

Complaint

IN THE MATTER OF

FIRSTPLUS FINANCIAL GROUP, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED
VIOLATIONS OF THE TRUTH IN LENDING ACT*Docket C-3984; File No. 9923121**Complaint, November 28, 2000--Decision, November 28, 2000*

This consent order addresses FirstPlus Financial's advertisements promoting high loan-to-value loans, home equity loans, and other types of consumer credit transactions. The complaint alleges that the advertisements are deceptive and misleading. The consent order prohibits FirstPlus from misrepresenting the comparative savings or benefits of consolidating debt, including the circumstances the circumstances under which consumers can save money when consolidating, the monthly saving from consolidation, the eligibility of a consumer to receive a loan, the amount of loan proceeds to be distributed to consumers or to third parties on behalf of consumers. The order also prohibits Respondent from stating the comparative benefit of their consolidation program in comparison to another without accurately, clearly, and conspicuously all of the information consumers need to evaluate the comparison and from giving examples of cost saving or benefits without basing the example on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable transactions. In addition, the order requires Respondent to comply with disclosures requirements of the TILA and Regulation Z when stating the amount or percentage down required, the number or payments or period of repayment, the amount of any payment, or the amount of any finance charge.

Participants

For the Commission: *William Haynes, Ellen Finn, Rolando Berrelez, Hannah Stires, Jessica Rich, David Medine, and BE.*

For the Respondents: *Paul H. Schieber, Blank, Rome, Comisky & McCauley and Trey Monsour, Verner, Lipfert, Bernhard, McPherson & Hand.*

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COMPLAINT

The Federal Trade Commission, having reason to believe that FirstPlus Financial Group, Inc., a corporation (referred to as "respondent" or AFirstPlus@), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. ' ' 45-58, as amended, and the Truth in Lending Act, 15 U.S.C. ' ' 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. ' 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent FirstPlus Financial Group, Inc., is a Nevada corporation with its principal office or place of business at 1600 Viceroy Drive, Dallas, Texas 75235.
2. Respondent originates, purchases, services, and sells consumer finance transactions. FirstPlus=s loan products include debt consolidation or home improvement loans secured by second liens on residential real property where the total outstanding debt on the dwelling exceeds the fair market value of the dwelling (known as Ahigh loan-to-value@ or AHLTV@ loans), non-conforming home equity loans (Ahome equity loans@), and personal consumer loans.
3. Respondent has disseminated advertisements to the public that promote consumer credit transactions, as the terms Aadvertisement,@ and Aconsumer credit,@ are defined in Section 226.2 of Regulation Z, 12 C.F.R. ' 226.2, as amended.
4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. ' 44.
5. Respondent has disseminated, or has caused to be disseminated, advertisements in various media promoting HLTV loans, home equity loans, and other types of consumer credit transactions (Acredit advertisements@) including but not necessarily limited to the attached FirstPlus Exhibits A and B.

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FirstPlus Exhibits A and B are direct-mail advertisements. These credit advertisements contain the following statements:

- A. [Exhibit A contains a non-negotiable coupon, which is similar in appearance to a check, in the amount of \$34,980.]

Cash in on the savings with a FIRSTPLUS HOME EQUITY LOAN.

Pay off high-interest credit cards, eliminate personal loan payments or consolidate credit cards and other loans into one **lower** monthly payment. And SAVE money!

Here=s an example of the savings you could realize.

Credit Card #1	\$245	Paid Off
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Credit Card #2	\$210	Paid Off
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Department Store Cards	\$125	Paid Off
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Auto Loan	\$293	Paid Off
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College Loan	\$110	Paid Off
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TOTAL PAYMENTS	\$983	\$375
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Your One Monthly Payment is now \$608 Less!

- B. [Exhibit B contains a non-negotiable coupon, which is similar in appearance to a check, in the amount of \$42,800.00.]

AWe are pleased to inform you that your home at [address] has recently been verified as eligible for a low interest 2nd trust

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deed in the amount shown above. If you would like this amount increased or decreased please contact your agent below. @

A This program is offered to a very select group of individuals in your community of [city] on a limited basis. Your eligibility allows you to receive these funds in cash within 7-14 working days. @

FEDERAL TRADE COMMISSION ACT VIOLATIONS

COUNT I: Misrepresentation of Cost Savings

6. In advertisements, including but not necessarily limited to FirstPlus Exhibit A, respondent has represented, expressly or by implication that:

- A. Consumers, in general, will save money when consolidating existing debts into a FirstPlus home equity loan;
- B. The examples shown in respondent=s advertisements accurately illustrate the potential monthly savings of consolidating existing credit card balances and other loans into a FirstPlus home equity loan.

7. In truth and in fact,

- A. Consumers, in many instances, will not save money when consolidating existing debts into a FirstPlus home equity loan. For many types of existing debts, depending on the interest rate and/or repayment terms of the existing debt, consumers will pay more per month and/or pay more over time when consolidating existing debts into a FirstPlus loan.

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- B. The examples shown in respondent=s advertisements do not accurately illustrate the potential monthly savings of consolidating existing debts into a FirstPlus loan. Based on generally available interest rates and repayment terms on credit card balances and other loans, consumers would save far less than the illustrated savings, or pay more per month following the original expiration date of the existing debt.

