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A CRITICAL ANALYSIS OF THE COOLING-OFF PERIOD FOR DOOR TO DOOR SALES

RODOLPHO SANDOVAL*

In 1966, in the City of New York, a salesman representing Frostifresh Corporation went to the home of Mr. Reynoso, and sold him a refrigerator-freezer;¹ a perfectly legitimate business transaction that occurs many times throughout the nation every-day. The difference between this transaction and many others was that the contract was completely negotiated orally in the Spanish language. The reason for this was that neither Mr. nor Mrs. Reynoso could read, write or understand the English language. During the course of the conversation between Reynoso and the company salesman, Reynoso informed the salesman that he (Reynoso) had but one more week of work left on his job and, therefore, could not afford to buy the appliance. The salesman insisted that whether or not Reynoso had a job he could still afford the refrigerator-freezer because the appliance would actually not cost him anything. A scheme was set up so that all Reynoso had to do was turn in the names of his neighbors and friends and he would get bonuses or commissions of \$25 for each name. Reynoso was finally convinced by the salesman to purchase the appliance and to sign a retail installment contract written entirely in English. It was later revealed that the retail contract was neither translated nor explained to Reynoso in Spanish, the only language that he understood.

It was never clear to the Reynosos how much the appliance was going to cost. In fact, the contract had a stated cash sales price of \$900 and a credit charge of \$242.88, making the total \$1,145.88 for the entire obligation.

Of course, as is usually the case, the Reynosos were unable to obtain a substantial number of names to make their \$25 per name commission and consequently defaulted on the payments.

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1. Frostifresh Corp. v. Reynoso, 52 Misc. 2d 26, 274 N.Y.S.2d 757 (1966).

Frostifresh corporation then brought suit against Reynoso not only for the contract price of \$1,145.88, but also, for attorney's fees in the amount of \$227.35 plus a late charge of \$22.87² for a total of \$1,396.10. The plaintiff, Frostifresh, later admitted in court that the cost to the company for the appliance was only \$348.00. Fortunately for the defendant, the New York court ruled that the sale of the appliance at the price and terms which the contract had been consummated, was shocking to the conscience. The court felt that the plaintiff had driven "too hard a bargain." Frostifresh, however, was allowed to recover \$348.00, the actual cost of the appliance to the company, as well as a reasonable profit, finance charges and trucking service charges incurred.³

I. THE NEED TO PROTECT CHICANO CONSUMERS

In the Southwest, the situation exemplified by Reynoso's liability occurs hundreds of times each day to people who are unable to understand or express themselves in English. There is, however, little legislation and case law to protect this consumer. The purpose of this article is to expose the inadequacies contained in existing administrative regulations and statutory schemes relative to this problem.

More specifically, it is the purpose of this article to critically examine one of the most recent rules promulgated by the Federal Trade Commission on October 18, 1972, namely: "The Cooling-Off Period for Door-to-Door Sales." This Rule addresses itself, in part, to the problem of non-English speaking consumers who are caught in a web of contractual obligations. However, to appreciate its potential impact this Rule must be analyzed within its historical framework.

This Rule emerged only after several years of hearings by the United States Senate and the Federal Trade Commission. What finally emerged from those lengthy debates was a dearth of knowledge about the sales industry, particularly sales conducted door-to-door. The hearings uncovered what was already common knowledge to many consumer protectionists. They found a widespread use of deception that was being carried on to unconscionable lengths in situations much like the *Reynoso* example. Adversaries of this legislative reform claimed that substantial protection was already available in the Truth-in-Lending Act,⁴ the Uniform Commercial Code and the Uniform Consumer Credit

2. *Id.* at 27, 274 N.Y.S.2d at 758.

3. *Id.* at 54 Misc. 2d 119, 120, 281 N.Y.S.2d 964 (1967).

4. Truth-in Lending Act 15 U.S.C. § 1601 (1969). The Truth in Lending Act is Part I of the Consumer Credit Protection Act P.L. 90-321, 82 Stat. 146, 15 U.S.C. § 1601.

Code.⁵ Most of the evidence presented, however, persuaded the Federal Trade Commission to enact a cooling-off period rule for door-to-door sales.

It is the uniqueness of the Cooling-Off Period Rule that makes it important. Its major provision is aimed at ensuring *full disclosure* in contractual dealings. Included is the additional provision requiring that the terms of a contract be written in the language of the oral presentation. So if a non-English speaking Chicano is persuaded to enter into a contract, the terms of the contract must be written in Spanish. The significance of this legislation cannot be easily dismissed, because it is the first time that a consumer protection ruling has been enacted to assist the non-English speaking consumer.

It is indeed a mystery why more consumer legislation has not been passed to protect the non-English speaking Chicanos of the Southwest. Government statistics indicate that the problems the Chicano consumer faces are compounded by pervasive educational handicaps⁶ and the lack of Chicano attorneys practicing in the area of consumer protection.⁷ Non-English speaking Chicanos are sure victims for misrepresentation and deception. Their predicament, however, can be substantially improved by enacting statutes similar to the Cooling-Off Period Rule for door-to-door sales. Unfortunately, only two states in the Southwest have adopted the Federal Trade Commission's Rule.⁸ Two other states have consumer protection laws without the *Spanish* requirement,⁹ while one state has virtually no protection for consumers contracting with door-to-door salesmen at all.¹⁰ To effectively prevent misrepresentation and deception in this area, state governments must enact legislation to protect the non-English speaking Chicano consumer and deliver essential consumer protection information to citizens residing in the barrios.

II. BACKGROUND OF COOLING-OFF PERIOD

The concept of a cooling-off period to provide consumers with the right to withdraw from door-to-door sales transactions

5. UNIFORM CONSUMER CREDIT CODE (1974 version). UNIFORM CONSUMER CREDIT CODE § 3.501 Comment 5 states that where the F.T.C.'s Cooling-Off Period Rule and this Code is applicable to a seller and there is a direct inconsistency, the Rule shall prevail.

6. Statistics reveal that Chicanos in the Southwest are consistently undereducated. See text accompanying notes 114-147 *infra*.

7. This conclusion is drawn from statistics indicating that in the Southwest few Chicanos are members of the bar. See text accompanying notes 148-159 *infra*.

8. See text accompanying notes 164-180 *infra*.

9. See text accompanying notes 191-203 *infra*.

10. See text accompanying note 203 *infra*.

originated with the English Committee on Consumer Protection in 1962. This idea was later adopted in the Hire-Purchase Act of 1964, resulting in a 72 hour period within which an English consumer could withdraw from doorstep retail sales installment agreements.¹¹ Other countries emulated this progressive legislation. For example, between 1963 and 1967, several Australian states and Canadian provinces enacted laws providing for a cooling-off period.¹² This concept found limited acceptance in the United States. In the few states which adopted the rule, its applicability was limited to *home improvement installment contracts*.¹³ In addition, contracts solicited outside of a vendor's business premises were not included within the scope of the legislation.

The Federal Trade Commission was well aware of the problems connected with *home solicitation sales*, a sales tactic whereby a company solicits business by canvassing the neighborhood of the consumer.¹⁴ Notwithstanding this information, it was not until 1967 that Senator Magnuson introduced a bill in the Senate proposing a cooling-off period rule in door-to-door sales.¹⁵ But despite the F.T.C.'s comprehensive statement in support of the bill,¹⁶ the Senate failed to take affirmative action.¹⁷

In *Household Sewing Machine Company, Inc.*,¹⁸ the Federal

11. Sher, *The "Cooling-Off" Period in Door-to-Door Sales*, 15 U.C.L.A. L. REV. 717 (1968).

12. *Id.* at 719.

13. Sher, *The "Cooling-Off" Period in Door-to-Door Sales*, *supra* note 11.

14. Industry members preferred to characterize these practices as "home solicitation sales." They claim that the term "door-to-door sales" is too narrow. Fed. Trade Reg. 37 Fed. Reg. 22934 (1972). "Home solicitation sale" is defined in the UNIFORM CONSUMER CREDIT CODE § 3.501. See Magnuson and Carper, *THE DARK SIDE OF THE MARKETPLACE: THE PLIGHT OF THE AMERICAN CONSUMER* (1968); Office of Consumer Affairs, Exec. Off. of the President, *State Consumer Action 1970*, at 98 (1971); Kintner, *A PRIMER ON THE LAW OF DECEPTIVE PRACTICES: A GUIDE FOR THE BUSINESSMAN* (1971). See also Comment, *Arizona's Home Solicitation and Referral Sales Act: An Evaluation and Suggestions for Reform*, 12 ARIZONA L. REV. 803 (1970); Comment, *A New Remedy For California Consumers: The Right to Cancel A Home Solicitation Contract*, 3 PACIFIC L.J. 633 (1972); Comment, *Home Solicitation Sales—The Legislative Response to A "Cooling-Off" Period*, 24 S. CAR. L. REV. 880 (1972).

15. Consumer Sales Protection Act, S. 1599, 90th Cong. 1st Sess. (1967). For a comprehensive treatment of the purpose and background of the Rule see 37 Fed. Reg. 22934 (1972). Furthermore, most of the relevant testimony taken at public hearings held pursuant to the F.T.C.'s notice of the proposed rule, is excerpted in the notes. Some of this evidence will be cited herein. References to oral testimony will be preceded by "Tr." while references to written statements will be preceded by "R." Evidence taken at these hearings is on file with the Federal Trade Commission. Cross-references will be made to 37 Fed. Reg. 22934 where possible.

16. 37 Fed. Reg. 22934 (1972).

17. S. 1599, 90th Cong., 2d Sess. (1968); S. Rep. 1417, 90th Cong., 2d Sess. 11 (1968).

18. Household Sewing Machine Co., Inc., F.T.C. Complaints & Orders, 1967-1970 at ¶ 18,882 (1969). The Commission ordered relief and allowed a "cooling-off" period during which the consumer could reflect upon his purchase and cancel

Trade Commission responded to what seemed to be Congressional inaction by including in its cease and desist order, a provision requiring the company to allow a three day grace period in its contractual policy. The stated purpose for this period was to allow the consumer to rescind a contract consummated in the consumer's home.¹⁹ Following the *Household* case, the F.T.C. included similar provisions in orders against other members of the direct selling industry.²⁰

Finally, on September 20, 1970, the F.T.C. published notice of a proceeding to consider the adoption of a cooling-off period rule.²¹ Ten days later, the proposed rule was issued with only Commissioner Dixon dissenting.²² When the hearings were completed, the evidence revealed that there was extensive incidence of fraud perpetrated upon the unsuspecting consumer.²³ A revised rule was published on February 17, 1972.²⁴ It is this revised rule which is the main focus of this article, because it provided that ". . . it constitutes an unfair and deceptive act or practice to . . . [f]ail to furnish the buyer with a fully completed receipt . . . which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation. . . ."²⁵ The fundamental importance of this rule is best established when the nature of deceptive sales methods are examined.

III. THE DECEPTIVE PRACTICES²⁶ THAT LED TO THE ADOPTION OF THE COOLING-OFF PERIOD RULE

The retail and wholesale industry is well aware that the chances of selling merchandise are immeasurably increased when

the contract. Similarly, in 1969 the final draft of the UNIFORM CONSUMER CREDIT CODE included a cooling-off period of three days. UNIFORM CONSUMER CREDIT CODE § 2.502(1).

19. Household Sewing Machine Co., Inc., *supra* note 18. Also see UNIFORM CONSUMER CREDIT CODE § 2.502, Comment 1 (1968 version) and UNIFORM CONSUMER CREDIT CODE § 3.502, Comment 1 (1974 version).

20. Owen W. Lofthus, Metro Distrib., 77 F.T.C. 1228 (1970); Universe Chemicals, Inc., 77 F.T.C. 598 (1970); Windsor Distrib. Co., 77 F.T.C. 204 (1970), *aff'd*, Windsor Distrib. Co. v. F.T.C., 437 F.2d 443 (3d Cir. 1971).

21. 35 Fed. Reg. 15164 (1970).

22. *Id.*

23. 37 Fed. Reg. 22934 (1972).

24. 37 Fed. Reg. 3551 (1972).

25. *Id.* In view of the limited support for the Spanish requirement, it is indeed curious that the Commission was able to enact it as part of the Rule. The situation might have been different had one of the hearings been held in the Southwest.

