

CREDIT ADVERTISING AND THE LAW: TRUTH IN LENDING AND RELATED MATTERS*

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I. INTRODUCTION

In recent years, much controversy has surrounded the subject of government regulation of advertising. Proponents of strict government regulation urge that advertisers be compelled to meet the familiar courtroom standard of truthfulness—"the truth, the whole truth, and nothing but the truth."¹ Their opponents, some of whom assume that a "whole truth" standard would require disclosure of every fact, however insignificant, about an advertised product,² concede that the government should demand truthfulness but contend that the "whole truth" is often immaterial and too voluminous to disclose.³

Although the debate continues, government agencies have been requiring advertisers to disclose more and more information. Current government standards compel advertisers to disclose all facts about a product that are so significant as to be inherently "material" to prospective consumers. The Federal Trade Commission's successful but hard-fought battle to require health warnings in cigarette packaging and advertising illustrates this sort of government supervision.⁴ In other

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1. Jones, *To Tell The Truth, The Whole Truth*, 26 FOOD DRUG COSM. L.J. 173 (1971).

2. See, e.g., D. OGILVY, CONFESSION OF AN ADVERTISING MAN 158-59 (1963); Austern, *What is "Unfair Advertising"?*, 26 FOOD DRUG COSM. L.J. 659 (1971); *The Right of Advertisers to Persuade*, address by Dr. Seymour Banks to 1976 Wisconsin Advertising Conference, March 23, 1976, on file in University of Wisconsin Law School.

3. See Leff, *The Cultural and Social Impact of Society on American Advertising*, 1970 LAW & SOCIAL ORDER 397-402. See, e.g., Pitofsky, *Changing Focus in the Regulation of Advertising*, in ADVERTISING AND SOCIETY 125, 144-45 (Y. Brozen ed. 1974).

4. For a history of the struggle between the cigarette companies and those seeking to restrict the marketing of cigarettes, see T. WHITESIDE, *SELLING DEATH* (1971). A

cases, advertisers must disclose additional facts simply to correct misimpressions created by previous misrepresentations of a product. For example, because early advertisements represented Geritol as a general curative for tiredness, the clarification that Geritol relieves only fatigue caused by iron-deficiency anemia became an essential component of subsequent Geritol advertisements.⁵ Disclosure requirements such as these rest on the belief that individuals armed with accurate and adequate information will act in their own best interests and seek the "best buy" available.⁶

The same theory underlies current government regulation of consumer credit advertising. Theoretically, a consumer who possesses sufficient information about a proposed credit transaction and is dissatisfied with the terms will seek another source of credit.⁷ Competitive factors arguably will compel creditors to match or approach the most favorable terms offered by other creditors in the market.⁸

Whether full disclosure of credit terms will in fact improve the bargaining power of credit consumers, however, is debatable. Borrowers may not be sophisticated enough to make effective use of the information disclosed and may not, in fact, have a choice of lenders. Furthermore, an applicant with a precarious credit status may care much less about locating favorable credit terms than about obtaining any credit. For these reasons, critics often decry Congress' most recent legislation on credit advertising, the Truth-in-Lending Act,⁹ as "middle-class legis-

short review of FTC activity and congressional restrictions on the FTC's battle to require health warnings on cigarette packages and in cigarette advertising is found in H. LINDB & G. BUNN, *LEGISLATIVE AND ADMINISTRATIVE PROCESSES* 915-51 (1976).

5. *J.B. Williams Co. v. FTC*, 381 F.2d 884 (6th Cir. 1967).

6. See generally Whitford, *The Functions of Disclosure Regulation in Consumer Transactions*, 1973 WIS. L. REV. 400, 439, 469. See also Bartlett, *Truth in Advertising—The Whole Truth*, 89 BANKING L.J. 998 (1972).

7. See Consumer Credit Protection Act § 102, 15 U.S.C. § 1601 (Supp. V, 1975): Findings and declaration of purpose . . .

. . . The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit . . .

8. See, e.g., Note, *Truth in Lending: The Impossible Dream*, 22 CASE W. RES. L. REV. 89 (1970). But see Kripke, *Gesture and Reality in Consumer Credit Reform*, 44 N.Y.U.L. REV. 1 (1969).

9. Consumer Credit Protection Act §§ 102-14, 121-31, 141-145(a), 15 U.S.C. §§ 1601-13, 1631-41, 1661-65(a) (1970).

lation."¹⁰ Although categorized as "consumer protection legislation," the Act offers little assistance to the consumers most in need of protection—those who have trouble obtaining credit on any terms.¹¹ The following discussion of the federal law governing credit advertising, therefore, should be read with full awareness of the limitations of disclosure-type regulation.

II. CREDIT ADVERTISING AND THE FEDERAL TRADE COMMISSION ACT

Primary responsibility for regulating advertising in the United States rests with the Federal Trade Commission (FTC).¹² Created in 1914 to enforce the antitrust laws, the FTC also regulates advertising pursuant to its broad power, under section 5 of the Federal Trade Commission Act, to outlaw "unfair methods of competition . . . and unfair or deceptive acts or practices . . ." ¹³ The Truth-in-Lending Act, discussed below, also authorizes the FTC to enforce its credit advertising provisions.¹⁴ While the Truth-in-Lending Act establishes specific requirements for credit advertising, it does not preclude the FTC from attacking any false, misleading, or unfair credit advertising that does not violate the explicit terms of Truth-in-Lending.¹⁵ Every advertisement in violation of Truth-in-Lending, however, also violates the Federal Trade Commission Act.¹⁶ Recent statutory extension of the

10. See Kripke, *Consumer Credit Regulation: A Creditor-Oriented Viewpoint*, 68 COLUM. L. REV. 445 (1968); Note, *Consumer Legislation and the Poor*, 76 YALE L.J. 745-68 (1967).

11. See Leff, *Unconscionability and the Code—The Emperor's New Clause*, 115 U. PA. L. REV. 485 (1967); Note, *Consumer Legislation and the Poor*, 76 YALE L.J. 745 (1967).