Therefore, respondent=s representations, as alleged in Paragraph 6, were, and are, false or misleading.

8. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. ' 45(a).

COUNT II: Misrepresentation of Credit Approval

9. In advertisements, including but not necessarily limited to FirstPlus Exhibit B, respondent has represented, expressly or by implication, that each recipient of respondent=s solicitations who applies for the loan advertised will receive such a loan.

10. In truth and in fact, not each recipient of respondent=s solicitations who applies for the loan advertised will receive such a loan. Therefore, respondent=s representation as alleged in Paragraph 9, was, and is, false or misleading.

11. Respondent=s practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. ' 45(a).

Count III: Misrepresentation of Loan Disbursement

12. In advertisements, including but not necessarily limited to FirstPlus Exhibits A and B, respondent has represented, expressly

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or by implication, that consumers will receive funds for the full loan amount stated in their advertisements (e.g., \$34,980).

13. In truth and in fact, in many instances, consumers do not receive funds for the full loan amount stated in respondent=s advertisements. In many instances, respondent deducts substantial origination fees and closing costs (e.g. 10.43%) from the advertised loan amount and disburses only the remaining amount to consumers. Therefore, respondent=s representation as alleged in Paragraph 12, was, and is, false or misleading.

14. Respondent=s practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. ' 45(a).

COUNT IV: Failure to Disclose and Failure to Disclose
Adequately Credit Terms

15. In advertisements, including but not necessarily limited to FirstPlus Exhibit A, respondent has represented, expressly or by implication, that consumers can obtain a loan at the terms stated in the advertisements, including but not necessarily limited to the monthly payment amount.

16. These advertisements fail to disclose, or fail to disclose adequately, additional terms pertaining to the credit offer, such as annual percentage rate and terms of repayment. This additional information, if provided, appears in fine print in the advertisements and would be material to consumers in deciding whether to apply for a loan from respondent. The failure to disclose, or failure to disclose adequately, this information, in light of the representation made, was, and is, a deceptive practice.

17. Respondent=s practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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TRUTH IN LENDING ACT AND REGULATION Z
VIOLATIONSCount V: Failure to Disclose Clearly and Conspicuously, Required
Information

18. In advertisements, including but not necessarily limited to FirstPlus Exhibit A, respondent has stated a monthly payment amount required to repay a loan but has failed to disclose clearly and conspicuously, one or more of the following items of information required by Regulation Z: the annual percentage rate and/or the terms of repayment.

19. The credit disclosures required by Regulation Z, if provided, are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location.

20. Respondent's practices violate Section 144 of the Truth in Lending Act, 15 U.S.C. ' 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. ' 226.24(c).

THEREFORE, the Federal Trade Commission this twenty-eighth day of November, 2000, has issued this complaint against respondent.

By the Commission.

Decision and Order

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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act and the Truth in Lending 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a 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 thirty (30) days, and having duly considered the comment filed by an interested person pursuant to ' 2.34 of its Rules, now in further conformity with the procedure prescribed in ' 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent FirstPlus Financial Group, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located in the City of Dallas, State of Texas.

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

ORDER DEFINITIONS

1. "Clearly and conspicuously" shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to notice, hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to notice, read and comprehend it.
 - b. In a print advertisement, a disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

2. "Respondent" as used herein shall mean FirstPlus Financial Group, Inc., its successors and assigns, and its officers, agents, representatives, and employees.
3. "Commerce" as used herein shall mean as defined in Section 4 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. ' 44.

Decision and Order

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit in or affecting commerce, as "advertisement" and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R. ' 226.2, as amended, shall not, in any manner, expressly or by implication:

- A. Misrepresent the comparative or absolute savings or benefits of consolidating existing credit card balances and other loans into a FirstPlus loan, including but not limited to misrepresenting:
 - 1. The circumstances under which consumers can save money when consolidating existing credit card balances and other loans into a FirstPlus loan.
 - 2. The monthly savings consumers will realize over the extended life of the FirstPlus loan.
 - 3. Other terms, conditions, or costs of a FirstPlus loan.
- B. Misrepresent an individual's eligibility, creditworthiness, or prior approval to receive a loan.
- C. Misrepresent the amount of loan proceeds to be disbursed to consumers, or misrepresent the amount of loan proceeds to be disbursed on consumers' behalf to third parties.
- D. State the dollar value of the cost savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, whether actual or hypothetical, without disclosing accurately, clearly and conspicuously, all material information needed to evaluate the comparison, such as loan amount(s), terms of repayment, and annual percentage rate(s) on the balances of the credit

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transactions purportedly to be paid off with the FirstPlus loan.

- E. Use any example of the cost savings or benefits of a FirstPlus loan, compared to other consumer credit transactions, whether actual or hypothetical, unless such example is based on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable credit transactions, such as, but not limited to, those published in the Federal Reserve Board's Statistical Release G.19 (AConsumer Credit@).
- F. State the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without complying with the Truth-in-Lending Act and Regulation Z, including the disclosure, accurately, clearly, and conspicuously, of all the terms required by the Truth-in-Lending Act and Regulation Z. (TILA, 15 U.S.C. ' ' 1601-1667, as amended, and Regulation Z, 12 C.F.R. ' 226, as amended).