26. This section discusses the unfair and deceptive practices which the Commission found to exist and which ultimately led to the adoption of the Cooling-Off Period Rule. Initially, it should be noted that the following deceptive practices are not unique to the direct selling industry, many industries utilize the very same methods of conducting business. In addition, several of the cases mentioned herein may serve to illustrate more than one type of deceptive practice. Given the same set of facts, a case may involve several deceptive practices at the same time.

they can create a situation wherein they can get the prospective purchaser in the presence of a skilled salesman with a *dynamic* personality who is able to manipulate the feelings of the buyer and create a desire to purchase. Personal contact with the consumer is still the magic key to closing a sale.²⁷ It is in the interest of the direct selling industry, therefore, to get the consumer to invite the salesman to the home. This is usually accomplished through the inticements communicated through advertising.

Investigations conducted by the F.T.C. disclosed that misrepresentation and deception in sales fell into three categories: (1) pre-transaction deceptive practices; (2) misrepresentation and unethical conduct during the transaction; and (3) post-transaction deceptive acts or practices.²⁸

A. *Pre-Transaction Deceptive Practice*

It is to the salesman's advantage to get the consumer before him in order to make his sales pitch. The salesman, or the direct selling industry for whom he works, may use three different types of deceptive practices to lure the consumer to the salesman. In this connection there are three major *luring* devices found in the pre-transaction stage: (1) false advertising; (2) deceptive pricing; and (3) misrepresentation of status or affiliation.

1. *False Advertising*

False advertising is a major pre-transaction deceptive practice. Cases indicate that the encyclopedia industry has a substantial and impressive track record in false advertising.²⁹ A common situation finds the company advertising that a prospective purchaser may have the use of the encyclopedia set for five days free without any further obligation. The purpose of the advertisement is to induce the consumer to invite the encyclopedia salesman into the buyer's home for a sales presentation.³⁰ Similarly, some companies advertise that they are seeking a "special person"

27. Kintner, *A PRIMER ON THE LAW OF DECEPTIVE PRACTICES: A GUIDE FOR THE BUSINESSMAN* (1971); Magnuson and Carpet, *THE DARK SIDE OF THE MARKET PLACE: THE PLIGHT OF THE AMERICAN CONSUMER* (1968).

28. Consumer complaints in door-to-door sales may be separated into five classifications: (1) deception by salesmen in getting inside the door; (2) misrepresentation of the quality, price or characteristic of the product; (3) high pressure sales tactics; (4) high prices for low quality merchandise; and (5) the nuisance created by the visit to the home by an uninvited salesman. See Project, *The Direct Selling Industry: An Empirical Study*, 16 U.C.L.A. L. REV. 890 (1969).

29. *Consumer Products of America, Inc., v. F.T.C.*, 400 F.2d 930 (3d Cir. 1968). It must be noted that the records and transcripts of the Commission hearings show that Encyclopedia Britannica was one of the strongest supporters of the Cooling-Off Period Rule. Thomas B. Curtis, Vice-President and General Counsel (R.778); 37 Fed. Reg. 22936 (1972).

30. 400 F.2d at 932 n.1.

to whom they could make a gift of the encyclopedia set for advertisement purposes. Subsequently, the consumer discovers that he has to pay from \$200 to \$300 for a yearly supplement and other services in order to keep this "gift set."³¹

In an attempt to curtail false advertising, the F.T.C. stated as early as 1957, that any promise or representation which turned out to be "material" to the inducement or encouragement of a sale of merchandise would be considered unlawful if the product was advertised in a manner which had a capacity or tendency to mislead.³² "Material representation" was later defined as any representation that is calculated to influence the choice of a consumer in making his or her decision to buy.³³

With respect to false advertising the F.T.C. has chosen to ignore the reasonable man standard.³⁴ Instead, the F.T.C. will determine what a person with limited sophistication³⁵ and education³⁶ would tend to believe from the advertisement. Consequently, where an advertisement is capable of being interpreted in more than one way, one of which may be false or misleading, the entire advertisement will be considered deceptive and misleading.³⁷ Actual deception is unnecessary. It is enough that there is a "likelihood" that the consumer will be deceived.³⁸ Similarly, where the F.T.C. finds that the deception manifested itself by innuendo, the advertisement will be deemed deceptive and illegal.³⁹ Furthermore, a finding of false advertising and, or, misrepresentation need not depend upon the good or bad faith of the advertiser.⁴⁰

2. Deceptive Pricing

Deceptive pricing entails the practice of advertising a piece

31. *F.T.C. v. Standard Education Soc'y*, 86 F.2d 692 (2d Cir. 1936) *rev'd on other grounds*, 302 U.S.112 (1937).

32. *Goodman v. F.T.C.*, 244 F.2d 584, 604 (9th Cir. 1957); *U.S. Retail Credit Ass'n v. F.T.C.*, 300 F.2d 212, 221 (4th Cir. 1962); *Carter Products, Inc., v. F.T.C.*, 323 F.2d 523, 528 (5th Cir. 1963).

33. 300 F.2d at 221; 323 F.2d at 528.

34. *Exposition Press, Inc. v. F.T.C.*, 295 F.2d 869, 872 (2d Cir. 1961), *cert. denied*, 370 U.S. 917 (1962).

35. *Id.*

36. *Feil v. F.T.C.*, 285 F.2d 879 (9th Cir. 1960). The Ninth Circuit Court of Appeals has sustained F.T.C. orders ". . . which sought to limit the use of language which, although seemingly innocuous to the expert was likely to deceive the unlearned and gullible." *Id.* at 897.

37. Federal Trade Commission Act 15 U.S.C. § 55(a) (1970). Also see, *Rhodes Pharmacal Co. v. F.T.C.*, 208 F.2d 382, 387 (7th Cir. 1954), *rev'd in part*, 348 U.S. 940 (1955). The Court of Appeals had modified the order of the Federal Trade Commission. The Supreme Court vacated the modification and affirmed the order as issued by the Commission.

38. 285 F.2d at 896.

39. Federal Trade Commission Act, 15 U.S.C. § 45 (1970); *National Baker's Services, Inc. v. F.T.C.*, 329 F.2d 365, 367-368 (7th Cir. 1964).

40. *Koch v. F.T.C.*, 206 F.2d 311, 317 (6th Cir. 1953); 285 F.2d at 896.

of merchandise for a lesser price than the intended selling price. The encyclopedia industry is one of the major door-to-door selling industries which has consistently utilized this scheme in the past. One method used is to inform the consumer that the encyclopedia company was seeking a qualified home to place a "free" encyclopedia set for advertisement purposes.⁴¹ Once inside the consumer's home, the salesperson reveals that a condition for getting the encyclopedia set is that the consumer must agree to purchase a yearbook, a cost previously undisclosed.⁴²

There are other ways by which the seller is able to deceive the consumer through the use of deceptive pricing. A good example of this is price comparisons between "sale price,"⁴³ "regular price,"⁴⁴ "manufacturer's list price"⁴⁵ and "manufacturer's suggested list price."⁴⁶ In this area, the F.T.C. has determined that unless the seller has previously sold the particular product regularly in its regular course of business, the seller cannot note the false "regular" price.⁴⁷ Likewise, manufacturers are prohibited from referring to a "manufacturer's list price" when that particular list price is not the usual and customary retail selling price of the product in the area.⁴⁸

3. *Misrepresentation of Status or Affiliation*

Misrepresentation of status is the third type of pre-transaction deceptive practice often used by door-to-door salespersons to gain entrance into the consumer's home. This practice may be classified into two types: (1) Misrepresentation of the status or affiliation of the product; and (2) Misrepresentation of the status or affiliation of the salesperson. In the first type, the product is advertised or introduced to the consumer in such a way as to make the consumer believe that the product is recommended by a prestigious organization. It may be suggested that the product is made by a popular company or that the product has certain characteristics which it does not have. For example, a company may advertise a product as if made by General Electric, when in fact only a small part of the product is manufactured by General Electric.⁴⁹

41. (R.581). Robert J. Funk wrote to the Federal Trade Commission during their hearings and discussed this method. See also text accompanying notes 29-40 *supra*.

42. *Id.*

43. *Giant Food Inc. v. F.T.C.*, 322 F.2d 977, 979-980 (D.C. Cir. 1963), *cert. denied*, 376 U.S.967 (1964).

44. *Id.* See also *Niresk Industries Inc. v. F.T.C.*, 278 F.2d 337 (7th Cir. 1960), *cert. denied*, 364 U.S. 883 (1960).

45. 322 F.2d at 979-980.

46. *George's Radio & Television Co.*, 60 F.T.C. 179 (1962).

47. 322 F.2d at 981-982.

48. *Id.*

49. 278 F.2d at 341-342.

Misrepresentation of the second type is more frequently encountered. For example, to gain entry into a consumer's home, a salesperson may claim that he is a member of an organization which in fact is non-existent,⁵⁰ or that he is taking an opinion poll or survey.⁵¹ He may also claim to be a building inspector, or a representative of a company distributing free products when the company is actually fictitious.⁵² An additional method involves situations where retailers advertise themselves to be wholesalers in order to mislead the consumer into thinking that he is getting a bargain when the opposite is true.⁵³

B. *Misrepresentation and Unethical Conduct During the Transaction*

The second major category of deceptive practices which the Federal Trade Commission uncovered during its hearings were those occurring after the salesman has managed to get into the home of the consumer and before the contract and other legal documents have been signed. This second stage can be reduced to three categories: (1) skilled and ruthless selling techniques; (2) high pressure selling; and (3) bait and switch marketing.⁵⁴

1. *Skilled and Ruthless Selling Techniques*

The outstanding characteristic of a door-to-door salesman is his ability to captivate his prospective purchaser with his dynamic, skillful and sometimes ruthless personality. The salesman develops a unique technique and skill which he successfully utilizes to exploit the consumer.⁵⁵ He also learns how to observe the responses and reflexes (i.e. body language) of the consumer, in order to determine when to "push" or when to "lay-low."⁵⁶ Once the consumer responds to the sales pitch, the salesman moves in with his high pressure selling technique which frequently culminates in the buyer purchasing the merchandise.

2. *High Pressure Selling*

Unfortunately no cases have held that, because of high

50. 244 F.2d 584 (9th Cir. 1957).

51. *Standard Distrib. Inc. v. F.T.C.*, 211 F.2d 7 (2d Cir. 1954).

52. Testimony by the Honorable Frank E. Moss, U.S. Senator from Utah taken at the F.T.C. hearings (Tr. 37); 37 Fed. Reg. 22937 (1972).

53. *Macher v. F.T.C.*, 126 F.2d 420 (2d Cir. 1942). This is a variation of misrepresentation of status of the salesman.

54. See generally *Guides Against Bait Advertising*, 16 C.F.R. § 238 (1975).

55. Statement by the National Consumer Law Center at the Federal Trade Commission Hearings (R.843); 37 Fed. Reg. 22938 (1972). In the case of non-English speaking consumers, salesmen exploit their inability to read and understand English.

56. Mehrabian, *Silent Messages* (1971).

pressure selling, a contract was void or voidable, or that the contract could be rescinded. This is probably due to the difficulty inherent in proving that the reason for the purchase was because the consumer was pressured into buying. However, F.T.C. records are full of examples which indicate that, because of high pressure selling, the consumer was induced into purchasing a product that he or she did not want in the first place.⁵⁷ The Uniform Consumer Credit Code takes cognizance of this fact and states that the underlying consideration for the home solicitation sales section ". . . is the belief that in a significant proportion of such sales the consumer is induced to sign a sales contract because of high pressure techniques."⁵⁸

According to an in depth survey, conducted by students at the U.C.L.A. School of Law,⁵⁹ the frequent use of high pressure methods in door-to-door sales can, in part, be attributed to the following factors: (1) *The Commission System*: Individual salesmen usually work on a commission rather than a salary basis of compensation. The salesman's entire livelihood may depend on the number of sales made. (b) *The Context of the Sale*: The consumer is trapped in his or her home and unless he or she abandons it, relief can only be gained by taking either affirmative action to remove the salesman or by succumbing to the sale. (c) *The Customer-Salesman Relationship*: Since most door-to-door sales are "one shot" affairs, the salesman has little reason to be concerned with the impression he leaves his customer. (d) *Ineffective Company Control*: The salesman's direct supervisor may be paid or promoted according to the volume of sales attained, thereby reducing the desire for curbing "high pressure techniques."