12. See generally *Developments in the Law—Deceptive Advertising*, 80 HARV. L. REV. 1005 (1967).

13. Federal Trade Commission Act § 5, 15 U.S.C. § 45 (1970).

14. Consumer Credit Protection Act § 108(c), 15 U.S.C. § 1607(c) (1970).

15. Consumer Credit Protection Act § 108(d), 15 U.S.C. § 1607(d) (1970) states:

The authority of the [Federal Reserve] Board to issue regulations under this subchapter does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter.

FTC Consumer Credit Policy Statement Number One (October 13, 1969), in NATIONAL CONSUMER LAW CENTER HANDBOOK ON TRUTH-IN-LENDING (1971) states at 7605:

[S]ome advertisers have . . . begun using general credit advertising. While this avoids the requirements of the Truth in Lending Act, it does raise the question of compliance with Section Five of the Federal Trade Commission Act.

See also Leon A. Tashof, 74 F.T.C. 1361 (1968), enforced 437 F.2d 707 (D.C. Cir. 1970) (upholding FTC's pre-Truth-in-Lending attack on "easy credit" misrepresentations).

16. Consumer Credit Protection Act § 108(c), 15 U.S.C. § 1607(c) (1970).

FTC's authority to attack acts or practices which "affect" interstate commerce,¹⁷ as well as those which are "in" commerce,¹⁸ subjects virtually every consumer credit advertising practice to potential FTC scrutiny.¹⁹

The FTC announced its first substantive regulation of credit advertising in a Consumer Credit Policy Statement issued October 13, 1969.²⁰ The Commission stated that, in determining the legality of credit advertising, it would consider the impact upon consumers of terms such as "easy credit," "liberal pay plan," and "easy credit terms."²¹ According to the Policy Statement, an advertisement which purports to offer "easy credit" or a "liberal pay plan" constitutes an implied representation to consumers that: a) the advertiser extends credit without determining the debtor's credit rating, or extends credit to persons whose ability to pay ranks below typical standards of credit-worthiness; b) the advertiser's prices do not exceed prices charged for like merchandise by other dealers, whether for credit or for cash; c) the advertiser's finance charge and annual percentage rate do not exceed those charged to persons with undetermined credit ratings or persons who meet generally accepted standards of credit worthiness; d) the required downpayment is no higher than that required of persons whose credit worthiness is determined before credit is extended; and e) the advertiser deals with debtors fairly with respect to all conditions of the credit transaction,

17. Federal Trade Commission Act § 5(a)(1), 15 U.S.C. § 45(a)(1) (Supp. V, 1975), amending 15 U.S.C. § 45(a)(1) (1970): "Unfair methods of competition in or affecting commerce . . . are declared unlawful." For a summary of the increasing power given the FTC by legislation, see Kintner & Smith, *The Emergence of the Federal Trade Commission as a Formidable Consumer Protection Agency*, 26 MERCER L. REV. 651, 670-73 (1975).

18. See Federal Trade Commission Act § 5(a)(1), 15 U.S.C. § 45(a)(1) (1970), as amended, 15 U.S.C. § 45(a)(1) (Supp. V, 1975).

19. Consumer Credit Protection Act § 108(c), 15 U.S.C. § 1607(c) (1970) states in pertinent part:

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 requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

20. FTC Consumer Credit Policy Statement Number One (Oct. 13, 1969), in NATIONAL CONSUMER LAW CENTER HANDBOOK ON TRUTH-IN-LENDING 7605 (1971).

21. *Id.* at 7606:

It is essential when evaluating "easy credit" and similar representations to consider the impact on the consumers to whom they are directed. Such customers are drawn largely from low-income markets where purchasing sophisti-

including the consequences of delayed or missed payments.²² An advertiser that uses such terms but does not meet these criteria exposes itself to FTC charges of deceptive credit advertising.

This Policy Statement reflected a continuing expansion of FTC authority, which once was restricted to regulating the effects of trade practices on competition.²³ By 1972, however, the Supreme Court had accepted the broader view of Commission powers, and held that the FTC had authority to protect consumers regardless of the anticompetitive effects of a practice.²⁴ The Court ruled that "[t]he Commission has broad powers to declare trade practices unfair."²⁵

This liberal interpretation of its power to define unfairness will undoubtedly encourage more extensive FTC involvement in consumer protection.²⁶ Consumer credit furnishes an especially fertile field for development of the doctrine of unfair practices, since the very nature of a consumer credit transaction indicates significant inequality in the

cation and knowhow may not be well developed, and where persons generally must purchase goods with a kind of credit that is often high risk and high rate.

22. *Id.* at 7605-06.

23. *FTC v. Raladam Co.*, 283 U.S. 643 (1931). See Thain, *Suffer the Hucksters to Come Unto the Little Children?: Possible Restrictions on Television Advertising to Children Under Section 5 of the Federal Trade Commission Act*, 56 B.U.L. REV. 651, 656-61 (1976). The 1938 Wheeler-Lea Amendment to the FTC Act explicitly authorized the Commission to attack "deceptive" practices regardless of their anticompetitive effect.

24. *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972). The Court held that an anticompetitive effect is not a prerequisite to FTC action, because section 5 of the Federal Trade Commission Act "charge[s] the FTC with protecting consumers as well as competitors." *Id.* See Note, *Unfairness Without Deception: Recent Positions of the Federal Trade Commission*, 5 LOY. CHI. L.J. 537 (1974).

25. 405 U.S. at 242. The Court noted, but did not explicitly approve or adopt, the factors which the FTC considers in determining "whether a practice that is neither in violation of the antitrust laws nor deceptive is nonetheless unfair:"

(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors or other businessmen).

Id. at 244 n.5, quoting *Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking*, 29 Fed. Reg. 8324, 8355 (1964).

