in Lending Act, 15 U.S.C. 1638(a)(6), and Section 226.18(g) of Regulation Z, 12 CFR 226.18(g).

III.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, in connection with the extension of consumer credit, which credit is subject to a finance charge or payable by written agreement in more than four installments, do forthwith cease and desist from failing to make all disclosures in accordance with Section 128 of the Truth in Lending Act, 15 U.S.C. 1638, and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18.

IV.

It is further ordered, That as used in this order "365/360 method" refers to amortization of a credit extension by applying 1/360th of the annual rate of interest to the balance of the credit extension during each of the calendar days of the year, "360/360 method" refers to amortization of a credit extension assuming 12 equal months of 30 days and applying 1/360th of the annual interest rate to each of those days, and "365/365 method" refers to amortization of a credit extension by applying 1/365th of the annual rate of interest to the balance of the credit extension during each of the calendar days of the year.

V.

It is further ordered, That, within thirty days of the date of service of this order, respondents and their successors and assigns shall make adjustments for each of their customers who received an extension of consumer credit that was amortized for at least some period of time using the 365/360 method, that was not extinguished before February 20, 1990, and on which disclosures of finance charges did not take into account the effect that the use of the 365/360 method would have in increasing the finance charges. The total adjustments for all these customers shall be \$1,112,000, and the adjustment for each customer shall be in the same proportion to the total adjustment of \$1,112,000 as the number calculated for each such customer, based on Appendix A's formula, is to the sum of the numbers calculated for all such customers, based on Appendix A's formula.

VI.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, do forthwith cease and desist from using the 365/360 method to amortize the extensions of consumer credit in which disclosures of finance charges were made that did not take into account the effect that the use of the 365/360 method would have in increasing the finance charges, and that respondents, their successors

and assigns, and their officers, agents, subsidiaries, representatives and employees, shall use in place of the 365/360 method in amortizing those extensions of consumer credit either the 360/360 method or the 365/365 method.

VII.

It is further ordered, That respondents and their successors and assigns shall make adjustments pursuant to this order by mailing a check in the amount of the adjustment due to the current or last known address of each customer who is to receive an adjustment under paragraph V unless the customer is delinquent in his or her loan payments. If the customer is delinquent, the amount of the adjustment shall be credited to the customer's account. For purposes of this order, respondents shall not be required to make adjustments where the amount of the adjustment is less than one dollar. The checks mailed to customers shall be accompanied by one of two letters. If the credit extension to the customer has not expired, the following letter shall be used:

Dear Customer:

We have enclosed a check for you because you may have been charged more interest on your loan with The Money Store than you were told. The Money Store has voluntarily agreed to an order by the Federal Trade Commission that requires the enclosed amount be sent to you. This check is yours to keep and use as you desire. You may wish to use the enclosed amount to reduce the balance of your loan. If you wish to use the check to reduce your loan balance, please endorse the check, write above your endorsement "Pay to the order of The Money Store", and return the check to the address stated below along with your next scheduled payment.

[ADDRESS TO BE INSERTED]

If you do not wish to use the check to reduce your loan balance, you may cash it as you would any other check.

If you should have any questions about this letter, please call [NAME OF AN EMPLOYEE OF THE MONEY STORE INC. TO BE INSERTED] at the following toll free number: [NUMBER TO BE INSERTED]. Thank you for your attention.

Very truly yours,
The Money Store

If the credit extension to the customer has expired, the following letter shall be used:

Dear Former Customer:

We have enclosed a check for you because you may have been charged more interest on your past loan with The Money Store than you were told. The Money Store has voluntarily agreed to an order by the Federal Trade Commission that requires the enclosed amount be sent to you. This check is yours to keep and use as you desire.

If you should have any questions about this letter, please call [NAME OF AN EMPLOYEE OF THE MONEY STORE INC. TO BE INSERTED] at the following toll free number: [NUMBER TO BE INSERTED]. Thank you for your attention.

Very truly yours,
The Money Store

In the case of customers who are delinquent in their loan payments and whose adjustments are made by account credits, the following letter shall be mailed to the customer at the time the adjustment is made along with a receipt indicating the customer's name, loan or account number, and the amount of the adjustment credited to the customer's account:

Dear Customer:

We have enclosed a receipt stating an amount that has been credited to your loan account with The Money Store because you may have been charged more interest on your loan than you were told. The Money Store has voluntarily agreed to an order by the Federal Trade Commission that required this credit be made; this has reduced the amount you owe on your loan.