The consumers seemingly most susceptible to the skilled high pressure sales tactics employed by the door-to-door salesman are the poor and uneducated,⁶⁰ particularly consumers who do not speak English fluently and who cannot understand the complicated legal contracts put before them. Chicano consumers, in particular, have only the contractual interpretations offered by self-serving salesmen to rely upon.⁶¹

57. See Statement by Elizabeth McCarthy to the Federal Trade Commission (Tr.675), (R.1650); 37 Fed. Reg. 22938 (1972); and Statement by Lee Ellis, village manager of Winnetka, Illinois (Tr.658); 37 Fed. Reg. 22940 (1972).

58. UNIFORM CONSUMER CREDIT CODE § 3.501, Comment 1.

59. Project, *The Direct Selling Industry: An Empirical Study*, *supra* note 28 at 896-898. The U.C.L.A. Project also found that "Industry Beliefs" was a factor. *Id.*

60. Statement by the consumer center, Legal Aid Society of Metropolitan Denver (R.540); 37 Fed. Reg. 22938 (1972). The latter part of this article will deal more specifically with the poor and uneducated Chicano in the Southwest.

61. See text accompanying notes 105-159 *infra*.

3. *Bait and Switch Marketing:*

The scheme is simple, the consumer is first "baited" by advertising telling the consumer that a particular product will be sold at a certain bargain price. This advertising is usually false, deceptive, or misleading and serves only to get the consumer into the merchant's presence. Once the consumer has indicated that he is interested in purchasing the particular advertised product, his attention is then "switched" to a higher priced product. This is accomplished by showing the consumer the shortcomings of the former and pointing out the superiority of the latter product.

This deceptive scheme is not always the work of the salesman. Oftentimes the main distributor encourages the bait and switch practice. An example of this practice is found in the facts of *A.C. Weber & Company, Inc.*,⁶² where the company distributed to dealers printed circulars describing a sales plan. The circulars falsely represented a *bona fide* offer to sell a low priced sewing machine. This was done despite the fact that there was never an intention to sell a sewing machine at the advertised price. The plan was described by the company as an excellent tool to enable the dealers to "step-up" their customers to a higher priced model.⁶³

The practice of bait and switch marketing is difficult to prove in a court of law. Accordingly, the F.T.C. has indicated that where it appears that the seller advertises a piece of merchandise at a low price and the evidence reveals that in fact very few sales of the sale items were made, the practice will be considered a *prima facie* case of bait and switch.⁶⁴ This determination has the effect of shifting the burden of proof to the seller to prove that the advertising was *bona fide*, that there was no disparagement of the advertised product and that no bait and switch practices occurred.⁶⁵

C. *Post Transactions Deceptive Practice*

The final major category of deceptive practices focuses on the period after a contract has been signed by the consumer and after the salesman has left the consumer's home. This involves

62. *A.C. Weber & Co.*, 60 F.T.C. 289 (1962).

63. *Id.* The Federal Trade Commission ordered A.C. Weber & Co. to cease and desist from, *inter alia*: "(1) Placing in the hands of retailers or others any sales program or means of offering merchandise for sale when such offer is not a bona fide offer to sell the merchandise so offered. (2) Representing in any manner that merchandise is being offered for sale when such offer is not a bona fide offer to sell the merchandise." *Id.* at 295.

64. *Tashof v. F.T.C.*, 437 F.2d 707, 709-710 (D.C. Cir. 1970).

65. *Id.*

the two following situations: (1) substitution of a lower quality product for the purchased product;⁶⁶ and (2) non-delivery of the purchased product.

1. *Substitution*

There is a similarity between substitution and other deceptive practices. The similarity between bait and switch and substitution, focuses upon the outcome of each practice; that is, the consumer does not receive what he believed the contract promised. As to their dissimilarities, in the former, the deceptive practice occurs during the negotiation when the salesman is present and is directly instrumental in "switching" the consumer from the advertised product to the more expensive product.⁶⁷ In the latter, the deceptive practice occurs after the contract has been consummated and the salesman has left the presence of the consumer.⁶⁸

Substitution is also similar to the deceptive practice of misrepresentation of status of the product, in that, the consumer thinks that he is buying and going to receive the high quality product, but actually receives a product of lesser quality.⁶⁹ However, the method of carrying out the two separate practices differs. In a case of substitution,⁷⁰ the consumer is shown Y product, which is of high quality. He purchases Y product but X product, which is of inferior quality, is then substituted at the time of delivery. When there is a misrepresentation of the status of the product,⁷¹ the consumer is shown X product and is falsely told that it is Y product which leads the consumer to purchase X product thinking that it is the superior Y product.

2. *Non-Delivery*

The non-delivery of merchandise may be the most frustrating of the deceptive practices.⁷² Consider that all of the aforementioned deceptive practices have been heaped upon the consumer,

66. *Kerran v. F.T.C.*, 265 F.2d 246 (10th Cir. 1959), *cert. denied*, *Double Eagle Refining Co. v. F.T.C.*, 361 U.S. 818 (1959). The Court of Appeals for the Tenth Circuit found that petitioners, doing business as Double Eagle Refining Company were involved in deceptive practices. Petitioners had re-refined previously used lubricating oil and packaged it in tin cans similar to oil produced directly from virgin crude.

67. *Wichita Sewing Center, Inc.*, 62 F.T.C. 1105 (1963); *Morse Sewing Machine and Supply Corp.*, 61 F.T.C. 1078 (1962).

68. *Robert A. Lyons*, 55 F.T.C. 1677 (1959).

69. *Consumer Home Equipment Co. v. F.T.C.*, 164 F.2d 972 (6th Cir. 1947), *cert. denied*, 331 U.S. 860 (1947).

70. (Tr.616); 37 Fed. Reg. 22938 (1972).

71. *Niresk Industries Inc. v. F.T.C.*, *supra* note 44.

72. *National Trade Publication Service, Inc. v. F.T.C.*, 300 F.2d 790 (8th Cir. 1962).

and he is forced to stay home and miss work to await delivery, only to have the company fail to deliver.⁷³ Unless provision is made to secure fully informed contractual transactions, especially when non-English individuals are involved, non-delivery could easily be the culmination of a long process of deception.

It was evidence of these deceptive practices that ultimately led the F.T.C. to investigate the direct selling industry. As a result of their investigation the F.T.C. adopted the Cooling-Off Period Rule, which became effective on November 1, 1973.⁷⁴ It is this Rule that shall now be more closely examined.

IV. THE RULE: THE COOLING-OFF PERIOD FOR DOOR-TO-DOOR SALES

According to the 1968 Senate Report⁷⁵ the purpose of the cooling-off period proposal was to provide a time for reflection during which the buyer would be able to reconsider the transaction and weigh it against his personal needs and resources. Should he subsequently realize "that he has made an unwanted purchase, paid an unconscionable price, or unnecessarily burdened his family with a major long-term expenditure" he would be given the opportunity to rescind his contract. In fact, he would be able to rescind the contract for any reason or for no reason at all.⁷⁶

The F.T.C.'s Rule, promulgated on October 18, 1972⁷⁷ and becoming effective on November 1, 1973,⁷⁸ seems to have the same philosophical premises as the proposal considered by Congress in 1968. The coverage afforded by the Rule, however, is limited to certain types of sales. It applies only to door-to-door

73. *Id.*

74. 38 Fed. Reg. 30104 (1973).

75. S. REP. NO. 17, 90th Cong., 2d Sess. 1 (1968).

76. *Id.* at p. 1.

77. 16 C.F.R. § 429.1 (1972). Notwithstanding that the Rule was promulgated on October 18, 1972, no effective date was given by the Federal Trade Commission at that time because litigation was pending regarding the Commission's rulemaking authority. Even so, prior cases had supported the Commission's position that it was "... empowered and directed to prevent persons, partnerships, or corporations . . . from using . . . unfair or deceptive acts or practices in commerce. . . ." 15 U.S.C. § 45(a)(6) (1970); *F.T.C. v. R.F. Keppel & Brother, Inc.*, 291 U.S. 304 (1934); *Holland Furnace Co. v. F.T.C.*, 295 F.2d 302 (7th Cir. 1961); *Lichtenstein v. F.T.C.*, 194 F.2d 607 (9th Cir. 1952), *cert. denied*, 344 U.S. 819 (1952).

This dispute has been recently resolved in favor of the Federal Trade Commission. *See* 16 C.F.R. § 1.8 (1976).

It was the industry's contention with respect to the effective date of the new Rule that they needed nine months after the promulgation to change contracts, train sales personnel and adjust computers (Tr.881, R.794).

78. 38 Fed. Reg. 30104 (1973). The Commission "... determined that it was unnecessary for it to . . . delay the effective date of the rule for thirty days in accordance with 5 U.S.C. § 553(d) . . . because it did not intend to create, alter or revoke any substantive rights or duties provided by the original language of the rule."

sales, leases or rentals⁷⁹ of consumer goods or services with a purchase price of \$25 or more.⁸⁰

For the purpose of analysis, the Rule shall be studied to reflect its four major components: (1) the seller's obligations; (2) the buyer's rights and obligations; (3) the exceptions to the rule; and (4) the Spanish requirement.

The seller's obligation to the buyer are many and can easily be identified by classifying them into two parts. First, there are those obligations that the seller must satisfy before and during the transaction with the buyer, and second, those obligations that exist after the contract has been consummated and the buyer has decided to conceal the contract.

As to the seller's obligations before and during the transaction, the Rule requires that the seller furnish the consumer with a fully completed copy of the contract which must contain the name of the seller, his address and the date of the transaction. Furthermore, if the oral presentation is made in a language other than English then the contract and the contents therein must also be in the same language as the oral presentation (*e.g.*, Spanish).⁸¹

In addition, the seller must make three disclosures, the first two in writing and the third orally. First, in the immediate proximity of the space reserved for the signature of the buyer the Rule requires that a "statement" of disclosure be printed in ten point type in the following form:⁸²

79. The Rule upon recommendation, was extended to include *leases and rentals* because door-to-door sellers were beginning to lease their goods instead of selling them in order to escape the provisions of some states' cooling-off legislation. Benny Kass, representing National Legal Aid & Defenders Ass'n (Tr. 139); 37 Fed. Reg. 22945 (1972). Also see Memorandum submitted by Ohio State Legal Services Ass'n (R.379). Note that under the UNIFORM CONSUMER CREDIT CODE § 3.501 a home solicitation sale ". . . means a consumer credit sale of goods. . . ."

80. The original proposed Rule included sales of consumer goods or services with a purchase price of \$10 or more. 35 Fed. Reg. 15164 (1970). However, Congressman Rooney argued that the Rule should apply to all door-to-door sales regardless of the amount, because according to his statistics 56 percent of the magazine subscription sales were valued between \$10 and \$25, with another 24 percent at less than \$10 (Tr.13-14); 37 Fed. Reg. 22945 (1972). UNIFORM CONSUMER CREDIT CODE § 3.501 has no limit as to the amount of purchase. As long as the purchase is a "credit sale" the Code will apply.

81. 16 C.F.R. § 429.1(a) (1975). This requirement was incorporated in the alternative Rule (R.791); 37 Fed. Reg. 22949 (1972). Many witnesses testified on behalf of the "Spanish" requirement. Betty Furness, Chairperson, New York State Consumer Protection Board, testified that "the New York statute provides for notice in Spanish and English in cities with a population of over one million. On a national basis . . . F.T.C. regulations should provide for a dual language provision where ever needed (Tr.81). Richard X. Connors, testifying on behalf of the National Consumer Law Center emphasized that they had many clients in the legal service program that did not speak any English at all (Tr.204). *Contra*, UNIFORM CONSUMER CREDIT CODE §§ 3.501-3.505 and Regulation Z, 12 C.F.R. § 226.9 (1976).

82. 16 C.F.R. § 429.1(a) (1975). *Compare* Regulation Z, 12 C.F.R. § 226.6(a) (1976), requiring that disclosures of finance charges and annual rates be

YOU, THE BUYER MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY⁸³ AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.⁸⁴

Secondly, the seller is required to furnish the buyer a completed form in duplicate, captioned "NOTICE OF CANCELLATION,"⁸⁵ written in ten point type, and presented in the same language as the oral presentation. Thirdly, the seller must orally inform the buyer at the time the contract is signed that he has the right to cancel the contract within three days.⁸⁶ In addition, the Rule strictly forbids the seller from doing certain things prior to and during the transaction. For example, the seller is forbidden to include in the contract a confession of judgment, or a statement to the effect that the buyer will waive his rights to cancel the contract.⁸⁷

As to the obligations imposed upon the seller *after* the contract has been signed and *after* the buyer has exercised his right to cancel, the rule is very explicit. Upon receiving the

made clearly and conspicuously. Also see, UNIFORM CONSUMER CREDIT CODE § 3.503(2)(a), (b), requiring the seller to set out the buyer's rights to cancel under a conspicuous caption or to comply with any notice of cancellation of any F.T.C. rule.