26. See Pitofsky, *The Developing Concept of Unfairness Under Section 5*, in *FTC IN ACTION* 125 (PLI Seminar in Washington D.C., Dec. 2, 1972); Note, *Section 5 of the Federal Trade Commission Act—Unfairness to Consumers*, 1972 WIS. L. REV. 1071; Note, *Psychological Advertising: A New Area of FTC Regulation*, 1972 WIS. L. REV. 1097.

parties' bargaining power. When a sale is conditioned on the seller's credit terms, it seems unlikely that any part of the credit transaction is freely negotiated. The Commission has already ruled that it is unfair for a retailer-creditor to sue its debtor customers in jurisdictions other than the debtors' residences.²⁷ Conceivably, the FTC might also outlaw a creditor's "self-help" repossession of the collateral securing a consumer credit loan, even though the practice is both constitutional²⁸ and specifically authorized by the Uniform Commercial Code.²⁹

The Supreme Court's recent decision in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*,³⁰ however, may be viewed as limiting the FTC's power to ban advertisements that are neither false nor deceptive, but which the FTC nevertheless considers to be "unfair." That case, which struck down a state law prohibiting advertising of drug prices, established that commercial speech is entitled to some first amendment protection, because of the advertiser's right to speak and the consumer's interest in the free flow of commercial information.³¹ The Court explicitly upheld the government's authority to regulate false, deceptive, or misleading commercial speech,³² but ruled that government may not "completely suppress the dissemination of concededly truthful information about entirely lawful activity"³³ even if it fears that publication of such information is not in the public interest.

27. Spiegel, Inc., [1973-1976 Transfer Binder] TRADE REG. REP. ¶ 20,985, at 20,835 (FTC 1975).

28. More precisely, the practice is not subject to constitutional restrictions if it can be accomplished without the direct assistance of the state. See, e.g., *Adams v. Southern California First Nat'l Bank*, 492 F.2d 324 (9th Cir. 1973), cert. denied, 419 U.S. 1006 (1974); *Bichel Optical Laboratories, Inc. v. Marquette Nat'l Bank*, 487 F.2d 906 (8th Cir. 1973). See also *Mitchell v. W.T. Grant*, 416 U.S. 600, 618-19 (1974) (dictum of Mr. Justice White that self-help repossession is not subject to constitutional restrictions); *Whitford & Laufer, The Impact of Denying Self-Help Repossession of Automobiles: A Case Study of the Wisconsin Consumer Act*, 1975 Wis. L. REV. 607, 609-11.

29. UNIFORM COMMERCIAL CODE § 9-503.

30. 96 S. Ct. 1817 (1976).

31. *Id.* at 1825-27.

32. *Id.* at 1830.

Untruthful speech, commercial or otherwise, has never been protected for its own sake. . . . Obviously, much commercial speech is not provably false, or even wholly false, but only deceptive or misleading. We foresee no obstacle to a State's dealing effectively with this problem. The First Amendment, as we construe it today, does not prohibit the State from insuring that the stream of commercial information flows cleanly as well as freely.

Id. at 1830-31 (footnote omitted).

33. *Id.* at 1831. It should be noted that 1) the Supreme Court's decision is con-

Presently, however, the scope of the FTC's authority is extremely broad. In examining the advertising requirements of the Truth-in-Lending Act, therefore, one must bear in mind that the Act alone does not define the outer limits of unlawful credit advertising.

III. CREDIT ADVERTISING AND TRUTH-IN-LENDING

The Truth-in-Lending Act,³⁴ as Title I of the Consumer Credit Protection Act is commonly known, became effective in July, 1969. The purpose of the Act is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."³⁵

Before the advent of Truth-in-Lending, credit advertisers employed a wide variety of credit disclosure practices which prevented consumers from comparing the cost of credit.³⁶ Some companies did not disclose credit rates. Some creditors advertised finance charges computed on the basis of the original debt rather than on the declining balance. Others did not disclose additional fees and service charges added to the stated finance charge. Most credit charges were expressed as monthly or weekly rates, rather than as an annual percentage rate, so that "[w]ithout knowing it, [consumers] would be paying . . . 18 or 24 percent, or more, for what they [were] told [were] 'easy terms' of 1-1/2 or 2 percent a month"³⁷ Thus, consumers remained ignorant of the true costs of credit. The Truth-in-Lending Act attempts to reduce confusion and allow comparison of credit costs "by requiring all creditors to disclose credit information in a uniform manner, and by requiring all additional mandatory charges imposed by the creditor as an incident to credit be included in the computation of the applicable percentage rate"³⁸

sistent with the trend of requiring disclosure of more relevant information, in that it outlawed prohibitions on disclosure of drug prices; and 2) the Court did not refer to "unfair" advertising practices because the parties did not raise that question. No representative of the FTC or any other government agency appeared in the case.

34. Consumer Credit Protection Act §§ 102-14, 121-31, 141-45(a), 15 U.S.C. §§ 1601-13, 1631-41, 1661-65(a) (1970).

35. *Id.* § 102, 15 U.S.C. § 1601.

36. H.R. REP. No. 1040, 90th Cong., 1st Sess. 13 (1967); 1968 U.S. CODE CONG. & ADM. NEWS at 1970.

37. *Id.* at 107, 1991.

38. *Id.* at 13, 1970.

Sections 142-44 of the Truth-in-Lending Act attempt to ensure truth in credit advertising. Section 142 sets forth the basic rule, applicable to all credit advertising: no commercial message which promotes or assists the extension of credit may state that a specific amount of credit or installment payment is available, unless the creditor customarily arranges credit or installment payments for that period or in that amount.³⁹ Section 142 also prohibits credit advertisements stating that the creditor will extend credit without downpayment or with a specified downpayment, unless the creditor usually accepts downpayment in that amount.⁴⁰ Sections 143 and 144, which establish the Act's disclosure requirements,⁴¹ require full disclosure only when an advertiser chooses to make some representation of credit terms in an advertisement. Under these sections, any reference to specific credit terms triggers requirements for further disclosure of credit costs and other explanatory information. In order to make such information understandable and comparable, these two sections also establish a uniform method of disclosure and specify the exact words that must be used.

The credit advertiser must also comply with the supplementary regulations governing credit advertising set forth in section 226.10 of the Federal Reserve Board's Regulation Z.⁴² The Board's authoritative interpretations establish fairly technical requirements that are at least as important as the provisions of the Truth-in-Lending Act itself.

"Advertising," for the purposes of Truth-in-Lending and Regulation Z, consists of any commercial message disseminated to aid, promote, or assist an extension of consumer credit.⁴³ This definition includes display signs in store windows and mail-order catalogues.⁴⁴ Realtors'

39. Consumer Credit Protection Act § 142, 15 U.S.C. § 1662 (1970). See also Federal Reserve Board Reg. Z, 12 C.F.R. § 226.10(a)(1) (1976).

