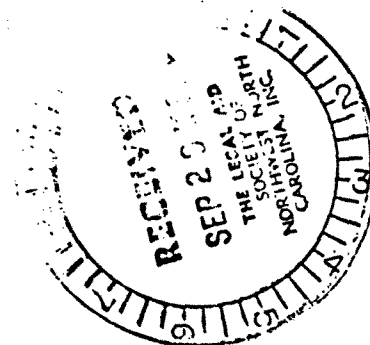




BUREAU OF
CONSUMER PROTECTION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 27, 1988



Joseph P. Henry, Esquire
Legal Aid Society of Northwest North Carolina, Inc.
216 West Fourth Street
Winston-Salem, N.C. 27101

Re: Credit Practices Rule

Dear Mr. Henry:

Thank you for your letter of August 24, 1988, requesting information about the Federal Trade Commission's Trade Regulation Rule on Credit Practices, 16 C.F.R. Part 444. The Credit Practices rule prohibits a creditor in a consumer credit transaction from taking or receiving a credit obligation that constitutes or contains, among other things, a non-purchase money security interest in household goods.

You ask if it is permissible to include such a security interest in a consumer credit contract if the contract also contains exclusionary language to the effect that the household goods security interest does not apply if a non-purchase money security interest is being taken on a loan for a personal, family or household purpose. You include an example of such exclusionary language in your letter.

In the opinion of the FTC staff, the addition of the exclusionary language you describe would not be sufficient to bring an otherwise violative contract into compliance. If the contract contains the prohibited language and is used in connection with a non-purchase money transaction for a personal, family or household purpose, that would violate the Rule. While the exclusionary language might be found by a court to invalidate the prohibited security agreement, consumer injury might still occur. In enacting the Rule, the Commission found the primary consumer injury to occur as a result of the creditor's threat to seize household goods, rather from the rare instances in which such goods were actually seized. (See Statement of Basis and Purpose, 49 Fed. Reg. 7740, 7762-7765, March 1, 1984.) The language of the disclaimer included in your letter is not sufficiently clear for us to expect a consumer to understand it

and not be susceptible to a creditor's threats to take household goods.

We are also concerned about creditor efforts to evade the Rule. In our experience, a security interest in household goods is rarely taken in connection with business credit. Hence, we fail to see the necessity for including a household goods security interest provision in a contract and then creating an exclusion for the transactions as to which the security interest would be most likely to apply. The use of such a device might be regarded as an effort to evade the Rule and, as such, an unfair or deceptive practice under the FTC Act.

This is an informal staff opinion that does not bind the Commission. However, it does represent the staff's current enforcement posture.

Sincerely,



Sandra M. Wilmore
Attorney
Division of Credit Practices

August 24, 1988

Consumer Protection Division
of the Federal Trade Commission
Sixth and Pennsylvania Avenues, N.W.
Washington, D. C. 20580

TO WHOM IT MAY CONCERN:

Is it permissible to include in a listing of items in which a security interest is taken in a non-purchase money contract, household goods prohibited by 16 C.F.R. 444.2(a)(4) if the listing is followed by the following disclaimer:

EXCLUSIONS: Secured Party specifically excludes from this security agreement the following items on a loan for a personal, family or household purpose, unless Secured Party has a purchase money security interest in the items:

Clothing, furniture (except antiques), appliances, one radio, one television, linens, crockery, china, kitchenware, impersonal effects (including wedding rings but excluding other jewelry).

If any items listed under "c" fall within the excluded items listed here and the Secured Party does not have a purchase money security interest in the item(s), then this preprinted language will supersede the items typed or written under "c" and Secured Party does not take a security interest in the excluded item.

Sincerely,