83. The original proposed Rule defined a *business day* as any day other than a Saturday, Sunday or holiday (35 Fed. Reg. 15164 (1970)). The revised Rule went further and listed nine legal holidays and classified Saturday as a *business day*. The holidays included: Sunday, New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas. 16 C.F.R. § 429 Note (1) (f) (1975). *Accord*, Regulation Z, 12 C.F.R. § 226.9(a) (1976). The UNIFORM CONSUMER CREDIT CODE, however, does not define a *business day*. UNIFORM CONSUMER CREDIT CODE §§ 3.501-3.505.

84. 16 C.F.R. § 429(1) (1975). *Cf.* the UNIFORM CONSUMER CREDIT CODE which does not require a separate notice of cancellation other than the "Buyer's Right to Cancel" notice. UNIFORM CONSUMER CREDIT CODE § 3.503(2)(b).

85. See Appendix for the exact language of the NOTICE OF CANCELLATION, the last revision of which was made in 38 Fed. Reg. 30104 (1973). The original proposal of September 29, 1970 did not require the seller to furnish the buyer with a copy of the contract, 35 Fed. Reg. 15164 (1970). The second proposal corrected this deficiency, 37 Fed. Reg. 3551 (1972). *Cf.* the UNIFORM CONSUMER CREDIT CODE does not require the seller to furnish the buyer with a separate notice of cancellation. UNIFORM CONSUMER CREDIT CODE § 3.503(1).

86. 16 C.F.R. § 429.1(e) (1975). *Contra*, Regulation Z of the Truth and Lending Act which does not require an oral disclosure, 12 C.F.R. § 226.9 (1976).

87. 16 C.F.R. § 429.1(d) (1975). In 1970 a federal district court limited relief to a class of Pennsylvania residents with incomes of under \$10,000 who had signed confession of judgment clauses in leases or commercial financing transactions but held that members of this class did not intentionally waive known rights and that entry of confessed judgment when there had not been an intentional waiver violated due process. *Swarb v. Lennox*, 314 F. Supp. 1091 (E.D. Pa. 1970), *aff'd*, 405 U.S. 191 (1972). *Also see*, REPORT OF THE NATIONAL COMMISSION ON CONSUMER FINANCE, CONSUMER CREDIT IN THE U.S. (1972) which recommended that no consumer credit note or contract be permitted to contain a confession of judgment. *Accord*, UNIFORM CONSUMER CREDIT CODE § 3.306 and § 3.504(1) which prohibit confession of judgment clauses.

"NOTICE OF CANCELLATION" form, the seller must honor it within ten business days by either refunding the entire down payment, or by returning the goods or property traded in or both.⁸⁸ And if a negotiable instrument has been signed by the buyer, it must be cancelled and returned to the buyer.⁸⁹

The second major component of the Rule consists of the buyer's rights and obligations which are plainly outlined in the "NOTICE OF CANCELLATION" given to the buyer in duplicate at the time of the execution of the contract. First, the buyer has the right to cancel the contract within three business days from the date of its execution without any obligation or penalty.⁹⁰ Second, in order for his cancellation to be effective, buyer must date and sign the "NOTICE OF CANCELLATION" and mail it to the seller.⁹¹ Alternatively, the buyer may send a telegram advising the seller of his intent to cancel the contract.⁹² Finally, if the seller does not pick up the rejected merchandise within twenty days of the date of the notice of cancellation, the buyer may retain or dispose of the goods without any further obligation.⁹³

The third major component of the Rule concerns six exceptions and exclusions. First, it is specifically noted that where the

88. 16 C.F.R. § 429.1(g)(i) and (ii) (1975). Also see, 12 C.F.R. § 226.9(d) (1976), which states that "[w]ithin 10 days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, down payment or otherwise."

89. 16 C.F.R. § 429.1(g)(iii) (1975); REPORT OF THE NATIONAL COMMISSION ON CONSUMER FINANCE, CONSUMER CREDIT IN THE U.S. (1972), at 35. The Commission recommended that ". . . notes executed in connection with consumer credit transactions should not be 'negotiable instruments,' that is, any holder should be subject to all claims and defenses of the maker." Furthermore, it recommended that ". . . each such note should be required to have the legend 'Consumer Note—Not Negotiable' clearly and conspicuously printed on its face." See also Regulation Z, 12 C.F.R. § 226.9(d) (1976); UNIFORM CONSUMER CREDIT CODE § 3.504(1) requiring that "any evidence of indebtedness" be returned to the buyer.

90. 16 C.F.R. § 429.1(b) (1975). Senator Moss urged the adoption of a five day cooling-off period (Tr.32). Donald Elberson, executive director Consumer Assembly of Greater New York, agreed with Senator Moss. He believed three days was insufficient time for the consumer to gather information for real decision-making (Tr.58). Also see UNIFORM CONSUMER CREDIT CODE § 3.502(1) which allows cancellation until midnight of the third business day.

91. 16 C.F.R. § 429.1(b) (1975).

92. 16 C.F.R. § 429.1(b) (1975). See Regulation Z, 12 C.F.R. § 226.9(a) (1976) which allows the consumer to rescind his contract by ". . . mail, telegram or other writing of his intention to do so." Also see, UNIFORM CONSUMER CREDIT CODE § 3.502(4) which states that the notice of cancellation given by the buyer need not take any specific form, a written expression manifesting the intent of the buyer is sufficient. *Contra*, ARIZ. REV. STAT. ch. 15, art. 1. § 44-5002 (1975).

93. 16 C.F.R. § 429.1(b) (1975). The original proposed Rule provided for the buyer to make the goods available to the seller ". . . in its *original condition*," (emphasis added) 35 Fed. Reg. 15164 (1970). The final Rule only requires the buyer to make the goods available to the seller at his residence ". . . in *substantially* as good condition as when received. . . ." (emphasis added) 37 Fed. Reg. 22934 (1972). Compare UNIFORM CONSUMER CREDIT CODE § 3.504. See also UNIFORM COMMERCIAL CODE § 2-711(3) which states that ". . . on rightful rejection . . . the buyer . . . may hold such goods and resell them."

consumer has conducted negotiations at the retailer's business establishment and subsequently a representative comes to the consumer's home, as a part of the negotiation or to demonstrate any merchandise, a contract executed pursuant to some further negotiation shall be exempted.⁹⁴ Secondly, the Rule shall not apply to transactions between a seller and a buyer where the buyer is accorded the right of rescission pursuant to the provisions of the Consumer Credit Protection Act.⁹⁵ The third exclusion involves the case where the buyer has initiated the contract and the goods or services are needed to meet a *bona fide* immediate personal emergency of the buyer.⁹⁶ But in order to perfect this exclusion, and remove himself from the Rule, the seller must obtain from the buyer a handwritten statement stating (a) the nature of the emergency, and (b) acknowledging that the buyer is expressly waiving the right to cancel the sale within three business days.⁹⁷ Finally, a fourth exclusion from the Rule involves a transaction that is conducted and consummated *entirely* by mail or telephone.⁹⁸ This exemption is based on the premise that if the consumer does not want to hear a "sales pitch," all he has to do is hang up the telephone; a much easier task than telling the salesperson to get out of his home. In addition, the seller is also exempt from the Rule where the buyer has initiated the contract and the nature of the sale is a performance of maintenance upon the buyer's personal property.⁹⁹ Finally, the Rule shall not apply to sales that deal with real property,¹⁰⁰ insurance, and securities.¹⁰¹

94. 16 C.F.R. § 429.1 Note (1) (a) (1) (1975). See UNIFORM CONSUMER CREDIT CODE § 3.501 which states that a "Home Solicitation Sale . . . does not include a sale made pursuant to a preexisting revolving charge account, or sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale."

95. 16 C.F.R. § 429.1 Note (1) (a) (2) (1975). Regulation Z, 12 C.F.R. § 226.9(a) (1976) states that ". . . in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day. . . ." In other words, in order to avoid duplication the F.T.C. decided not to overlap the Cooling-Off Period Rule with Regulation Z.

96. 16 C.F.R. § 429.1 Note (1) (a) (3) (1975). See also UNIFORM CONSUMER CREDIT CODE § 3.502(5)(a). The UNIFORM CONSUMER CREDIT CODE will not allow the consumer to cancel when the seller in good faith has made (a) a substantial beginning in the performance of the contract, or (b) in the case of goods, the buyer cannot return the goods in substantially good condition. It is of interest to note that Comment 3 does not define "emergency."

97. See UNIFORM CONSUMER CREDIT CODE § 3.503(1). Emergencies are exempted from the Code. Also see, Regulation Z, 12 C.F.R. § 226.9(e)(1) (1976) which allows the consumer to waive his right of rescission whenever an extension of ". . . credit is needed in order to meet a bona fide immediate personal financial emergency."

98. 16 C.F.R. § 429.1 Note (1) (a) (4) (1975).

99. 16 C.F.R. § 429.1 Note (1) (a) (5) (1975).

100. With regard to *real property*, the Commission emphasizes that the Rule is not intended to apply to the sales of goods or services such as siding, home

The fourth and final component of the Cooling-Off Period Rule for door-to-door sales is the "Spanish" requirement of which much will be said in the following section. It is important to mention at this point, however, that the Rule requires that where an oral sales presentation is made in e.g. Spanish, the contract must be written in Spanish. Secondly, the "statement" on the contract in ten point type in the immediate proximity of the buyer's signature must also be in Spanish. Finally, the "NOTICE OF CANCELLATION" outlining all of the buyer's and seller's rights, duties and obligations must also be in Spanish.¹⁰²

Although most states in the Southwest have adopted some type of door-to-door sales legislation, few include a "Spanish" requirement.¹⁰³ Congress is enacting a statute based on the same premise as the Cooling-Off Period Rule stated that disclosure is *meaningful* only when a consumer is able to readily compare various credit items available to him.¹⁰⁴ It is therefore, important that the Spanish requirement be enacted in door-to-door sales to make disclosure meaningful for Chicano consumers unable to comprehend the English language

V. THE IMPORTANCE OF THE SPANISH REQUIREMENT IN THE SOUTHWEST

The basic purpose of consumer protection legislation and litigation in recent years has been to disclose to the consumer the facts about the product and the facts about the amount of money that the product is to cost him.¹⁰⁵ Indeed, by requiring disclosure of finance charges in connection with the extension of credit, competition among firms extending credit will be strengthened and as a consequence economic stabilization will be enhanced.¹⁰⁶ For

improvements, driveways and roof repairs. 16 C.F.R. § 429.1 Note (1) (a) (1975).

101. Because of the securities industry concern that securities might fall within the concepts of this Rule, they suggested a specific exemption (R.2325-27, 2332-34, 2340-42). See 15 U.S.C. § 1603(2) which exempts from the provision of the Consumer Credit Protection Act "... transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission."

102. Richard X. Connors, testifying on behalf of the National Consumer Law Center (Tr.204), stated that "[w]e have many clientele in the legal service program who don't speak English. . . ." Cameron County Legal Aid Society reported the inadvertent purchase of a set of encyclopedias by a Spanish-speaking couple who were told they were signing a cancellation form (R.1569-70).

103. See discussion in Section VI entitled "Consumer Protection Legislation in the Southwest" *infra*.

104. *N.C. Freed Co. v. Board of Governors of the Federal Reserve System*, 473 F.2d 1210 (2d Cir. 1973) at 1214.