40. Consumer Credit Protection Act § 142, 15 U.S.C. § 1662 (1970). See also FEDERAL RESERVE BOARD Reg. Z, 12 C.F.R. § 226.10(a)(2) (1976).

41. Consumer Credit Protection Act §§ 143-44, 15 U.S.C. §§ 1663-64 (1970).

42. Federal Reserve Board Reg. Z, 12 C.F.R. § 226.10 (1976). See notes 56 & 62 *infra*.

43. Federal Reserve Board Reg. Z, 12 C.F.R. § 226.10(a) (1976) regulates "advertisement[s] to aid, promote, or assist directly or indirectly any extension of credit may state" See also CCH CONSUMER CREDIT GUIDE ¶ 2305, at 3271 (1975):

An advertisement is any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, television, or public address system, in direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tags, or which is delivered or made available in any manner whatsoever. (Regulation at ¶ 3510(d)).

44. Federal Reserve Board Reg. Z, 12 C.F.R. § 226.2(d) (1976). See also CCH

"multiple-listing" cards, if placed in windows for public display, are advertisements under Truth-in-Lending,⁴⁵ unless their purpose is only to inform prospective purchasers which houses are on the market. Section 141 exempts catalogues and similar publications from the requirements of sections 142 and 143 if all credit rates are listed in a single table and if the publication meets certain Federal Reserve Board requirements.⁴⁶

Regulation Z defines "consumer credit" as "credit offered or extended to a natural person, in which the money, property, or service which is the subject of the transaction is primarily for personal, family, household, or agricultural purposes."⁴⁷ A "creditor" is any person who extends consumer credit "payable by agreement in more than four installments, or for which the payment of a finance charge is or may be required."⁴⁸ The term "finance charge" includes any and all charges imposed directly or indirectly as an incident to or a condition of the extension of credit.⁴⁹

CONSUMER CREDIT GUIDE ¶ 1700, at 3171 (1975):

Regulation Z includes within the meaning of *advertisement* any commercial messages in newspapers, magazines, catalogs, leaflets, or flyers. Commercial messages beamed over the airwaves via radio, television or public address system are advertisements. Direct mail literature is advertising subject to disclosure requirements. Any printed material that may appear on any interior or exterior sign or display, even a window display, is advertisement. Any point-of-transaction literature or price tag that is delivered or made available to the customer or to a prospective customer, in any manner whatsoever, is also advertising. (Regulation at ¶ 3510).

45. Federal Reserve Board Reg. Z, 12 C.F.R. § 226.2(d) (1976). See also FTC Staff Guidelines for Advertising of Consumer Credit (undated pamphlet published by FTC).

46. Consumer Credit Protection Act § 141, 15 U.S.C. § 1661 (1970). Federal Reserve Board Reg. Z, 12 C.F.R. § 226.10(b) (1976) provides:

If a catalog or other multiple-page advertisement sets forth or gives information in sufficient detail to permit determination of the disclosures required by this section in a table or schedule of credit terms, such catalog or multiple-page advertisement shall be considered a single advertisement provided:

(1) The table or schedule and the disclosures made therein are set forth clearly and conspicuously, and

(2) Any statement of credit terms appearing in any place other than in that table or schedule of credit terms clearly and conspicuously refers to the page or pages on which that table or schedule appears, unless that statement discloses all of the credit terms required to be stated under this section. For the purpose of this subparagraph, cash price is not a credit term.

47. Federal Reserve Board Reg. Z, 12 C.F.R. § 226.2(p) (1976).

48. Consumer Credit Protection Act § 103(f), 15 U.S.C. § 1602(f) (Supp. V, 1975); Federal Reserve Board Reg. Z, 12 C.F.R. § 226.2(s) (1976); Mourning v. Family Publications Serv., Inc., 411 U.S. 356 (1973).

49. Federal Reserve Board Reg. Z, 12 C.F.R. § 226.2(w) (1976): "Finance charge"

Thus, both Regulation Z and the Truth-in-Lending Act regard a transaction involving more than four installment payments as a credit transaction even if no separate finance charge is assessed.⁵⁰ For example, a health spa that offers ten body-building lessons for a cash price of \$120 or for ten installments of \$12 each is offering consumer credit under the ten-payment plan. This "four installment" rule was originally promulgated by the Federal Reserve Board, and upheld as a valid exercise of the Board's authority in *Mourning v. Family Publication Services*;⁵¹ Congress subsequently amended the statute to incorporate the rule.⁵² Although the four-installment rule sometimes requires disclosure when no finance charge actually exists, without the rule a creditor could "hide" the finance charge by advertising merchandise at "\$X down and \$X per week," without stating the number of payments or the total true price.

As mentioned above, the credit advertiser must make full disclosure if he advertises any of the specific terms of his credit plan. The disclosure requirements differ, however, depending on whether the advertisement is for "open end credit" or "credit other than open end." Section 143 imposes disclosure requirements for open end credit; section 144 governs disclosure of closed end credit terms.⁵³

Open end credit refers to credit transactions entered into from time to time, with periodic payments and periodic finance charges computed on the unpaid balance.⁵⁴ Most department store and other credit card accounts offer open end credit. An advertisement for open end credit may use terms such as "Charge accounts available," "Just say charge

means the cost of credit determined in accordance with § 226.4." 12 C.F.R. § 226.4 provides that

[t]he amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party

50. *Mourning v. Family Publications Serv., Inc.*, 411 U.S. 356 (1973); *Kruger v. European Health Spa, Inc.*, 363 F. Supp. 334 (E.D. Wis. 1973).

51. 411 U.S. 356 (1973).

52. Consumer Credit Protection Act § 103(f), 15 U.S.C. § 1602(f) (Supp. V, 1975). Consumer Credit Protection Act § 145(a), 15 U.S.C. § 1665(a) (Supp. V, 1975) also amends the credit advertising provisions of the Act by requiring certain disclosures in advertisements of consumer credit repayable in more than four installments.