If you should have any questions about this letter, please call [NAME OF AN EMPLOYEE OF THE MONEY STORE INC. TO BE INSERTED] at the following toll free number: [NUMBER TO BE INSERTED]. Thank you for your attention.

Very truly yours,
The Money Store

Each envelope containing a letter to a customer pursuant to this paragraph shall bear the following legend in red, 14 point print on its face: IMPORTANT NOTICE OF INTEREST REFUND ENCLOSED.

VIII.

It is further ordered, That, to the extent checks mailed under this order are returned as undeliverable or are not cashed within one hundred and forty days of the date of service of this order, respondents and their successors and assigns shall make a certified check payable to the Federal Trade Commission for an amount equal to the total of the checks that have been returned as undeliverable and the checks that have not been cashed and shall deliver that certified check to the following person and address within two hundred days of the date of service of this order:

William S. Sanger
Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission/S-4631
6th and Pennsylvania Ave., N.W.
Washington, D.C. 20580

At the time of delivering the certified check, respondents shall also deliver to the foregoing person a list, in both hard copy and computer readable form, of the names and addresses of each customer whose account was credited under paragraph VII and of each customer to whom the respondents mailed a check under paragraph VII. As to each customer whose account was credited, the list shall indicate the amount of the credit. As to each customer who was mailed a check, the list shall indicate the amount of the check mailed to that customer and whether the check was cashed. Customers who were mailed a check that was not cashed shall be listed separately. The Commission in its sole discretion shall determine whether the amount of money remaining undistributed is sufficient to make practical further distribution of adjustments by the Commission to customers. If the Commission determines, at any time, that further distribution of adjustments is impractical, any remaining undistributed funds shall be sent to the U.S. Treasury.

IX.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order.

X.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, shall distribute a copy of this order to each of their officers.

XI.

It is further ordered, That respondents and their successors and assigns shall notify the Commission at least thirty days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other changes in respondents, their successors and assigns that may affect compliance obligations arising out of this order.

XII.

It is further ordered, That respondents and their successors and assigns shall, within two hundred days after the date of service of this order, and at such other times as the Federal Trade Commission may by written notice require, 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 of the customers to whom adjustments have been made and the amounts of such adjustments.

APPENDIX A

The number calculated for each customer described in paragraph V of the order shall be calculated using the following formula:

Number = $P \times (A + B \times C)$ where

$$A = (1 + si)^n - (1 + I)^n$$

$$B = \frac{(1 + I)^T}{(1 + I)^T - 1}$$

$$C = (1 + I)^n - 1 - \frac{[(1 + si)^n - 1]}{s}$$

$$I = \frac{\text{Annual interest rate on promissory note evidencing credit extension to customer}}{12}$$

n = Number of payments made by customer through August 1990

P = Beginning principal amount of customer's credit extension

$$s = \frac{365}{360}$$

T = Term of customer's credit extension expressed as a number of months

IN THE MATTER OF

ELEXIS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3370. Complaint, Feb.6, 1992 -- Decision, Feb. 6, 1992*

This consent order prohibits, among other things, a Miami-based manufacturer and its officer from calling its ultrasonic dog and cat collars by names such as Flea Relief, Pet Shield, Flea Buster, Flea and Tick Collar, and from representing that such collars will eliminate or repel fleas or repel ticks without the use of chemicals.

Appearances

For the Commission: *Timothy T. Hughes* and *John C. Hallerud*.
For the respondents: *Leslie D. Locke, Ross & Hardies*, Chicago, IL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Elexis Corporation, a corporation, and Frank J. Bianco, individually and as an officer of Elexis Corporation, hereinafter sometimes referred to as respondents, have violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent Elexis Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and is authorized pursuant to the laws of the State of Florida to transact business in the State of Florida. Its office and principal place of business is at 7000 N.W. 46 Street, Miami, Florida. (b) Respondent Frank J. Bianco is an officer of the corporate respondent named herein. He has formulated,