105. See e.g., Consumer Credit Protection Act, 15 U.S.C. § 1601 *et seq.*; Consumers Affairs Act, CAL. BUS. & PRO. CODE § 300 *et seq.*

106. Consumer Credit Protection Act, 15 U.S.C. § 1601 states that "... economic stabilization would be enhanced and the competition among various

example, disclosure could prevent consumers from becoming indebted beyond their capacity to pay. "[T]he required disclosure would not only benefit consumers directly but [could] add to economic stability by reducing the incidence of delinquency, repossession, and credit losses in a period of recession."¹⁰⁷

It is recognized, moreover, that because of divergent and sometimes fraudulent practices by which consumers are misinformed of the quality of merchandise or the terms of the credit extended to them, many consumers are prevented from shopping or buying at home for the best terms available.¹⁰⁸ In this respect Joseph Barr, former Secretary of the Treasury testified before a Senate subcommittee that such "blind economic activities" are inconsistent with the "efficient functioning of a free economic system," whose ability to provide desired merchandise at the lowest cost is dependent on asserted preferences and *informed* choices of consumers.¹⁰⁹

Thus, it appears that a basic underlying philosophy of consumer protection legislation is to put the consumer in possession of the pertinent information before the "plunge" so that he may *know* and *intelligently compare* his options.¹¹⁰ Unfortunately, putting the consumer in possession of pertinent information is sometimes not enough. He must be able to understand it so that he can evaluate it.

It matters not how much legislation is enacted, if the consumer, and in our case the Chicano consumer, is unable to understand the rights and privileges accorded him under consumer protection legislation. The laws and regulations become but empty words of hope. The Chicanos who are unable to read or understand the English language become entangled in the "blind economic activities" from which they are unable to extricate themselves. Consequently, the lack of adequate legislation to protect this group of Americans makes the Spanish requirement in the Cooling-Off Period Rule increasingly important.

To understand the reason why the Spanish requirement in

financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. . . . It is the purpose of this subchapter to assure the 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." *Accord*, Consumer Affairs Act, CAL. BUS. & PRO. CODE § 301 (West 1971).

107. REPORT OF THE NATIONAL COMMISSION ON CONSUMER FINANCE, CONSUMER CREDIT IN THE U.S. (1972), at 174.

108. H.R. REP. No. 1040, 90th Cong., 1st Sess. 13 (1967); H.R. REP. No. 1040, 90th Cong., 1st Sess. 1-2 (1967).

109. *Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 90th Cong., 1st Sess. 76 (1967).

110. *Ratner v. Chemical Bank New York Trust Co.*, 329 F. Supp. 270 (S.D.N.Y. 1971) at 276.

contracts and other pertinent material is important to the Chicano consumer, particularly those of the Southwest, one must look closely at socio-economic conditions Chicano consumers of the Southwest.

The socio-economic conditions of the Southwest as they pertain to the Chicano community can be analyzed by dividing them into three major areas:¹¹¹ (1) population, (2) education, and (3) lack of legal counsel.

1. Population Factor

The Chicano population of the Southwest which includes Arizona, California, Colorado, New Mexico, and Texas, is an important element in analyzing consumer problems in that area. According to the 1970 census updated in 1972 in a special report, the Chicano population living in the five Southwestern states is 4,667,975, comprising approximately 13% of the entire Southwest population.¹¹² New Mexico has the largest percentage of Chicanos with 31.9% while Colorado has the smallest with 9.6% of that state's population. However, California has the largest number of Chicanos with 2,222,185 while Colorado has the smallest number with 211,585. The chart below gives a breakdown of the individual states and their total Chicano population with respect to the total population of the state.¹¹³

THE POPULATION FACTOR			
STATE	TOTAL POPULATION	CHICANOS	%
Arizona	1,770,893	246,390	13.9
California	19,957,304	2,222,185	11.1
Colorado	2,207,259	211,585	9.6
New Mexico	1,016,000	324,248	31.9
Texas	11,195,416	1,663,567	14.9

111. The author recognizes that there may be other variables that affect the individual choices that Chicano consumers make but believes that generally most factors can be subsumed within the three major areas.

112. U.S. Bureau of Census, U.S. Census of Population: 1970, *Subject Report—Persons of Spanish Surname*, table 1, (Final Report PC (2) ID, 1973). (Hereinafter cited as *Subject Report—Persons of Spanish Surname*).

113. *Id.* The "Subject Report" indicates a lesser number of Chicanos than the U.S. Bureau of Census, U.S. Census of Population: 1970 Detail Characteristics of 4 Arizona 247, 6 California 1148, 7 Colorado 351, 33 New Mexico 266, and 45 Texas 1330:

State	Total Population	Chicanos
Arizona	1,770,893	333,349
California	19,957,304	3,101,589
Colorado	2,207,259	286,467
New Mexico	1,015,998	407,286
Texas	11,195,416	2,059,671
TOTAL	36,284,870	6,145,362

2. Education Factor

The second major factor affecting the Chicano consumer of the Southwest is education. The education of the consumer is of such importance that the report of the National Commission on Consumer Finance devoted one entire chapter to it.¹¹⁴ It was the Commission's opinion that education would not only improve the effectiveness of existing consumer legislation but lessen the need for it as well.¹¹⁵

The answer on the surface seems obvious; consumer education. In fact, in 1968, amendments to the Vocational Educational Act¹¹⁶ made federal funds available specifically for consumer education courses and earmarked one-third for uses in economically distressed areas. But the answer under the surface is less obvious and more real. The problem is not that there is a lack of instructional material,¹¹⁷ but that many Chicano consumers are unable to understand the English language. Therefore, for all practical purposes, federal and state consumer programs in English are completely useless. Unfortunately, the National Commission on Consumer Finance failed to consider the idea of including a "Spanish" requirement in their recommendations on consumer education.¹¹⁸

To illustrate the educational level of the Chicano living in the Southwest, a comparison is drawn in the following material between the Chicano and his Anglo counterpart. The Chicano educational level is broken down into two groups for analytical purposes: (1) Chicanos fourteen years and over, and (2) Chicanos twenty-five years and over.

The reason for selecting Chicano consumers in the "fourteen years and over" group is that this includes the greatest number

114. REPORT OF THE NATIONAL COMMISSION ON CONSUMER FINANCE, CONSUMER CREDIT IN THE U.S. (1972) at 193-200.

115. *Id.* at 193. It cannot be denied that education would help in keeping a larger number of consumers out of situations that lead them into the courts. Consumers with an increased awareness of their legal rights may be better able to prevent salespersons from taking unfair advantage of them.

116. 20 U.S.C. § 1341(d). See FEDERAL BOARD OF VOCATIONAL EDUCATION, ORGANIZATION AND ADMINISTRATION, Bulletin No. 28, Home Economic Series No. 2 (Washington D.C.: U.S. Government Printing Office, 1918), at 16; Joseph N. Uhl, SURVEY AND EVALUATION OF CONSUMER EDUCATION PROGRAMS IN THE U.S. vol. 1 (Study prepared for the U.S. Department of Health, Education and Welfare, March 1970), at 19.

117. REPORT OF THE NATIONAL COMMISSION ON CONSUMER FINANCE, CONSUMER CREDIT IN THE U.S. (1972), at 197. The National Commission on Consumer Finance has recommended, however, that appropriate federal and state agencies should continue their emphasis on adult education for low income consumers and ". . . should try to reach more of them." *Id.*

118. It would be unfair to say that the members of the Commission were unaware of the large Chicano population in the Southwest for Senator John G. Towers, Representative Henry B. Gonzalez and Representative Wright Patman were on the Commission; all are from Texas. *Id.* at v.

of individual Chicanos who are important factors in the economic market of the Southwest. Two outstanding characteristics can be pointed out about this group: (a) the educational grade average; and (b) the number of Chicanos without any education at all.

The first characteristic of this age group is the educational grade average. For example, the number of years of school completed by *all* persons fourteen years and over in the entire Southwest is 12.02;¹¹⁹ the number of years of school completed by *Chicanos* fourteen years and over in the entire Southwest is 9.9.¹²⁰ The analysis further amplified into individual state statistics revealed that both Colorado¹²¹ and California¹²² maintain an educational state average of 12.3 for persons fourteen years old and over. Statistics illustrated, however, that while Anglo population in both states in this age group maintained their respective educational state average, about 12.3 years of school,¹²³ the Chicano population fell considerably short of the state average. In fact, their average grade of school years completed was 10.3 and 10.7 in Colorado¹²⁴ and California¹²⁵ respectively.

Arizona on the other hand, has a state average of 12.1 years of school completed by persons fourteen years and over,¹²⁶ slightly over the average of the entire Southwest. But unlike California and Colorado, the educational level of the Anglo population does not remain the same as the state average, on the contrary, it increases to 12.2¹²⁷ while the educational level of the Chicano decreases to 9.7 years of school completed.¹²⁸

The state of New Mexico has a state educational average still lower than the states of California, Colorado, and Arizona, and well below the average of the Southwest. New Mexico has a state educational average of 12.0.¹²⁹ Within this age group the educational average of the Anglo population is 12.1,¹³⁰ while the educational level of the Chicano in this same age group is 10.2, almost two full grades below the state's average.¹³¹

119. U.S. Bureau of Census, U.S. Census of Population: 1970, Detail Characteristics of 4 Arizona 289; 7 Colorado 148; 6 California 1271; 33 New Mexico 297; 45 Texas 1363. (Hereinafter cited as Census of Population: 1970, Detail Characteristics of . . .).

120. *Id.*

121. Census of Population: 1970, Detail Characteristics of 7 Colorado 148.

122. Census of Population: 1970, Detail Characteristics of 6 California 1271.

123. Census of Population: 1970, Detail Characteristics of 6 California 1271; 7 Colorado 148.

124. Census of Population: 1970, Detail Characteristics of 7 Colorado 148.

125. Census of Population: 1970, Detail Characteristics of 6 California 1271.

126. Census of Population: 1970, Detail Characteristics of 4 Arizona 288.

127. *Id.*

128. *Id.* at 289.

129. Census of Population: 1970, Detail Characteristics of 33 New Mexico 297.

130. *Id.*

131. *Id.* at 298.

Finally, Texas, the state with the second largest number of Chicanos, has an educational average of 11.4 years of school completed for the entire state.¹³² The Anglo population in this age group has an average of 11.6 years of school completed,¹³³ while their Chicano counterparts have a depressing average of 8.5 years of school completed.¹³⁴ From California to Texas the statistics prove that the educational level of the Chicano is not only well under the average of the entire Southwest, but also well below the educational average of each individual state.

A second characteristic of people fourteen years and over in the Southwest is one which is not only interesting but also directly related to the question of the need for consumer protection in the Chicano communities, particularly the need for Spanish translation of consumer protection material and legal instruments. This characteristic is the actual number of Chicanos, fourteen years and over without any formal education in the English language at all.

The total number of Chicanos fourteen years and over who live in the Southwest that do not have any formal education at all is 237,906.¹³⁵ Texas leads the Southwest with 129,150.¹³⁶ Notwithstanding that California has twice as many Chicanos as Texas,¹³⁷ the number of uneducated Chicanos in California is almost one-half that of Texas, 82,516.¹³⁸ Arizona¹³⁹ and New Mexico¹⁴⁰ have 10,492 and 10,486 uneducated Chicanos respectively, while Colorado, with the smallest population in the Southwest has 5,262 Chicanos fourteen years and over who have no education at all.¹⁴¹

Since it is more likely that female consumers will be confronted by door-to-door salesmen than male consumers, it is important to further breakdown the total number of Chicanos in the Southwest without any education at all, into the categories of Chicanos and Chicanas. Generally, statistics indicate that there are more Chicanos without any education at all. The chart below

132. Census of Population: 1970, Detail Characteristics of 45 Texas 1363.

133. *Id.*

134. *Id.* at 1364.

135. Census of Population: 1970, Detail Characteristics of 4 Arizona 289; 6 California 1271; 7 Colorado 148; 33 New Mexico 297; and 45 Texas 1363.

136. Census of Population: 1970, Detail Characteristics of 45 Texas 1363.

137. Census of Population: 1970, Detail Characteristics of 6 California 16; 45 Texas 1363. California has a total of 2,944,844 Chicanos in the fourteen years and over group while Texas only has 1,286,898.

138. Census of Population: 1970, Detail Characteristics of 6 California 1271.

139. Census of Population: 1970, Detail Characteristics of 4 Arizona 289. Arizona has 208,204 total Chicanos in this age group.

140. Census of Population: 1970, Detail Characteristics of 33 New Mexico 297. New Mexico has 258,523 Chicanos in this age group.

141. Census of Population: 1970, Detail Characteristics of 7 Colorado 148.

indicates the specific breakdown of Chicanos and Chicanas without any education state-by-state.

**CHICANOS FOURTEEN YEARS & OVER WITHOUT
ANY EDUCATION¹⁴²**

STATE	MALE	FEMALE	TOTAL
Arizona	4,996	5,496	10,492
California	40,441	42,075	82,516
Colorado	2,548	2,714	5,262
New Mexico	4,963	5,523	10,486
Texas	58,266	70,884	129,150
TOTAL	111,214	126,692	237,906

The second group of Chicanos to be analyzed in terms of the educational factor is that particular age group who is most likely to be married, have children, and have the capacity to bind themselves in a legal contract. This Chicano is twenty-five years old and over. Do Chicanos in this age group have an adequate education, or do they even have the equivalent education of their Anglo counterparts? Statistics indicate that the answer to this question is a simple, "No."

The Chicanos in the twenty-five year old and over group can be divided into different categories: (1) the percentage of Chicanos without a high school education, and (2) the average educational level of this group in the Southwest. As to the first category only 28.7% of the Chicanos in the twenty-five year old and over group in the Southwest have graduated from high school. Thus, a surprising 71% of Chicanos in this group do not have a high school education and because of their age it is unlikely that they will ever obtain one.¹⁴³

The percentages, however, of the twenty-five year old and over group without a high school education varies widely from state to state. For example, in California 65.7% of the Chicanos in this group do *not* have a high school education while in Texas the percentage is a much higher 80%. Arizona, Colorado and New Mexico each have percentages of 71.4%, 69.0% and 67.9% respectively.¹⁴⁴

142. Census of Population: 1970, Detail Characteristics of 4 Arizona 411, 6 California 1567, 7 Colorado 495, 33 New Mexico 403, and 45 Texas 1599.

143. *Subject Report—Persons of Spanish Surname*, table 7, note 112 *supra*. There are a total of 93,973 in Arizona, 937,073 in California, 85,137 in Colorado, 129,171 in New Mexico and 662,376 in Texas.

144. *Id.* The total number in the Southwest of 25 years and over Chicanos who have absolutely no education at all is 189,719; Arizona has 7,461; California has 63,014; Colorado 4,004; New Mexico has 7,173 and Texas has 108,067.

The second category of this age group analyzed is the average educational level in the Southwest. The average educational level of all the Chicanos twenty-five years old and over living in the Southwest is 8.6%.¹⁴⁵ The state with the highest educational average for this Chicano age group is California with a 9.7 grade average, while Texas is at the very bottom with a 6.7 grade average for Chicanos twenty-five years and over.¹⁴⁶ Colorado, New Mexico and Arizona again fall somewhere between California and Texas with a 9.4, 9.1 and 8.6 grade average respectively.¹⁴⁷

With statistics showing that the Chicano consumer, twenty-five years old and over is repeatedly under-educated, it is obvious that he is unable to understand complicated consumer information written in the English language and oriented towards his more educated Anglo counterpart. It is equally obvious that the Chicano consumer is also unable to understand a contract written in the English language and replete with legal jargon that even his more educated Anglo counterpart can not understand.

3. *Lack of Legal Assistance*

The third major factor is the limited number of Chicano attorneys available to assist the Chicano consumer. This factor increases the importance of the Spanish requirement in the Cooling-Off Period Rule. The statistics below illustrate the effect of the inadequate education available to the Chicanos in the Southwest.

Because the number of Chicanos who earn a high school education and subsequently pursue further education remains comparatively small, it follows that an even smaller number of Chicanos are able to enter the legal profession. The result is that there are far too few Chicano attorneys in the Southwest. Conse-

145. *Subject Report—Persons of Spanish Surname*, note 112 *supra*. There are a total of 190,961 Chicanos 25 years and over who have only an 8th grade education in the Southwest: Arizona has 13,924; California has 97,034; Colorado has 12,582; New Mexico has 17,318 and Texas has 50,040.

146. *Id.* Texas which has 662,376 Chicanos in this age group accounts for only 18,626 college graduates in this same group or 2.8% and California which has a total of 937,073 Chicanos in this age group, has 35,440 college graduates or 3.7%.

147. *Id.* The percentage of college graduates are as follows:

State	Total 25 yrs & over	College Grad.	% College Grad.
Arizona	93,978	3,071	3.1%
California	937,073	35,440	3.7%
Colorado	85,137	3,115	3.6%
New Mexico	129,171	5,040	3.1%
Texas	662,376	18,626	2.8%

quently, the bulk of consumer related problems that Chicanos experience are resolved without legal assistance from Chicano attorneys. The undereducated Chicano consumer, therefore, is left at the mercy of unrestrained deceptive acts and practices unless he is either aware of his rights or can read and understand the consumer material and contracts before him.

Statistics reveal a depressing picture regarding the expectations a Chicano can realistically entertain with respect to retaining a Chicano attorney. For example, out of a total of 46,333 lawyers and judges in the Southwest only 2,275 are Chicanos. Thus Chicanos comprise only 4% of the bar in the Southwest,¹⁴⁸ illustrating further that for the 4.6 million Chicanos living in the Southwest, there is roughly one Chicano attorney for every 2,400 persons.

California has the largest number of lawyers and judges. According to the 1970 census, California has about 26,428 out of which only 1,064 are Chicanos.¹⁴⁹ Texas which claims the second largest total population¹⁵⁰ in the Southwest has half as many attorneys as California, 13,418, but only 807 Chicano attorneys.¹⁵¹

Statistics of Colorado, Arizona and New Mexico indicate still fewer Chicano attorneys. In Colorado, for example, there is a total of 3,337 attorneys¹⁵² only 116 of whom are Chicano attorneys.¹⁵³ In Arizona, there are 2,079 attorneys,¹⁵⁴ 121 are Chicanos,¹⁵⁵ while in New Mexico out of 1071 attorneys,¹⁵⁶ only 167 are Chicanos.¹⁵⁷

The chart below compares the number of Anglo attorneys with Chicano attorneys in the Southwest.¹⁵⁸

148. Census of Population: 1970, Detail Characteristics of 4 Arizona 411; 6 California 1567; 7 Colorado 495; 33 New Mexico 403 and 45 Texas 1599.

149. Census of Population: 1970, Detail Characteristics of 6 California 1567. There are 41 Chicano judges in California.

150. Census of Population: 1970, Detail Characteristics of 45 Texas 1330. Texas has a total population of 11,195,416 of which 2,059,671 are Chicanos. Whereas California has a total population of 19,957,304 with a Chicano population of 3,101,589. *Id.* at 6 California 1148.

151. Census of Population: 1970, Detail Characteristics of 45 Texas 1599.

152. Census of Population: 1970, Detail Characteristics of 7 Colorado 495.

153. *Id.*

154. Census of Population: 1970, Detail Characteristics of 4 Arizona 411.

155. *Id.*

156. Census of Population: 1970, Detail Characteristics of 33 New Mexico 403.

157. *Id.*

158. Census of Population: 1970, Detail Characteristics of 4 Arizona 411; 6 California 1567; 7 Colorado 495; 33 New Mexico 403, and 45 Texas 1599.

LAWYERS & JUDGES

State	Anglo	Chicanos
Arizona	2,038	121
California	25,833	1,064
Colorado	3,301	116
New Mexico	1,048	167
Texas	13,330	807
TOTAL	45,550	2,275

In analyzing the situation in which the Chicanos find themselves, particularly in the Southwest, one begins to appreciate the real importance the Cooling-Off Period Rule and the Spanish requirements can have. But, the Cooling-Off Period Rule promulgated by the Federal Trade Commission is only a rule and in order for it to be truly effective local and state governments must pass substantially similar legislation.¹⁵⁹ Unfortunately, however, some of the states in the Southwest have not realized that a more complex situation exists when enacting consumer legislation for Chicanos.

Let us now turn to the individual state's statutes and analyze their legislation passed to protect the consumer in general and the Chicano in particular. More specifically, let us examine each state's rescission of contract remedies in door-to-door sales.

VI. CONSUMER PROTECTION LEGISLATION IN THE SOUTHWEST

As noted previously, there is a tremendous need for consumer legislation, particularly in the area of door-to-door sales. It has also been pointed out that the Chicano consumers of the Southwest face a significantly different problem than other consumers because a great number of the consuming public of the Southwest do not understand the English language.¹⁶⁰ If there were enough Chicano attorneys in the Southwest to assist in this problem perhaps the situation would not be so grim. Unfortun-

159. 16 C.F.R. § 1.8 (1975) states:

For the purposes of carrying out the provisions of the Federal Trade Commission Act, the Commission is empowered to promulgate trade regulation rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce. Such rules may include requirements prescribed for the purposes of preventing such acts or practices. A violation of a rule shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of that Act, unless the Commission otherwise expressly provides in its rule

160. See discussion in section entitled, "Need to Protect Chicano Consumer" *supra*.

ately, there are but a handful of Chicano lawyers.¹⁶¹ Therefore, the next possible solution is to promulgate adequate and substantial consumer protection legislation so that the consumer can help himself.

According to *State Consumer Action*¹⁶² home solicitation sales received significant state attention in 1971. In response to this report the main thrust of legislative enactments was to provide consumers with a "cooling-off period" which in most cases meant three days during which the consumer might cancel a contract.¹⁶³ Much of the cooling-off period legislation provided the requirement that the consumers had to be notified of their rights to cancel at the time the consumer signed the contract.

1. California

In 1971 the California legislature passed a statute dealing with home solicitation sales.¹⁶⁴ The statute effective on March 4, 1973, permitted a buyer to cancel a home solicitation sale contract that exceeds \$50.00.¹⁶⁵ The statute required both that the seller furnish a copy of the contract to the buyer, and that the contract contain language giving the buyer the option of cancelling the contract within three days of its making. Furthermore, the seller was required to furnish the buyer a "cancellation form" which, the buyer need only sign and mail to the seller in order to cancel the contract. In addition, like the F.T.C. requirement, the seller had to honor the cancellation by refunding the entire down payment or trade in.¹⁶⁶

California later amended its home solicitation statute in regard to the jurisdictional amount. Thus, instead of requiring that the transaction involve a minimum of \$50.00 before the statute applied, the required amount was lowered to "twenty five dol-

161. See text accompanying notes 148 *supra*.

162. Office of Consumer Affairs, Exec. Off. of the President, *State Consumer Action 1970*, at 98-99 (1971).

163. *Id.* New York has expanded the consumer's procedural rights by extending the Spanish requirement to summonses issued in an action arising from a consumer credit transaction conducted in Spanish. N.Y. CIV. PRAC. § 2900 (McKinney 1973). This type of legislation is a logical step in the protection of Spanish-speaking consumers, if effective notice of legal action is considered a requisite for adequate "in personam" jurisdiction. See Comment, *Breaking the Language Barrier*, 5 PAC. L.J. 648, 665 (1974).

164. CAL. CIV. CODE § 1698 (West 1971), had not yet been adopted in California by 1971. See UNIFORM CONSUMER CREDIT CODE, §§ 3.501-3.505.

165. CAL. CIV. CODE § 1698 (West 1971). The original proposed Cooling Off Rule by the Federal Trade Commission defined door-to-door sales as a "sale of a consumer good . . . with a purchase price of \$10 or more." Proposed Federal Trade Regulations, 35 Fed. Reg. 15164 (1970). The final Rule was proposed and promulgated with the amount at \$25. 16 C.F.R. § 429.1 (1972).