II.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

III.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall, within thirty (30) days after the date of service of this order, distribute a copy of this order to all current principals, officers, directors, managers, employees,

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agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and, for five (5) years after the date of service of this order, to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not necessarily limited to dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learn less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. Materials submitted pursuant to this Consent Decree and designated confidential shall be accorded the protections accorded to materials designated confidential under Federal Trade Commission Rule 4.10(e), 16 C.F.R. ' 4.10(e).

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall within one hundred and twenty (120) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the

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Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VI.

This order will terminate on November 28, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order, if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

*Analysis to Aid Public Comment***STATEMENT OF CHAIRMAN ROBERT PITOFSKY AND
COMMISSIONERS MOZELLE W. THOMPSON AND
THOMAS B. LEARY**

This matter is the Commission's first action brought against a consumer finance company for misrepresenting the savings that consumers would gain by consolidating their debts into a high loan-to-value (HLTV) loan. Accordingly, this case sends an important law enforcement message to companies engaged in this multi-billion dollar financial market that the Commission will look closely at HLTV transactions and take appropriate action when consumers are victimized by those who omit or misrepresent material facts relating to such loans.

Because this principle is so important, we also note that this case does not necessarily establish the full scope of relief that the Commission may seek in future cases. While the Commission's order B by providing for strong injunctive relief B supplies the full dose of all relief feasible in light of this particular respondent's weak financial situation, we believe that the Commission may consider pursuing additional relief in future cases involving deceptive HLTV loan advertising. Specifically, we expect that the Commission, in appropriate circumstances, would seek consumer redress or other monetary relief.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from FirstPlus Financial Group, Inc. (AFirstPlus@).

Analysis to Aid Public Comment

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement=s proposed order.

Through direct mail, television, and online advertisements, FirstPlus has disseminated information promoting high loan-to-value (AHLTV@) loans, home equity loans, and other types of consumer credit transactions. The complaint alleges that many of these advertisements are deceptive and misleading, and violate various provisions of the Federal Trade Commission Act (AFTC Act@), the Truth in Lending Act (ATILA@), and Regulation Z. Specifically, the complaint alleges that FirstPlus: (1) falsely represented in its advertising that consumers would save money when consolidating existing debts in a FirstPlus loan and that the examples shown in FirstPlus=s advertising accurately illustrate potential monthly savings; (2) falsely represented that each consumer receiving a solicitation from the company would actually receive a loan; (3) misrepresented that consumers would receive loans for the full amount stated in the company=s advertisement; (4) failed to adequately disclose credit terms for its loan products; and (5) failed to disclose clearly and conspicuously key information about the terms of its credit offers as required by the TILA and Regulation Z.

The proposed consent order (1) prohibits FirstPlus from misrepresenting the comparative or absolute savings or benefits of consolidating debt, including misrepresenting the circumstances under which consumers can save money when consolidating, and misrepresenting the monthly savings consumers will realize over the extended life of the FirstPlus loan; (2) prohibits FirstPlus from misrepresenting an individual=s eligibility to receive a loan; (3) prohibits FirstPlus from misrepresenting the amount of loan

Analysis to Aid Public Comment

proceeds to be disbursed to consumers, or misrepresenting the amount of proceeds to be disbursed on consumers= behalf to third parties; (4) prohibits FirstPlus from stating the savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, without disclosing accurately, clearly, and conspicuously all material information needed by consumers to evaluate the comparison; (5) prohibits FirstPlus from using an example of the cost savings or benefits of a FirstPlus loan, as compared to other consumer credit transactions, without basing the example on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable credit transactions; and (6) requires FirstPlus to comply with the disclosure requirements of the TILA and Regulation Z when stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

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IN THE MATTER OF

TYCO INTERNATIONAL LTD.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket C-3985; File No. 0010208

Complaint, December 1, 2000--Decision, December 1, 2000

This consent order addresses the \$4.2 billion acquisition by Tyco International Ltd. of Mallinckrodt Inc., the two largest producers of endotracheal tubes. The complaint alleges that the proposed acquisition, if consummated, would substantially lessen competition and to tend to create a monopoly in the Endotracheal Tube market in the United States. The order requires Respondent to divest its Sheridan line of endotracheal tube products to Hudson RCI, and to provide employee incentives for employees from the Sheridan line to accept employment and remain employed by Hudson.

Participants

For the Commission: *Michael Moiseyev, Ann Malester, Elizabeth Callison, Daniel P. O'Brien, Daniel P. Ducore, and BE.*

For the Respondents: *Chuck Koob and Brandi Katz, Simpson, Thatcher & Bartlett and Steve Newborn and John Scribner, Clifford, Chance, Rogers & Wells.*

COMPLAINT

The Federal Trade Commission (ACommission@), having reason to believe that Respondent, Tyco International Ltd. (ATyco@), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Mallinckrodt Inc. (AMallinckrodt@), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade