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Consumer Law in a Nutshell

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CONSUMER LAW
IN A NUTSHELL

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PREFACE

This book is designed to introduce the major problems and issues in the consumer law area and to summarize as clearly and concisely as possible the significant legal rules and principles that govern this area. Both the particulars of the rules that govern consumer transactions and the policies that underlie these rules are discussed. The emphasis is on what the law is as of August 1, 1980—not on what the law should be.

We have learned a lot about consumer law by writing this book. We hope that you too will learn about the subject by using this book as a place to begin (but not end) your study of consumer law.

Fayetteville, Arkansas
December, 1980

DAVID G. EPSTEIN
STEVE H. NICKLES
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CHAPTER I

INTRODUCTION TO AND OVERVIEW OF CONSUMER TRANSACTIONS LAW

A. WHAT IS CONSUMER TRANSACTIONS LAW?

This nutshell deals with consumer transactions, i.e., a man or woman obtaining credit, goods, real property or services for personal, family or household purposes. For example,

(1) Ward and June Cleaver obtain a $50,000 loan from Mayfield Savings and Loan to buy a home at 428 Mapleton.

(2) Shana Alexander buys a used hearse from Steven Weed for $500 to take ego trips in.

(3) Sluggo hires John Wayne Gacy to babysit with Mr. Bill for $5 an hour under a long-term contract.

The fact that a transaction is a "consumer transaction" does not usually cause a "general"
statute or common law rule to be inapplicable. The Mayfield Savings & Loan Mortgage on the Cleavers' house would be subject to the general real property recording requirements; the sale of the hearse would be governed by Article 2 of the Uniform Commercial Code; the John Wayne Gacy long-term employment contract would be within the Statute of Frauds.

The fact that a transaction is a "consumer transaction" does, however, often cause special consumer protection statutes to be applicable.

Consumer transactions law is primarily statutory law. While there are some reported cases that seem to recognize rights in consumers beyond those provided by statute, there is no body of consumer transactions case law. In these cases, the courts tend to be non-disclosive about the basis of the decision. Accordingly, this book will focus primarily on the consumer transaction statutes.

The Truth in Lending Act is perhaps the best known of the consumer transactions statutes. Truth in Lending is the official short title of Title I of the Consumer Credit Protection Act of 1968. It requires that creditors extending consumer credit disclose essential credit terms, especially the cost of credit, before the credit is extended. Truth in Lending includes disclosure in advertising as well as person-to-person transactions. Truth in Lending is considered infra at pages 80–207. (Truth in Lending was significantly amended in 1980. Most of the amendments do not affect this book.)

The Consumer Credit Protection Act of 1968 contained more than 200 provisions. Title II, labeled "Fractions," was intended to constitute a crime, which derives its threat from extortionate credit transactions. The targets are "loan sharks," those who charge usurious rates of interest, and those who use means of collection, such as Garnishment, for fraudulent purposes. Second, it prohibits the employer from discharging an employee because of a consumer transaction.

Title IV establishes a wide variety of provisions on Consumer Credit Protection of consumer finance. It included further recommendations for regulation and trade. The Consumer Credit Protection Act of 1968 was significantly amended in 1980. Most of the amendments do not affect this book.

Credit card provisions of the Consumer Credit Protection Act of 1968 were significantly amended in 1980. The former prohibited the use of credit cards and established cardholder liability for unauthorized use of the credit card.

Most of the amendments do not affect this book.
The amendments do not become effective until 1982. The Truth in Lending Simplification and Reform Act of 1980 is considered infra at pages 189–207).

The Consumer Credit Protection Act of 1968 contained more than the Truth in Lending provisions. Title II, labeled "Extortionate Credit Transactions," was intended as a blow against organized crime, which derives a substantial part of its income from extortionate credit transactions. The primary targets are "loan sharks," who extend credit at usurious rates of interest and then use force as a means of collection. Title III, Restrictions on Garnishment, has a dual impact. First, it limits the amount of earnings subject to garnishment by creditors. Second, it limits the employer's right to fire an employee because of garnishment.

Title IV established a bipartisan National Commission on Consumer Finance which investigated the consumer finance industry generally and recommended further reforms in the area of rate regulation and trade practices. From time to time references will be made to the NCCF's findings and recommendations.

Credit card provisions were added to the Consumer Credit Protection Act in both 1970 and 1974. The former prohibit the distribution of unauthorized cards and establish a fifty dollar limitation on cardholder liability for unauthorized use of his or her credit card. The 1974 credit card amendments subject credit card issuers to defenses arising out of
the transaction between a merchant and the cardholder. See pages 324-29, infra.

A title dealing with credit reporting agencies was also added to the Consumer Credit Protection Act in 1970. The Fair Credit Reporting Act regulates both the contents and confidentiality of the reports of “consumer reporting agencies” and provides for consumer access to such reports. When a consumer is denied credit, insurance, or employment in whole or in part because of information in a consumer report, the user of the consumer report must inform the consumer of this fact and must provide the consumer with the name and address of the consumer reporting agency that furnished the report. Whether or not adverse action was taken, the consumer has the right to obtain disclosure of the substance of the information about himself or herself in a reporting agency’s file. If the consumer takes issue with the information, the agency must reinvestigate and make any indicated changes. See pages 58-72, infra.

In 1974, the Equal Credit Opportunity Act and the Fair Credit Billing Act were added to the Consumer Credit Protection Act. The former prohibits discrimination based on sex or marital status in connection with extensions of credit. See pages 72-79, infra. The latter requires creditors to maintain procedures whereby consumers will be able to make complaints about billing errors. The

creditor will then be required to investigate the bill or correct it. See infra at pages 376-79.

In 1977, Congress added a section to the Fair Credit Billing Act that amended the Equal Credit Opportunity Act to require debt collectors, persons authorized to collect debt, to provide a statement to a consumer, at any time, that includes the following information: (1) the name and address of the collector, the person authorized to collect debt, or the person to whom the bill is being sent; (2) the amount of the bill and the amount of any finance charge; (3) the amount of any late charge; and (4) the due date for payment of the bill or any finance charge or late charge. The statement must be in a form that is clearly visible and readable. See supra at pages 595-96.

The Consumer Credit Protection Act is not the only federal law that regulates consumer transactions. Section 10 of the Federal Trade Commission Act requires the Commission to maintain a consumer protection rule for the prevention of fraud. The rule is to be drafted to protect the public interest and to promote a balance between the protection of consumers and the maintenance of competitive conditions in the marketplace. The rule must be based on the rule's ability to prevent fraud and to ensure that consumers are able to make informed decisions about their financial affairs. The rule must be updated periodically to reflect changes in the marketplace.

Title I of the Federal Trade Commission Act provides for the issuance of regulations by the Commission. The regulations may be issued without notice and without opportunity for public comment. The regulations must be based on the rule's ability to prevent fraud and to ensure that consumers are able to make informed decisions about their financial affairs. The regulations must be updated periodically to reflect changes in the marketplace.

Section 10 of the Fair Credit Billing Act prohibits creditors from charging a finance charge on a consumer's account for a transaction that does not involve a purchase or a sale. The section also prohibits creditors from charging a finance charge on a consumer's account for a transaction that involves a purchase or a sale but does not involve the use of credit. The section further prohibits creditors from charging a finance charge on a consumer's account for a transaction that involves the use of credit but does not involve the purchase or the sale of a product. The section provides that a creditor may charge a finance charge on a consumer's account for a transaction that involves the purchase or the sale of a product if the transaction is in connection with the consumer's credit account and if the transaction is not prohibited by law.
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creditor will then be required either to explain the bill or correct it. See pages 346–53, infra.