166. CAL. CIV. CODE § 1689 (West 1973). Also see, 16 C.F.R. § 429.1(g) (1972). Compare, UNIFORM CONSUMER CREDIT CODE, §§ 3.504(1) and 3.504(2).

lars or more" including any interest or service charges.¹⁶⁷ This amendment brought the California jurisdictional amount in line with the F.T.C. rule. More importantly, the home solicitation statute was amended to include the Spanish requirement.¹⁶⁸ The final amendment version also incorporated the entire Cooling-Off Period Rule, including the requirement that the seller furnish the buyer a "NOTICE OF CANCELLATION" form, and if necessary, that the notice be written in Spanish.¹⁶⁹

The California statute, however, goes further than the requirements of the F.T.C.'s rule. Most notable, the statute requires that the salesperson disclose, prior to any sales discussion, his identity, whom he represents, and the kind of goods or services being offered. Moreover, the salesman must display an identification card attesting to the truth of the above statement.¹⁷⁰

Nor has California's efforts to protect the Chicano consumer stopped at the door-to-door sale situation. In the 1973-74 session, the California legislature passed a "Spanish language transaction" bill¹⁷¹ which extended the principle behind the Spanish language requirement for door-to-door sales into two previously ignored areas. The new statute, which becomes effective on July 1, 1976, covers loans or extensions of credit, and varying forms of tenancy agreements.¹⁷² The statute requires that a person negotiating the specified transactions¹⁷³ provide a Spanish language copy of the proposed agreement, if the agreement is in writing, if the negotiations were conducted primarily in Spanish, and *if the consumer requests* a Spanish language copy.¹⁷⁴

2. Texas, Colorado, and New Mexico

Texas, the state with the second largest number of Chicanos,¹⁷⁵ and the lowest educational level in the Southwest,¹⁷⁶

167. CAL. CIV. CODE § 1689.5 (West 1973), amending CAL. CIV. CODE § 1689 (West 1971).

168. CAL. CIV. CODE § 1689.7 (West 1973), amending CAL. CIV. CODE § 1689 (West 1971). Compare 16 C.F.R. § 4291(a) (1975).

169. CAL. CIV. CODE § 1689.7 (West 1973). Compare 16 C.F.R. § 429.1(b) (1975).

170. CAL. BUS. & PRO. CODE § 17500.3 (West 1973). This type of requirement upon the salesman would certainly eliminate much of the deceptive practice where the salesman disguises his identity and assumes a status that he does not hold. Moreover, the possibility of a salesman misrepresenting the status of his product, is also reduced.

171. CAL. CIV. CODE § 1632 (West 1974) (effective July 1, 1976).

172. CAL. CIV. CODE § 1632(a)(1)-(4) (West 1974) (effective July 1, 1976).

173. CAL. CIV. CODE § 1632(a)(1)-(4) (West 1974) (effective July 1, 1976).

174. CAL. CIV. CODE § 1632(a)(5) (West 1974) (effective July 1, 1976).

175. Census of Population: 1970, Detail Characteristics of 45 Texas 1330 (1970). Texas has a total of 1,286,898 Chicanos.

176. *Subject Report—Persons of Spanish Surname*, table 7, note 112 *supra*. Texas has a state educational level for Chicanos of 6.7 grade although the state

passed on May 19, 1973 the "Home Solicitation Transaction Act." It became effective on June 11, 1973.¹⁷⁷ This Act incorporates every aspect of consumer protection covered by the Federal Trade Commission Rule including the three day cooling-off period,¹⁷⁸ the \$25 minimum purchase,¹⁷⁹ and most importantly for the Chicano community, the Spanish requirement in the oral and written "NOTICE OF CANCELLATION."¹⁸⁰

Colorado, the third most populous state in the Southwest,¹⁸¹ and the state that has the least number of Chicanos,¹⁸² has an altogether different type of home solicitation statute.¹⁸³ According to the statute, in a home solicitation sale, the seller is not required to give the buyer a separate statement notifying the buyer that he has the right of cancellation. Instead, the notice may be part of the contract itself of which the buyer will receive one copy.¹⁸⁴ The statement of cancellation in the contract is required to be under a caption bearing the title "Buyers Right to Cancel,"¹⁸⁵ but unlike the Federal Trade Commission's Rule¹⁸⁶ or the Texas¹⁸⁷ and California¹⁸⁸ statutes that require that a *separate* notice be given to the buyer, written in ten point type, the Colorado statute requires only that the "type" be no ". . . smaller than the lar-

average is 11.4 grade. Census of Population: 1970, Detail Characteristics of 45 Texas 1363.

177. TEX. CIV. STAT. ART. 5069-13.01-13.06 (Vernon's 1973). This is referred to as the Deceptive Trade Practice Act.

178. TEX. CIV. STAT. ART. 5069-1302(a) (Vernon's 1973).

179. TEX. CIV. STAT. ART. 5069-1301(5)(a) (Vernon's 1973).

180. TEX. CIV. STAT. ART. 5069-1302(b) and (c) (Vernon's 1973). The NOTICE OF CANCELLATION in the Texas statute is exactly the same as the NOTICE OF CANCELLATION in the proposed rule. Fed. Trade Reg. 37 Fed. Reg. 22934 (1972). However, the Federal Trade Commission modified some of the language used in the former proposed Rule. The modified provisions in the NOTICE OF CANCELLATION constitute merely an editorial change in the language of the Rule and therefore, it did not create, alter or revoke any substantive rights or duties provided by the original language of the Rule. 38 Fed. Reg. 30104 (1973). Texas has not adopted the last editorial change.

181. Census of Population: 1970, Detail Characteristics, 7 Colorado 352; Colorado has a total population of 2,207,259.

182. *Id.* at 351. Colorado has a Chicano population of 286,467.

183. COLO. REV. STAT., 1973, § 5-2-504. Colorado is the only state in the Southwest that has accepted the UNIFORM CONSUMER CREDIT CODE. See UNIFORM CONSUMER CREDIT CODE, §§ 3.501-3.505. The only other states that have adopted the U.C.C.C. are Idaho, I.C. §§ 28-31-101 to 28-39-108; Indiana, I.C. 1971, §§ 24-4.5-1-101 to 24-4.5-6-203; Iowa, I.C.A. §§ 537.1101 to 537.7103; Kansas, K.S.A. 6a-1-101 to 16a-9-102; Maine, 9A M.R.S.A. §§ 1-101 to 6-415; Oklahoma, 14A OKLA. ST. ANN. §§ 1-101 to 9-103. South Carolina, Code 1962, §§ 8-800.101 to 8-800.541; Utah, U.C.A. 1953, 70B-1-101 to 70-11-105; Wisconsin, W.S.A. 421.101 to 427.105; Wyoming, W.S. 1975, §§ 40-1-101 to 40-9-103.

184. COLO. REV. STAT., 1973, 5-2-503.

185. COLO. REV. STAT., 1973, 5-2-503(2). See generally, UNIFORM CONSUMER CREDIT CODE 3.503(2). The caption in UCCC is also "BUYERS RIGHT TO CANCEL." The caption in Regulation Z of the Truth in Lending Act is "NOTICE TO CONSUMER REQUIRED BY FEDERAL LAW" in 12 point type. 12 C.F.R. § 226.9(b) (1976).

186. 16 C.F.R. § 429.1(b) (1975).

187. TEX. CIV. STAT. ART. 5069-13.02(c) (1973).

188. CAL. CIV. CODE § 1689.7(c) (West 1973).

gest type appearing elsewhere in the contract, except for the 'type' used for identifying the seller."¹⁸⁹ In other words, the consumer's notice of cancellation may be written in the smallest letters possible as long as they are not smaller than the largest print. Notice to the buyer that he may cancel the contract within three business days is also located in the fine print of the "Buyers Right to Cancel," which may be written in the same size type as the rest of the contract.¹⁹⁰ For an undereducated Chicano, or any similarly situated consumer, reading about his legal right in this type of contract can be a difficult task.

The most serious objection to this statute is its failure to provide for the Spanish requirement. So assuming the consumer is able to locate the "Buyers Right to Cancel" section of the contract, and assuming he can read the legal jargon in English, and assuming further he decides to exercise his option of cancelling the contract, what are his obligations, and how can he bring about the recission?

Under the Colorado statute, the buyer must first indicate his intentions to cancel his contract by writing to the company within three days of the transaction. Secondly, the notice ". . . must say that you do not want the goods . . ." and ". . . the notice must be signed. . . ."¹⁹¹ However, the buyer may not cancel the contract simply because he changes his mind. The buyer may only cancel the contract when he has been coerced into entering into the transaction by high pressure selling tactics.¹⁹² The statute fails to state how the consumer is to prove he was pressured into the sale, or how the seller is to prove that the buyer simply changed his mind.

Moreover, since Colorado has adopted the Uniform Consumer Credit Code,¹⁹³ which also has a section on home solicitation sales,¹⁹⁴ a question arises as to which law will prevail

189. COLO. REV. STAT., 1973, § 5-2-503(2).

190. COLO. REV. STAT., 1973, § 5-20503(2)(b).

191. COLO. REV. STAT., 1973, § 5-2-503(2)(b).

192. COLO. REV. STAT., 1973, § 5-2-504. The official comment reads: "The purpose of this section . . . is to protect buyers from contracts that they may have been coerced into entering by high pressure tactics on the part of the seller. On the other hand, many home solicitation sales are freely entered into by buyers without coercion; in such cases a buyer should not be encouraged to cancel simply because of a change of mind."

Contra, "The consumer would also be able to decide for himself if he really wanted the goods or services." This is the reason for the proposed cooling-off period. Federal Trade Commission Hearing on the cooling-off period (R.547). See also, The Legal Assistance Foundation of Champaign County who stated that the 3 day cooling-off period would provide consumers with an opportunity to discuss his purchase with others and perhaps do a little comparative shopping (R.1922).

193. See note 183 *supra*.

194. UNIFORM CONSUMER CREDIT CODE, §§ 3.501-3.505.

in determining a consumer's right to cancel. An example of the problem is found in the following comparison. According to the Colorado statute, the consumer may not cancel merely because he changed his mind. Under the Uniform Consumer Credit Code, however, the consumer may cancel when two things happen: "First, there must be personal solicitation at the residence of the buyer, [and] second, the act of the buyer in binding himself by agreeing or offering to purchase must also take place at a residence of the buyer." When these two elements are present the consumer may cancel his contract simply because it is a home solicitation sale.¹⁹⁵

Not everything is grim for the consumers living in Colorado. The door-to-door sales statute requires that the seller must within thirty seconds after beginning the conversation with the consumer, identify himself, identify the company he represents, and state the purpose of his call.¹⁹⁶

In Arizona, where Chicano consumers face the same problems of under-education and under-representation in the state bar, their new home solicitation statute is but a name on the law books.¹⁹⁷ The Arizona Home Solicitation statute which became effective on August 8, 1973¹⁹⁸ goes further than Colorado's statute in making the consumer bear the burden, in cancelling a door-to-door sales transaction. For example, within a three day period after the day of the transaction,¹⁹⁹ the buyer may cancel his contract if he gives written notice to the "seller at his office" and either sends a letter "registered mail, return receipt requested on form #3806-S" or has the letter stamped by the Post Office on "receipt form 3817."²⁰⁰ Of course the advantage of this requirement is its certainty; both the buyer and the seller will know whether a letter was posted on time.

195. UNIFORM CONSUMER CREDIT CODE, §§ 3.501, Comment 2. The Cooling-Off Period Rule may resolve this conflict. If the transaction meets the jurisdictional requirements of the Rule, the seller must comply with its provisions. The Rule provides that ". . . laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale which is substantially the same or greater than that provided in this section. . . ., or which do not provide for giving the buyer notice of his right to cancel the transaction in substantially the same form and manner provided for in this section . . . will be considered directly inconsistent." Thus, in this respect, F.T.C. will construe the Rule to annul any inconsistent law. 16 C.F.R. § 429.1 Note (2)(b) (1976).

196. COLO. REV. STAT., 1973, § 6-1-105(1)(b). Cf. CAL. BUS. & PRO. CODE § 17500.3 (West 1973).

197. ARIZ. REV. STAT. ch. 15 art. 1, § 44-5002 (1973). With a state population of 1,770,893, Chicanos in Arizona number only about 246,390. (Census of Population: 1970, Detail Characteristics of 4 Arizona 249). Their average grade level is 9.7 while the states overall average is 12.1 (*id.*, at 4 Arizona 289). In addition 10,492 Chicanos have had no education at all (*id.*).

198. ARIZ. REV. STAT. ch. 15, art. 1, § 44-5002 (1973).

199. ARIZ. REV. STAT. ch. 15, art. 1, § 44-5002(a) (1973).

200. ARIZ. REV. STAT. ch. 15, art. 1, § 44-5002(b) (1973).

There are obvious disadvantages, however. For example, the statute assumes that the consumer is familiar with both the procedure by which to register mail and registered mail itself. This may be an improper assumption with respect to some consumers. There are undoubtedly many people who are not aware of many postal services. Furthermore, consumers could be unnecessarily inconvenienced if made to travel the distance to the nearest Post Office or forced to miss work because of conflicting hours with their jobs. Indeed, to require notice by registered mail may be tantamount to denying certain low income and undereducated consumers the right to rescind.²⁰¹

In addition, the buyer receives only a copy of the contract which must contain a "Notice to Buyer" statement written in a "conspicuous" manner, and indicating the buyer's rights and advising him specifically of his right to cancel the contract within three days of its making.²⁰² Needless to say the Arizona Home Solicitation Statute does not contain a Spanish requirement.