53. Consumer Credit Protection Act §§ 143-44, 15 U.S.C. §§ 1663-64 (1970).

54. Consumer Credit Protection Act § 103(i), 15 U.S.C. § 1602(i) (1970). See also Federal Reserve Board Reg. Z, 12 C.F.R. § 226.2(x) (1976).

it," "All major credit cards honored," or "Use our convenient charge plan," without triggering requirements for further disclosure.⁵⁵ Advertisements of open end credit that contain any specific terms of the plan,⁵⁶ however, must disclose additional information required by section 143. To comply with this section, an advertisement must clearly and conspicuously set forth all of the following, in prescribed language: an explanation of the time period in which payments may be made without incurring a finance charge; the method of determining the balance upon which the finance charge is imposed; the method of determining the finance charge, including any minimum, fixed-service, transaction-activity, or similar charges; the periodic rate or rates (stated separately) used to compute the finance charge and the range of balances to which each rate is applicable, plus the corresponding annual percentage rate (determined by multiplying the periodic rate by the number of periods in a year); the conditions under which other charges may be imposed and the methods by which they will be determined; and the minimum required periodic payment.⁵⁷

If an advertisement for credit other than open end simply states the interest charge in terms of an "annual percentage rate," it need not dis-

55. CCH CONSUMER CREDIT GUIDE ¶ 30,620, at 66,274 (1975) (FTC Staff Guidelines for Direct-Mail Consumer Credit Advertisements and Staff Guidelines for Advertising of Consumer Credit, Spring, 1970).

56. Federal Reserve Board, Reg. Z, 12 C.F.R. § 226.10(c) (1976), governing advertising of open end credit, states:

No advertisement to aid, promote, or assist directly or indirectly the extension of open end credit may set forth any of the terms described in paragraph (a) of § 226.7, the Comparative Index of Credit Cost, or that a specified downpayment or periodic payment is required (either in dollars or as a percentage), the period of repayment or any of the following items, unless it also clearly and conspicuously sets forth all of the following items in terminology prescribed under paragraph (b) of § 266.7:

(1) An explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge may be imposed.

(3) The method of determining the amount of the finance charge, including the determination of any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year and, where there is more than one corresponding annual percentage rate, the range of balances to which each is applicable. (footnote omitted)

57. Consumer Credit Protection Act § 143, 15 U.S.C. § 1663 (1970). See note 56 *supra*.

close any other credit terms.⁵⁸ No further disclosure is required, because the drafters of the statute wanted to encourage use of the annual percentage rate.⁵⁹ Only the precise term "Annual Percentage Rate" will suffice, however; even "A.P.R." or a similar abbreviation will not do.⁶⁰

An advertisement of closed end credit may also use language such as "liberal budget terms," "on-the-spot financing," "easy monthly payments," or "arrange low terms for instant credit" without triggering the need for further disclosure.⁶¹ Several additional disclosures are required, however, if a closed end credit advertisement states: the amount of downpayment or claims that none is required; the dollar amount of any finance charge; the number of installments or period of repayment; or that there is no charge for credit. The advertisement must then include all of the following: the cash price or amount of the loan; the amount of the downpayment or a statement that none is required; the number, amount, and due dates scheduled for repayment; the amount of the finance charge, expressed as an annual percentage rate; and the deferred payment price or the sum of the payments.⁶²

58. Consumer Credit Protection Act § 144(c), 15 U.S.C. § 1664(c) (1970): "If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate."

59. H.R. REP. NO. 1040, 90th Cong., 1st Sess. 108-13 (1967); 1968 U.S. CODE CONG. & ADM. NEWS at 1991-97.

60. CCH CONSUMER CREDIT GUIDE ¶ 30,534, at 66,240 (1974). See CCH CONSUMER CREDIT GUIDE ¶ 30,630, at 66,273 (1974) (Direct Mail Consumer Credit Advertisements); FTC Staff Guidelines for Direct-Mail Consumer Credit Advertisements and Staff Guidelines for Advertising of Consumer Credit, Spring, 1970: "The term 'Annual Percentage Rate' should be spelled out and not reduced to 'APR' or otherwise abbreviated"

61. CCH CONSUMER CREDIT GUIDE ¶ 30,620, at 66,275 (1974).

62. Consumer Credit Protection Act § 144(d), 15 U.S.C. § 1664(d) (1970). Federal Reserve Board Reg. Z, 12 C.F.R. § 226.10(d) (1976) provides:

(d) *Advertising of credit other than open end.* No advertisement to aid, promote, or assist directly or indirectly any credit sale including the sale of residential real estate, loan, or other extension of credit, other than open end credit, subject to the provisions of this Part, shall state

(2) That no downpayment is required, or the amount of the downpayment or of any installment payment required (either in dollars or as a percentage), the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless it also clearly and conspicuously sets forth all of the following items in terminology prescribed under § 266.8:

(i) the cash price or the amount of the loan, as applicable.

Advertisements of residential real estate are exempt from the requirements for closed end plans.⁶³ Similarly, the deferred payment price and sum of the payments need not be disclosed in transactions involving the sale of a dwelling or the transfer of a lien secured by a first lien on a dwelling.⁶⁴ The advertising requirements of Truth-in-Lending apply to all other real estate transactions.

In summary, sections 143 and 144 establish disclosure requirements designed to eliminate come-ons for easy credit. Disclosure of all relevant information in a standard fashion facilitates comparison shopping and avoids the confusion that results from a wide variety of credit advertising practices.

IV. SANCTIONS FOR UNLAWFUL CREDIT ADVERTISING

Despite the limited resources available to the FTC to police consumer credit practices, lenders appear to be complying with the requirements of the Truth-in-Lending Act.⁶⁵ A 1971 FTC survey revealed a compliance rate of 86 percent.⁶⁶ Both the Truth-in-Lending Act and the Federal Trade Commission Act, however, provide for penalties against those who continue to advertise unlawfully.

Although private citizens may sue to enforce other sections of the Truth-in-Lending Act,⁶⁷ the Act does not authorize private actions for

(ii) in a credit sale, the amount of the downpayment required or that no downpayment is required, as applicable.

(iii) the number, amount and due dates or periods of payments scheduled to repay the indebtedness if the credit is extended.

(iv) the amount of the finance charge expressed as an annual percentage rate. The exemptions from disclosure of an annual percentage rate permitted in paragraph (b)(2) of § 266.8 shall not apply to this subdivision.

(v) except in the case of the sale of a dwelling or a loan secured by a first lien on a dwelling to purchase that dwelling, the deferred payment price in a credit sale, or the total of payments in a loan or other extension of credit which is not a credit sale, as applicable.

63. Consumer Credit Protection Act § 144(b), 15 U.S.C. § 1664(b) (1970): "The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require."

64. Federal Reserve Board Reg. Z, 12 C.F.R. § 226.10(d)(v) (1976).

65. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, ANNUAL REPORT TO CONGRESS ON TRUTH IN LENDING FOR THE YEAR 1970, at 20 (1971).

66. National Commission on Consumer Finance, Press Release of March 21, 1971, *quoted in* P. SCHRAG, CASES AND MATERIALS ON CONSUMER PROTECTION 1081 (2d ed. 1971).

67. Consumer Credit Protection Act § 130(a), 15 U.S.C. § 1640(a) (Supp. V, 1975).

credit advertising violations.⁶⁸ The drafters of the statute decided that individuals who see illegal advertisements but suffer no specific injury thereby should not be allowed to sue.⁶⁹ Government enforcement agencies, however, may seek both civil and criminal penalties for credit advertising violations.

The Assistant Attorney General for Antitrust is authorized to institute criminal charges against knowing and willful violators of the Truth-in-Lending Act;⁷⁰ conviction exposes the offender to a possible year's imprisonment or a fine of up to \$5,000.⁷¹

Section 5 of the Federal Trade Commission Act authorizes cease-and-desist orders if, after a hearing, the FTC determines that any person or firm is engaged in unfair or deceptive trade practices.⁷² An FTC cease-and-desist order becomes final after appellate review or, if no review is requested, after sixty days.⁷⁴

Until 1975, the only penalty for violating a final FTC cease-and-desist order was a civil contempt fine recoverable in an action by the United States.⁷⁵ Moreover, because final orders bound only the immediate parties to the cease-and-desist proceeding,⁷⁶ the cease-and-desist order had little deterrent effect on competitors of companies

68. See *Jordan v. Montgomery Ward & Co.*, 442 F.2d 78 (8th Cir.), cert. denied, 404 U.S. 870 (1971).

69. H.R. REP. NO. 1040, 90th Cong., 1st Sess. 19 (1967); 1968 U.S. CODE CONG. & ADM. NEWS at 1976. If a seller extends credit in a consumer credit transaction without providing the buyer with all information required by the statute, however, the consumer may sue the creditor for actual damages, twice the amount of the finance charge, and attorney's fees. Consumer Credit Protection Act § 130(a), 15 U.S.C. § 1640(a) (Supp. V, 1975).

Furthermore, it is generally held that private citizens may not sue under § 5 of the FTC Act for advertising violations. See *Consumer Federation of America v. FTC*, 515 F.2d 367 (D.C. Cir. 1975) (only parties to FTC actions may appeal FTC orders); *Holloway v. Bristol-Myers Corp.*, 485 F.2d 986 (D.C. Cir. 1973) (section 5 does not authorize private action by consumers misled by illegal advertising). Compare *Nader v. Allegheny Airlines, Inc.*, 96 S. Ct. 1978 (1976) (common law action for misrepresentation against air carrier subject to CAB regulation need not be stayed pending CAB consideration of question). This rule is criticized in Gard, *Purpose and Promise Unfulfilled: A Different View of Private Enforcement Under the Federal Trade Commission Act*, 70 Nw. U.L. REV. 274 (1975).

70. Consumer Credit Protection Act § 112, 15 U.S.C. § 1611 (1970).

71. *Id.* § 114, 15 U.S.C. § 1613.

72. Federal Trade Commission Act § 5(b), 15 U.S.C. § 45(b) (1970).

73. See text accompanying notes 14-16 *supra*.

74. Federal Trade Commission Act § 5(g), 15 U.S.C. § 45(g) (1970).

75. *Id.* § 5(1), 15 U.S.C. § 45(1).

76. *Id.*

under order. Even if the FTC ordered one advertiser to abandon a certain advertising practice, other advertisers could retain that practice without liability until the FTC initiated separate cease-and-desist proceedings against them.

In 1975, Congress amended the Federal Trade Commission Act⁷⁷ to eliminate these difficulties in the Commission's enforcement powers. The 1975 amendments permit the FTC to seek civil penalties in federal district court against any person who violates a final FTC cease-and-desist order.⁷⁸ The offending party may now be fined as much as \$10,000 a day for each violation of the order; each advertisement constitutes a separate violation.⁷⁹

The 1975 amendments also make final cease-and-desist orders binding upon all nonparties who know or have reason to know of the order. The amended statute authorizes the FTC to issue a complaint, obtain a final order against a company that is violating the Act, and then seek civil penalties against any nonparty who has reason to know of the order but nevertheless engages in the same kind of conduct.⁸⁰ Nonparties can learn of the order in a number of ways. Often, the FTC sends a copy of the complaint and order, by certified mail, to nonparties. If the FTC fails to notify other companies, the offending company can make such mailings to insure that its competitors are aware of the order.⁸¹

Although nonparties are now bound by final FTC orders resulting from litigation,⁸² most cease-and-desist proceedings end in consent

77. Magnuson-Moss Warranty—Federal Trade Commission Improvement Act of January 4, 1975, Pub. L. No. 93-637, 88 Stat. 2183-2203.

78. Federal Trade Commission Act § 5(m)(1)(A), 15 U.S.C. § 45(m)(1)(A) (Supp. V, 1975). In actions under this section, the FTC need not prove intent. *See, e.g.,* *Montgomery Ward & Co. v. FTC*, 379 F.2d 666 (7th Cir. 1967). The FTC need only show that a challenged representation in an advertisement had a tendency or capacity to deceive. *Charles of the Ritz Distributors Corp. v. FTC*, 143 F.2d 676 (2d Cir. 1944). Furthermore, discontinuance of a practice is not a defense. *See, e.g.,* *Sears, Roebuck & Co. v. FTC*, 258 F. 307 (7th Cir. 1919) (first judicial review of an FTC order).

79. Federal Trade Commission Act § 5(m)(1), 15 U.S.C. § 45(m)(1) (Supp. V, 1975).

80. *Id.* § 5(m)(1)(B), 15 U.S.C. § 45(m)(1)(B).

81. The author was advised informally by Commission officials that some companies had indicated a preference for litigating rather than settling with the FTC, to insure that their competitors would be bound by the Commission's prohibition of their conduct. These companies indicated they would mail any order to their competitors to insure notice.

82. Federal Trade Commission Act § 5(m)(1)(B), 15 U.S.C. § 45(m)(1)(B) (Supp. V, 1975).

orders. Whether the FTC may issue a complaint, negotiate a consent order, and then bind third parties by notifying them of the consent order has not been determined. The significant differences between consent orders and cease-and-desist orders obtained through litigation, however, make such a procedure unlikely.⁸³ The latter order contains findings of fact and rules of law, both absent from consent orders. Indeed, consent orders routinely provide that the order is for settlement purposes only and does not constitute an admission that the company has violated the law.⁸⁴ A consent order, therefore, does not adjudicate the legality of a practice, even though it may have implicit precedential value.

While the statutory penalties may deter intentional violations of final FTC orders, the Commission and its critics have questioned the deterrent effect of the enforcement process in some circumstances.⁸⁵ Cease-and-desist orders, which in effect command the violator merely to "go and sin no more," are unlikely to discourage profitable practices of dubious legality but not explicitly condemned by previous orders. A company engaged in false or misleading advertising can profit substantially by continuing such advertising during consent negotiations or litigation, because doing so creates no additional liability.⁸⁶ Penalties are imposed only for violating final orders.⁸⁷

83. See generally Kintner & Smith, *supra* note 17, at 682-83. My discussions of this portion of the FTC Act with Commission representatives, and their emphasis on litigated orders, suggests to me that the FTC does not believe that consent orders could be used in this fashion.

84. See *Procedures & Rules of Practice for the Federal Trade Commission*, 16 C.F.R. § 2.32 (1976):

[T]he [consent] agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the complaint.

The following language appears in all consent orders:

A CONSENT AGREEMENT IS FOR SETTLEMENT PURPOSES ONLY AND DOES NOT CONSTITUTE AN ADMISSION BY RESPONDENTS THAT THEY HAVE VIOLATED THE LAW. WHEN ISSUED BY THE COMMISSION ON A FINAL BASIS, A CONSENT ORDER CARRIES THE FORCE OF LAW WITH RESPECT TO FUTURE ACTIONS. A VIOLATION OF SUCH AN ORDER MAY RESULT IN A CIVIL PENALTY UP TO \$10,000 PER VIOLATION BEING IMPOSED UPON A RESPONDENT.

85. See Thain, *Advertising Regulation: The Contemporary FTC Approach*, 1 *FORDHAM URB. L.J.* 349 (1973); Thain, *Corrective Advertising: Theory and Cases*, 19 *N.Y.L.F.* 1 (1973).

86. Posner, *Truth in Advertising: The Role of Government*, in *ADVERTISING AND SOCIETY* 111 (Y. Brozen ed. 1974).

87. See text accompanying notes 78-82 *supra*.

In an attempt to alleviate this problem, the FTC staff is experimenting with "corrective advertising,"⁸⁸ which requires a person who violated advertising regulations to notify the public that his earlier advertisements were unlawful. For example, a company that unlawfully offered "easy credit" would be forced to include a prominent statement in future commercial messages that, "contrary to our previous advertisements, we do not offer easy credit terms."

Although the Commission's authority to require corrective advertising is in dispute,⁸⁹ I believe the courts will sanction the use of this remedy. A number of consent orders have stipulated corrective advertising.⁹⁰ Administrative law judges of the FTC have also ordered corrective advertising against several companies that violated credit advertising and other provisions of the Consumer Credit Protection Act.⁹¹ The corrective aspects of these orders extended only to "bait and switch" tactics, however, and the FTC disapproved the corrective advertising portions of the orders. While the Commission views corrective advertising as an extraordinary remedy to be applied only in exceptional cases,⁹² the FTC recently ordered corrective advertising in future Listerine mouthwash commercials⁹³ and is seeking corrective advertising in several other pending actions.⁹⁴

In an appropriate case, therefore, the Commission might order a company that has violated the credit advertising laws to disclose that

88. See, e.g., Thain, *Corrective Advertising: Theory and Cases*, 19 N.Y.L.F. 1 (1973); Note, "Corrective Advertising"—*Orders of the Federal Trade Commission*, 85 HARV. L. REV. 477 (1971); Note, *Corrective Advertising and the FTC: No, Virginia, Wonder Bread Doesn't Help Build Strong Bodies Twelve Ways*, 70 MICH. L. REV. 374 (1971). For an updated view of corrective advertising, see Cornfeld, *A New Approach to an Old Remedy: Corrective Advertising and the Federal Trade Commission*, 61 IOWA L. REV. 693 (1976).

89. See, e.g., Thain, *Corrective Advertising: Theory and Cases*, 19 N.Y.L.F. 1 (1973); Note, "Corrective Advertising"—*Orders of the Federal Trade Commission*, 85 HARV. L. REV. 477 (1971).

90. See *Ocean Spray Cranberries, Inc.*, 80 F.T.C. 975 (1972); *ITT Continental Baking Co.*, 79 F.T.C. 248 (1971) (Profile Bread consent order).

91. See *Maryland Carpet Outlet, Inc.*, [1973-1976 Transfer Binder] TRADE REG. REP. ¶ 20,906, at 20,755 (FTC 1975) (requiring corrective advertising as to bait-and-switch tactics; case also involved credit advertising violations). See also CCH CONSUMER CREDIT GUIDE ¶ 98,917, at 88,599 (1974) and cases cited therein.

92. See Thain, *supra* note 88.

93. *Warner-Lambert Co.*, [1973-1976 Transfer Binder] TRADE REG. REP. ¶ 21,066, at 20,926 (FTC 1975). This case, now on appeal, is the first in which corrective advertising was ordered in a litigated proceeding.

94. See Thain, *supra* note 88. The FTC is seeking corrective advertising in pending

fact to the public in future advertising. Conceivably, the Commission might also require a creditor to make restitution—to return to his customers any profit derived from unlawful credit advertisements. The restitution remedy is based on the rationale that creditors should not be permitted to retain the “fruits” of egregious violations of the law.⁹⁵

The mere threat of such severe penalties should persuade prudent advertisers to ascertain the legality of a credit advertising practice before adopting it. An advertiser uncertain of the legality of an advertisement may seek an advisory opinion from the FTC.⁹⁶ The Commission will respond to such inquiries, however, only if the party seeking advice has not yet engaged in the practice.⁹⁷

Section 145 of the Truth-in-Lending Act insulates publishers and broadcasters from liability for publishing advertisements that violate the credit advertising provision of the Act.⁹⁸ Nevertheless, publication of an advertisement which media officials know to be untrue or incomplete might be considered an unfair practice in violation of section 5 of the FTC Act, even if not punishable under Truth-in-Lending.⁹⁹ Although such charges against the media seem unlikely in the near future, one cannot be too cautious in measuring the limits of the FTC's authority under section 5—an authority to determine what is deceptive or unfair by continuously redefining those terms.¹⁰⁰

V. THE IMPACT OF CREDIT ADVERTISING REGULATION

The Truth-in-Lending Act has virtually eliminated the advertising of expensive merchandise for “\$1 down and \$1 per week”—ads which were fairly common prior to the Act.¹⁰¹ It has also given consumers the option of comparison credit shopping, by establishing uniform credit

proceedings against the major advertisers of analgesic products, who represented that their products have significantly different therapeutic effects than competing analgesics.

95. See Kintner & Smith, *supra* note 17, at 687-88.

96. See Procedures & Rules of Practice for the Federal Trade Commission, 16 C.F.R. §§ 1.1-1.4 (1976).

97. *Id.* § 1.1.

98. Consumer Credit Protection Act § 145, 15 U.S.C. § 1665 (1970).

99. Section 5 provides an independent basis for FTC action against unfair or deceptive acts or practices that do not violate the Consumer Credit Protection Act. See text accompanying notes 12-16 *supra*.

100. *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972); Kintner & Smith, *supra* note 17, at 655-65; Baker & Baum, *Section 5 of the Federal Trade Commission Act: A Continuing Process of Redefinition*, 7 VILL. L. REV. 517 (1962).

101. NATIONAL COMMISSION ON CONSUMER FINANCE, CONSUMER CREDIT IN THE UNITED STATES 188 (1972).

disclosure procedures.¹⁰² The Act has resulted in credit advertising which contains "nothing but the truth." Most credit advertisements, however, still do not reveal the "whole" truth.

Upon the advent of Truth-in-Lending, for instance, most creditors simply stopped advertising their interest rates. While rate advertising has apparently increased somewhat since then, it is still far less frequent than prior to the Act.¹⁰³ Clearly, the drafters of the statute did not intend this result; the disclosure requirements of the Act were designed to supply consumers with more information, not less.

In its present form, therefore, the Truth-in-Lending Act does not approach the "whole truth" standard. Some would argue that the Act will not adequately protect consumers until it is amended to *require* disclosure of interest rates in all credit advertising.¹⁰⁴ Such compulsory disclosure is consistent with the announced goals of Truth-in-Lending and with the current direction of disclosure regulation.¹⁰⁵ Although those who favor compulsory disclosure presently occupy a minority position,¹⁰⁶ I suspect that Congress will seriously consider compulsory rate advertising before the end of this decade.

Another proposed amendment to the Truth-in-Lending Act would reduce the number of mandatory lending disclosures, in accordance with the recommendations of the National Commission on Consumer Finance. The National Commission's 1972 Report to Congress recommended that businesses offering open end credit be permitted to advertise the periodic rate and the annual percentage rate without further disclosure, as advertisers of closed end credit are allowed to do.¹⁰⁷ The National Commission further proposed that open end credit advertise-

102. *Id.*

103. Day & Brandt, *A Study of Consumer Credit Decisions: Implications for Present & Prospective Legislation*, in 1 NATIONAL COMMISSION ON CONSUMER FINANCE, TECHNICAL STUDIES 44 (1973); NATIONAL COMMISSION ON CONSUMER FINANCE, *supra* note 101, at 239 (separate statement of Congresswoman Sullivan); Telephone conversation with Sheldon Feldman, Esq., then Assistant Director for Special Statutes, Bureau of Consumer Protection of FTC, Sept. 23, 1975.

104. *Cf.* White & Munger, *Consumer Sensitivity to Interest Rates: An Empirical Study of New-Car Buyers and Auto Loans*, 69 MICH. L. REV. 1207, 1240 (1971).

105. This trend toward requiring fuller disclosure is illustrated by the FTC's increasing use of its rulemaking power, which may result in compulsory disclosure of certain nutritional information in food advertising. 40 Fed. Reg. 23086 (1975); 39 Fed. Reg. 39842 (1974).

106. See NATIONAL COMMISSION ON CONSUMER FINANCE, *supra* note 101, at 239-40 (separate statement of Congresswoman Sullivan).

107. *Id.* at 188.

ments which contain credit terms other than interest rates be required to disclose only the following: the minimum required periodic payment and the method of determining any larger required periodic payment; the periodic rates; and the annual percentage rates.¹⁰⁸ In advertisements for closed end credit that refer to terms other than rates, the National Commission recommended that only the following information be required: the cash price or the amount of the loan; the specifics of the repayment schedule; and the annual percentage rate, or the dollar finance charge on small transactions when the annual percentage rate is not required.¹⁰⁹ Congressional supporters of Truth-in-Lending reacted unfavorably to the National Commission's recommendations, however. The legislators appear satisfied with the Act's present advertising requirements and the Board's current interpretations.

Thus, little demand for change in credit advertising regulation is evident at the present time. Some evolution in the law is inevitable, however, as creditors gain experience in using various kinds of disclosure techniques. In my view, the two most likely changes in the Act's disclosure requirements will compel disclosure of the annual percentage rate and reduce the number of mandatory disclosures, as suggested by the National Commission. Such changes would carry out the goals of credit advertising regulation—not to stop creditors from advertising but to provide consumers with enough accurate information to choose among competing lenders.

108. *Id.*

109. *Id.*

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