In 1977, Congress added the Fair Debt Collection Practices Act to the Consumer Credit Protection Act. FDCPA governs the conduct of only certain debt collectors—persons who regularly collect debts owed to someone else. Its provisions are considered infra at pages 376–79.

The Consumer Credit Protection Act, as amended, is not the only federal statute affecting consumer transactions. Section 5 of the Federal Trade Commission Act regulates deceptive or unfair trade practices. The role (or lack of role) of the FTC in consumer protection has been criticized by President Nixon’s son-in-law and others. Title II of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act significantly increased the FTC’s jurisdiction and power. The Federal Trade Commission consumer protection past, present, and potential are considered infra at pages 12–29.

Title I of the Magnuson-Moss Act provides minimum disclosure standards for written consumer product warranties. If a “consumer product firm” issues a written warranty, it must comply with the disclosure requirements of the Act as supplemented by rules promulgated by the FTC. For example, all written warranties of consumer products costing more than $10 must be designated as either “limited” or “full.” The meaning of “limited” and “full” and other requirements of
INTRODUCTION AND OVERVIEW

Magnuson-Moss are discussed infra at pages 282-89.

Still another important federal consumer protection statute is the Real Estate Settlements Procedure Act, discussed infra at pages 149-51. The primary purpose of this act is to protect buyers and sellers of residential real estate from unreasonably high settlement costs by requiring advance disclosure of such costs and by outlawing certain "kickbacks."

There are also state consumer protection statutes: rate regulation provisions, truth in lending disclosure statutes, deceptive trade practices acts, etc. The types and particulars of the statutes vary considerably from state to state. Two "uniform" statutes have been proposed. The National Conference of Commissioners on Uniform State Laws proposed a Uniform Consumer Credit Code in 1968 and a revised UCCC in 1974. Because of the expected opposition of creditors' groups and the unexpected opposition of consumers' groups, the Uniform Consumer Credit Code has only been adopted by nine states: Colorado, Idaho, Indiana, Iowa, Kansas, Maine, Oklahoma, Utah, and Wyoming. And, even in these states, the UCCC has been revised considerably.

The other Model Act, originally the National Consumer Act but revised in 1973 as the Model Consumer Credit Act, was promulgated by the National Consumer Law Center at Boston College. It is much more pro-consumer than the UCCC.

INTRODUCTION

Neither the National nor the Model Consumer Act has been enacted by a number of states, partly because of the expected and unexpected opposition of consumers' groups. Generally, the Uniform Commercial Code treat consumer transactions—transportation, sale, and consumer transactions—under 9-507. The UCC's greatest impact on unconscionable contracts—are not limited to these sections are under 271-73, 275-82.

B. HOW IS A CONSUMER ACTION BROUGHT?

1. PRELIMINARY CONSIDERATIONS

Under our adversarial system, the primary mechanic for a consumer to contest a commercial transaction is to hire an attorney and bring an action in court. A number of problems in consumer transactions are not suited to court procedures, and consumers are reluctant to go to court, due to the cost and time involved. Consumer grievances which are substantiated by the consumer may be compensated by a number of mechanisms have developed to provide at least the cost barrier to filing a court action.
Neither the National Consumer Act nor its successor has been enacted anywhere. The NCA has however influenced consumer protection legislation in a number of states, particularly Wisconsin.

Generally, the Uniform Commercial Code does not treat consumer transactions differently than commercial transactions. But see, sections 9-505 and 9-507. The UCC provisions that have had the greatest impact on consumer transactions—section 2-302 unconscionability and the warranty provisions—are not limited to consumer transactions. These sections are considered infra at pages 271-73, 275-82.

B. HOW IS CONSUMER TRANSACTIONS LAW ENFORCED?

1. PRIVATE ACTIONS

Under our adversary system of justice, the primary mechanism for redress is private litigation: hire an attorney and “sue the bastards.” There are a number of problems of access to private legal services in consumer disputes. Consumers are reluctant to go to court for a variety of reasons: Time, embarrassment, fear and cost, to cite a few. Consumer grievances often involve small amounts which are substantially less than the fees required to compensate members of the private bar. Mechanisms have developed which purport to offset at least the cost barrier to private litigation: free legal
services, small claims courts, recovery of attorney’s fees and class actions. The last two merit further consideration.

a. ATTORNEYS’ FEES

Attorney’s fees are not generally included in the costs of litigation taxed against the losing parties. In *Alyeska Pipeline Service Co. v. The Wilderness Society*, 421 U.S. 240 (1975), the Supreme Court reversed an award of attorney’s fees to environmentalist groups which had instituted litigation to prevent issuance of Government permits required for the construction of the trans-Alaska pipeline. The Court rejected the “private attorney general’s” approach adopted by the Court of Appeals. After *Alyeska*, it would seem that attorney’s fees will be recoverable in federal consumer credit litigation only where there is express statutory authorization.

A number of the recently enacted consumer protection statutes do expressly authorize recovery of “reasonable” attorney’s fees by consumers who are successful in asserting certain statutory rights. Note that only a successful party is entitled to recover attorney’s fees; the consumer must still gamble on winning his or her suit. Accordingly, it seems doubtful that the possibility of attorney’s fee awards in consumer cases will substantially increase the involvement of private attorneys.

Statutes providing for recovery of attorney’s fees by successful plaintiffs have raised the question of whether attorney’s fees will aid client who is not successful. There is a line of *Tennessee v. Williamson County*, decided in 1978, that policy considers that the attorney’s fees to a plaintiff’s cost-liability act. In the *Resell Loan of Mississippi*, 394 U.S. 100 (1969), such cases encouraging private counsel imposing the costs of the act.

b. CLASS ACTIONS

Class actions provided by small claims into suit of private counsel. Any case four among the representatives defendants provision requirement that the $10,000. The *Supreme v. Harris*, 394 U.S. 100 (1969), claims of class members the class members which they have a consumer claims act. *Snyder ruling eff*
recovery of attorney’s fees to the losing parties.

f. ATTORNEY’S FEES

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actions in federal courts to claims under Federal statutes that have waived the jurisdictional amount requirement.

The requirements of rule 23 of the Federal Rules of Civil Procedure must also be considered. In order for a consumer right to be maintained as a class action in federal court, it must meet all of the general criteria established in rule 23(a) and come within one of the three categories listed in rule 23(b).

Rule 23(a) requires that (1) there be a definable class of plaintiffs; (2) the class be too numerous to permit joinder; (3) there be common questions of law and fact and (4) representatives fairly and adequately protect the interests of the class. Rule 23(a) has rarely presented problems for the consumer plaintiff.

Rule 23(b) has presented problems for the consumer plaintiff. The Advisory Committee in its comments seem to place consumer class actions in rule 23(b)(3). Almost all law review writers agree. Accordingly, it is necessary to consider the criteria of rule 23(b)(3). It requires that a court determine not only that common questions of law or fact exist but also that such common questions predominate over individual questions. Additionally, rule 23(b)(3) requires a judicial determination that the class action be superior to other available methods for a fair resolution of the controversy.

Finally, rule 23(b)(3) “the best circumstances, including members who can represent the class with a fair effort.” The Supreme Court quoted language in its notice must be given to be identified with held that the representation the full costs of identifiable class. The Supreme Court in .U.S. 417 U.S. 174, rule 23(c)(2) and 23(c)(4) must define their budgets for resolution of the controversy.

A number of states’ class action provisions are based on rule 23(b)(3).

2. ADMINISTRATION

In part because the enforcement of the laws have assumed a major protection. A variety of agencies have a wide

A detailed consideration of federal and state consumer...
Finally, rule 23(c)(2) sets forth a special notice requirement, limited to class actions under rule 23 (b)(3) “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” The Supreme Court recently held that the quoted language means what it says; individual notice must be given to all class members who can be identified with reasonable effort. The Court held that the representatives of the class must pay the full costs of individual notice to 2 million readily identifiable class members in Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974). At the very least, rule 23(c)(2) and Eisen mean that consumer plaintiffs must define their classes within the limitation of their budgets for notice costs.

A number of states now have general or limited class action provisions; a number of such provisions are based on rule 23.

2. ADMINISTRATIVE ACTION

a. GENERAL

In part because of the problems with private enforcement of consumer rights, public agencies have assumed a major responsibility for consumer protection. A wide variety of federal and state agencies have a wide variety of responsibilities.

A detailed consideration of each of the federal and state consumer protection agencies is beyond the
b. FTC: AN ABBREVIATED CASE STUDY

The Federal Trade Commission was established in 1915 pursuant to the provisions of the Federal Trade Commission Act of 1914. There are five Commissioners, appointed by the President for terms of seven years. Not more than three Commissioners can be members of the same political party.

Since its creation, the FTC has been given enforcement responsibilities by a number of statutes. A list of these statutes is set out in S. Oppenheim and G. Weston, Unfair Trade Practices and Consumer Protection 596–598 (3d ed. 1974). The focal point of the FTC’s consumer protection responsibility, is in the Federal Trade Commission Act itself—section 5 of the FTC Act.

As originally enacted in 1914, section 5 prescribed unfair methods of competition in commerce. In 1938, section 5 was amended to extend the jurisdiction of the FTC to cover “unfair or deceptive acts or practices in commerce”. The phrase “in commerce” was held to confer less than Constitutionally permissible through the sale of interstate commodities. See Federal Trade Com’n v. Bunte Bros., 312 U.S. 344 (1941).

Neither ordinary law nor the plain-english language of the Act itself clearly indicated that the Federal Trade Commission could regulate interstate commerce. In several cases, the sales by Bunte Bros. were of the sort that the Illinois Commerce Commission, in order to protect the state’s public policy, has regulated as unfair, although not explicitly. * * *

As a result of this clear manifestation of state policy, the FTC was prohibited from regulating commerce. Since Bunte Bros. v. Illinois, the Commerce Clause has been clearer manifestly a matter of federal, not state, concern. See, e.g., Moss v. United States, 484 F.2d 1124 (2d Cir. 1973).
than Constitutionally permissible jurisdiction over interstate commerce. In FTC v. Bunte Bros., Inc., 312 U.S. 349 (1941), the Commission charged Bunte with violating section 5 of the FTC Act in selling, in Illinois, "break and take" packages in which the amount received by the purchaser is dependent on chance. The Supreme Court held that the Commission lacked jurisdiction on the facts of the case. "The 'commerce' in which these methods are barred is interstate commerce. Neither ordinary English speech nor the considered language of legislation would aptly describe the sales by Bunte Brothers of its 'break and take' assortment in Illinois as 'using unfair methods of competition in [interstate] commerce.' When in order to protect interstate commerce Congress has regulated activities which in isolation are merely local, it has normally conveyed its purpose explicitly. * * * This case presents the narrow question of what Congress did, not what it could do. And we merely hold that to read 'unfair methods of competition in [interstate] commerce' as though it meant 'unfair methods of competition in any way affecting interstate commerce,' requires, in view of all the relevant considerations, much clearer manifestations of intention than Congress has furnished."

Since Bunte Bros., Congress has furnished a much clearer manifestation of intention. The Magnuson-Moss Warranty-FTC Improvement Act amends
section 5 so that it now reads: “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.” According to the Senate Commerce Committee Report, the expansion of the Commission’s jurisdiction is “intended to permit more effective policing of the market place by bringing within reach practices which are unfair or deceptive and which, while local in character, nevertheless have an adverse impact upon interstate commerce.”

What is an “unfair or deceptive act or practice”? The FTC has long issued interpretative “industry guides” (also known as trade practice rules). These are set out in Subchapter B of Title 16 of the Code of Federal Regulations. These guides or rules describe in lay language acts or practices in a particular industry that the Commission considers to be a violation of section 5’s prohibition of “unfair or deceptive acts or practices”. These interpretations do not have the force and effect of law.

In 1962, the Commission decided to enact “trade regulation rules” that delineate specific practices which the Commission considers to be prescribed by the FTC Act. These rules are set in Subchapter D of Title 16. While industry guides are merely interpretative, violations of trade regulation rules are considered violations of the statutory provision from which the rule is derived.
The following example illustrates the difference between industry guides and trade regulation rules. Assume that the Commission issues a trade regulation requiring that all aspirin advertisement include the statement “ALL ASPIRIN IS ALIKE.” If the FTC decided to prosecute a violation of the rule, the complaint would charge a failure to include the required legend rather than allege a “deceptive practice.” All the Commission would have to show was the absence of the required language; it would not have to prove the conclusion which underlies this hypothetical rule that the omission of the required language is a deceptive act. If on the other hand, the Commission merely issues an industry guide on aspirin advertising, an action by the FTC would have to be based on violation of the statute, not violation of the guide. The Commission would have to prove the commission of a deceptive act or practice rather than merely a violation of the industry guide.

The power of the FTC to promulgate trade regulation rules was tested and upheld in National Petroleum Refiners Ass’n v. FTC, 482 F.2d 672 (D.C.Cir. 1973). The trade regulation rule there involved provided that failure to post octane ratings on service station gasoline pumps would be a “deceptive practice” in violation of section 5. The court found that the FTC substantive rule-making power was consistent with the plain lan-
The Magnuson-Moss Warranty-Federal Trade Commission Improvement Act confirms the Commission's authority to issue substantive rules defining unfair or deceptive acts or practices and details the procedures the Commission is to observe in promulgating such rules.*

Magnuson-Moss also significantly increased the FTC's remedies. Until 1973 the only procedure available for enforcement of section 5(a) of the Act was the cease and desist order. Under this procedure whenever the FTC has reason to believe that any person is violating section 5(a) and that action by the Commission would be in the public interest it may issue a complaint and notice of hearing. In most instances before a complaint is issued, however, the party involved is given an opportunity to “consent” to a formal “cease and desist” order or it may be permitted to agree informally to discontinue the practice. “Consent” to such an order refers to future practices. It does not admit of violations in the past. In the event the case is not settled by a consent order or an informal agreement, a complaint is issued and a public hearing is held before an administrat

*For a detailed consideration of the procedure, see Kintner & Smith, The Emergence of the Federal Trade Commission as a Formidable Consumer Protection Agency, 26 Mercer L.Rev. 651, 675–70 (1975), a very helpful article.
tive law judge of the FTC. This is a trial type hearing with all of the attendant safeguards provided for in the administrative procedure provisions of sections 556 and 557 of Title 5, United States Code.

After taking testimony the administrative law judge drafts an initial decision for the Commission. If the Commission is of the opinion based on the record of the hearing that the act or practice in question is violative of section 5(a) it issues an order directing the party charged to "cease and desist" the act or practice. Unless the party subject to cease and desist order files a petition for review with an appropriate Court of Appeals of the United States the cease and desist order becomes final on the 60th day after it is served. In the event review of a cease and desist order is sought the order of the Commission does not become final until affirmance is obtained from the Court of Appeals or by the Supreme Court of the United States if taken to that Court for review. Some cases have taken years from the filing of the original complaint to a cease and desist order becoming final.

It was only the violation of a cease and desist order that could be punished. No penalty for the first violation—the conduct that gave rise to the cease and desist order. And, the sanction for the second violation—the violation of a cease and desist order was only a $5,000 civil penalty.
Ch. I INTRODUCTION AND OVERVIEW

In 1969, “Nader's Raiders” published a very critical report of the FTC's consumer protection efforts. Shortly thereafter an American Bar Association Special Commission studied the FTC. Although couched in somewhat more subdued terms than the Nader book, the report of the ABA's Special Commission supported the findings of Nader's Raiders. Both reports noted the need for additional statutory authority to permit the FTC to carry out its consumer protection responsibilities.

Both the Nader and ABA reports recommended that the FTC be empowered to obtain preliminary injunctions against unfair or deceptive acts or practices which are unfair or deceptive to consumers. This authority was granted by section 408 of the Alaska Pipeline Act, which authorized the FTC to obtain temporary restraining orders and preliminary injunctions of violations or threatened violations of any provision of law administered by the Commission. In addition, section 408 increased the penalty for violation of cease and desist orders from $5,000 to $10,000 and gave the Commission the right to represent itself through its own attorneys in civil actions if, after notifying the Attorney General and giving him 10 days to take the action proposed by the Commission, the Attorney General failed to do so.

Even after adopting the Trans-Alaska Oil Pipeline Act, Congress continued to consider broader amendments to the Commission's authorization field. Early into the law the Federal Trade Commission Act significantly increased the FTC's authority to promote competition and protect consumers.

“The Act makes clear that the Commission is the focal point for protecting consumers against deception, fraud, and unfairness in commerce.” B. Clark, Consumer Credit Casebook. The Act confirms the FTC's role to promulgate trade rules and significantly increases its weapons in the consumer protection field.

Remember, until the second violation, the civil penalties for corporations which violate the Act that had been previously violated are: (1) knowing violation and (2) knowing violation order issued against a second violation prohibiting advertising by professional drivers.
amendments to the FTC that would buttress the Commission's authority in the consumer protection field. Early in 1975, the President signed into the law the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act.

"The Act makes a number of far-reaching changes which greatly increase the power of the FTC to become an important source of consumer credit law," B. Clark & J. Fonseca, Handling Consumer Credit Cases § 62 (1979). As already noted, the Act confirms the Commission's authority to promulgate trade regulation rules. Additionally, the Act significantly increases the FTC's arsenal of weapons in the consumer protection field.

Remember, until 1975, no civil penalties until the second violation. The FTC could only recover civil penalties from a person, partnership or corporation which violated a cease and desist order that had been previously issued against it. Section 5(m)(1) of the FTC Act as amended imposes civil penalties for first violations in two instances: (1) knowing violation of a trade regulation rule and (2) knowing violation of a cease and desist order issued against another person. To illustrate the second situation, if the FTC issues a cease and desist order directed at General Motors prohibiting advertising of mileage tests performed by professional drivers without disclosing that the drivers were professionals, the FTC could seek
a civil penalty against Ford if it advertised mileage test results without making such a disclosure.

Section 19 of the newly amended Act also authorizes the FTC in two situations to seek damages for persons injured by unfair or deceptive acts or practices. The Commission may bring civil actions in federal or state court in order to obtain redress for consumers or other persons, partnerships or corporations which have been injured (1) by violations of existing Commission trade regulation rules defining unfair or deceptive acts or practices, or (2) by persons violating the FTC Act, where the violation resulted in a cease and desist order and where a reasonable man would have known under the circumstances that the act or practice was dishonest or fraudulent. The phrase "dishonest or fraudulent" is not defined in the Act. It would seem to be a stricter standard than "unfair or deceptive." Otherwise, Congress would not have added this new test.

An action under section 19 for redress does not prevent the Commission from also bringing an action under section 5(m) for a civil penalty. Similarly, civil penalty actions brought by the FTC under section 5(m) do not affect the Commission's authority to seek redress under section 19. Thus, for example, if a person violates a trade regulation rule defining an unfair or deceptive act or practice with constructive knowledge that
Under the Act, it authorized attorneys to seek damages against unfair or deceptive practices. The Commission may bring suit in court in order to prevent or cure such practices. Persons violating the act also brought an action in federal court for civil penalties and for redress of the injury resulting from the rule violation.