The only state in the Southwest that does *not* have a door-to-door sales statute is New Mexico.²⁰³ New Mexico, however, does have an unfair trade practices act, but no mention is made of door-to-door sales. The table below illustrates the important characteristics of the various statutes discussed above.

COOLING-OFF STATUTES IN THE SOUTHWEST

State	Days Allowed	Year Passed	Type of Sale	Notice to Buyer		
				Written	Oral	Spanish
Arizona	3 days	1973	Installment	Yes	No	No
California	3 days	1971 Amend 1973	\$25 & over	Yes	Yes	Yes
Colorado	3 days	1971	Credit	Yes	No	No
New Mexico	3 days	1973	\$25 & over	Yes	Yes	Yes
Texas	3 days	1973	\$25 & over	Yes	Yes	Yes

**VII. IMPACT OF FEDERAL TRADE COMMISSION'S
COOLING-OFF PERIOD RULE**

Although there has been concern in the past regarding the substantive rulemaking powers of the F.T.C.,²⁰⁴ this concern

201. See Roisman, *Truth in Lending: Regulation Z—Its Limitations and Applicability*, 37 GEO. WASH. L. REV. 1154 (1969); Sher, *The "Cooling-Off" Period in Door-to-Door Sales*, 15 U.C.L.A. L. REV. 717 (1968); Project, *The Direct Selling Industry: An Empirical Study*, 16 U.C.L.A. L. REV. 890 (1969).

202. ARIZ. REV. STAT. ch. 15, art. 1, § 44-5004 (1973).

203. N.M. STAT. §§ 49-15-1 to 49-15-18 (1967).

204. See generally Note, *F.T.C. Substantive Rulemaking: An Evaluation of Past Practices and Proposed Legislation*, 48 N.Y.U. L. REV. 135 (1973).

seems illusory in nature. This concern existed largely because the F.T.C. did not assert this power for ²⁰⁵ almost fifty years after the passage of the Federal Trade Commission Act and had indicated before that it lacked such powers.²⁰⁶ This concern was also motivated by the fact that past Congressional legislation had granted the F.T.C. limited powers of substantive rulemaking in certain areas.²⁰⁷ In addition, Congress was considering amendments to the Act which would grant limited substantive rulemaking power only in the area of "unfair and deceptive practices."²⁰⁸

The landmark case of *National Petroleum Refiner's Association v. F.T.C.*,²⁰⁹ resolved the doubts of such rulemaking capacity in favor of the F.T.C. The Circuit Court of Appeals quoted the United States Supreme Court in *United States v. Morton Salt Co.*,²¹⁰ which indicated that if powers have gone unexercised for a long period of time, close scrutiny may be required to determine their existence, but if the powers are found to exist, they are not forfeited by nonuse.²¹¹ The Court of Appeals then reasoned that although judicial deference is usually accorded an agency's construction of its own enabling legislation, the need for such deference is not strong where the question does not require special agency competence or expertise and it is of a nature which comes under a particular judicial function, i.e., statutory construction.²¹² Using this reasoning the Court disregarded prior statements made by the F.T.C. that it had no substantive rulemaking capacity and found that such powers were within the general grant of Section 6(g) of the Federal Trade Commission Act.²¹³

The Court went on to consider what impact past legislation granting limited rulemaking powers had on a construction of Section 6(g). Added to this consideration was the fact that Congress was considering proposed legislation granting the F.T.C. limited

205. See *National Petroleum Refiners Ass'n v. F.T.C.* 482 F.2d 672, 693 & n.29 (D.C. Cir. 1973), cert. denied, 415 U.S. 951 (1941). The Federal Trade Commission Act, 38 Stat. 717 et seq., was passed in 1914, but the F.T.C. did not announce its dependence on rules until 1962. (27 Fed. Reg. 4636, 4796 (1962)).

206. *National Petroleum Refiners Ass'n v. F.T.C.* supra note 205, at 693 n.27.

207. See generally Wool Products Act of 1939, 15 U.S.C. § 68a (1970); Fur Products Labeling Act of 1951, 15 U.S.C. §§ 69a(a)-(c), 69f(b) (1970); Textile Fiber Products Identification Act of 1958, 15 U.S.C. § 70a(a), (b), (c) (1970); and the Fair Packaging and Labeling Act of 1967, 15 U.S.C. § 1456(b) (1970). In these areas of marketing regulation, Congress affirmatively enacted limited grants of substantive rulemaking authority.

208. See S. 356, 93rd Cong., 1st Sess. (1973).

209. 482 F.2d 672 (D.C. Cir. 1973).

210. *United States v. Morton Salt Co.*, 388 U.S. 632, 647-648 (1950).

211. *Id.* at 647-48.

212. *National Petroleum Refiners Ass'n v. F.T.C.* supra note 205.

213. Federal Trade Commission Act, 15 U.S.C. § 40 et seq. Section 6(g) provides that the F.T.C. shall have power to make rules and regulations for the purpose of carrying out the provisions of sections 41 to 46 and 47 to 56 of the title. Section 45 prohibits unfair and deceptive practices.

rule-making powers in the area of "unfair and deceptive practices."²¹⁴ The National Petroleum Refiner's Association argued that Congress would not consider granting the F.T.C. such powers if it already possessed them.²¹⁵ Nevertheless, the Court determined that although the legislative history of the Federal Trade Commission Act was ambiguous on the point of the F.T.C.'s substantive rule-making powers, the plain language of Section 6(g), when read in light of the broad concerns which motivated passage of the Act confirmed that the framers' intent was to allow exercise of substantive rulemaking powers.²¹⁶ Such rulemaking was felt to be not only consistent with the framers' broad purpose but also an appropriate method of carrying that purpose out.²¹⁷ The Court concluded that Congress had enacted past rulemaking legislation cautiously in order to eliminate the kind of disputes which flow from statutory ambiguity.²¹⁸

Despite the existence of substantive rulemaking powers, the effectiveness of the F.T.C.'s Cooling-Off Period Rule with its Spanish requirement remains to be seen. Further, the F.T.C. has been criticized in the past for its failure to enforce its cease and desist orders, and it is feared that this defect may result in a failure to enforce compliance with its rules.²¹⁹ While there is little objective evidence available on this issue, it seems that the Cooling-Off Period Rule will be subject to some difficulties, primarily because of its broad-coverage.²²⁰ The nature of the F.T.C.'s procedural process necessary to enforce compliance and the size of the industry involved would necessarily result in slow and ineffective enforcement on an industry-wide basis. Nonetheless, the individual consumer relying on the Rule may be more effective in solving his particular problem.²²¹

214. See S. 356, 93rd Cong., 1st Sess. (1973). This proposed amendment to the Federal Trade Commission Act would specifically grant the F.T.C. limited substantive rulemaking powers in the area of unfair and deceptive practices. See note 218 *infra*.

215. National Petroleum Refiners Ass'n v. F.T.C. *supra* note 205, at 695. The argument was that where there is evidence of Congressional knowledge and acquiescence in a long-standing agency construction of its own powers, the court should conclude that the agency construction had received a de facto ratification by Congress.

216. See National Petroleum Refiners Ass'n v. F.T.C., *supra* note 205, at 686.

217. *Id.*

218. National Petroleum Refiners Ass'n v. F.T.C. *supra* note 205 at 697. Congress has since amended the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.* to allow the F.T.C. limited substantive rulemaking authority, Pub. L. No. 93-637, tit. II, § 202(a), 88 Stat. 2193 (codified at 15 U.S.C.A. § 57a (Supp. 1975)).

219. See Note, *F.T.C. Substantive Rulemaking: An Evaluation of Past Practices and Proposed Legislation*, 48 N.Y.U. L. REV. 135, 158-159 (1973); Elman, *Administrative Reform of the Federal Trade Commission*, 59 GEO. L.J. 777, 820-25 (1971).

220. Note, *F.T.C. Substantive Rulemaking: An Evaluation of Past Practices and Proposed Legislation*, *supra* note 219, at 158-159.

221. 16 C.F.R. § 429.1 (1975); 37 Fed. Reg. 1099 (1974).

For example, using an analogy provided by a similar Rule,²²² it can be argued that the three-day cooling-off period does not begin to run until all requirements of the Rule are complied with.²²³ Under the F.T.C.'s Rule this would include providing a Spanish language copy of the contract as well as a "Notice of Cancellation" when it is required by the Rule, since effective notice of the consumer's right is frustrated if he is unable to understand his right to cancel the contract.²²⁴ The consumer may then bring an action for cancellation of the contract if the salesperson has failed to provide a copy of both the contract and notice of rescission in Spanish, on the basis that the three day cooling-off period had not yet run. Prior to bringing a cause of action, however, the consumer must notify the merchant of his desire to cancel the contract²²⁵ and afford the merchant an opportunity to honor the cancellation.²²⁶

VIII. CONCLUSION

From the foregoing statistics and conclusions it is clear that much of the deceptive trade practices, whether they be misrepresentations that occur during the pre-transaction or post-transaction period, can be curtailed by passing federal and state legislation wholly encompassing the Federal Trade Commission's Cooling-Off Period Rule. As pointed out previously, one of the most important sections of the Cooling-Off Period Rule as far as the Chicano consumers of the Southwest are concerned, is the Spanish requirement. The need for this requirement is illustrated by the position, in which Chicanos in the Southwest find themselves. Although constituting a substantial percentage of the population, they are nevertheless, when compared to their Anglo counterparts, repeatedly under-educated and under-represented in the state bar. Thus, Chicanos of the Southwest, for the most part, must depend upon themselves. Realistically, they can do this only when they

222. See Truth in Lending Act, 15 U.S.C. § 1601 (1969); Regulation Z, 12 C.F.R. § 226.9 (1976) contains a provision for the right to rescind certain transactions within three business days.

223. See *Palmer v. Wilson*, 359 F. Supp. 1099 (9th Cir. 1973). In this case the defendant failed to make disclosures required by the Truth in Lending Act. Plaintiff attempted to rescind the contract, as provided within 12 C.F.R. § 226.9, five and one-half months after the signing of the instrument. The court found that the plaintiff could rescind as the three day rescission period had not begun to run because of the failure to make the required disclosures. Thus, the court held that plaintiff exercised his right of rescission within the three day period.

224. See text and notes accompanying notes 105-110 *supra*.

225. Cooling-Off Period for Door-to-Door Sales, 16 C.F.R. § 429.1(b) (1975). The Rule provides that in order for the buyer to cancel the transaction, notice must be sent to the seller at place of business. But, the "Notice of Cancellation" must be furnished by the seller.

226. Cooling-Off Period for Door-to-Door Sales, 16 C.F.R. § 429.1(g) (1975). This section of the Rule provides that the seller must honor the cancellation within ten business days after receipt of the "Notice of Cancellation."

are able to read and understand the contracts which they are asked to sign. The Spanish requirement can help fulfill this need.

There is a great void in requirements for Spanish language contracts which must be considered for legislation in the future. The Cooling-Off Period Rule affects only door-to-door sales, leaving unaffected contracts which are negotiated on the business premise. Even California's new "Spanish transactions" statute,²²⁷ fails to cover areas of importance to the non-English speaking Chicano consumer. Almost all transactions concerning real property, including home improvements contracts, are presently free from any existing Spanish requirement. There can be no rational basis for requiring a Spanish contract in door-to-door sales which involve small amounts of money and refusing to extend the Spanish requirement to include transactions concerning real property which by their very nature involve substantial amounts of money. The non-English speaking Chicano consumer should have the same information available to him as the English speaking consumer. That information should be distributed to the consumer in the language which he understands, especially when the transaction concerns a home, the average consumer's most significant purchase.

Hopefully in the very near future those states in the Southwest that have not yet promulgated any consumer legislation will do so, and those that have taken the initiative will include the Spanish requirement in all consumer transactions.

227. CAL. CIV. CODE § 1632 (West 1974) (effective July 1, 1976).

APPENDIX
NOTICE OF CANCELLATION

[enter date of transaction]

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE. AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [Name of seller], AT [address of seller's place of business] NOT LATER THAN MIDNIGHT OF _____.

(date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)