State of Maine

DEPARTMENT OF ATTORNEY GENERAL

M E M O R A N D U M

To: Stephen L. Wessler, Deputy Attorney General

From: Laurie N. Simpson, Research Assistant

Date: October 15, 1991

Subject: Electrolux

On October 10, 1991, this office received a telephone call from Jean Maynard of Electrolux (800-892-5678, x 249). Maynard told me she was relatively new to her position and had recently realized that Electrolux was supposed to file a report with this office in September pursuant to a 1985 Consent Decree. The Consent Decree addresses (1) failure to provide notice of the right to cure; (2) repossession prior to end of cure; (3) failure to calculate correctly unearned finance charges; (4) failure to refund proceeds from sale of repossessed collateral; (5) failure to disclose annual percentage rate; (6) failure to disclose total sale price; (7) failure to provide notice of resale. Maynard wondered whether there would be a problem because she was filing the report one month late. I told Maynard that it was fine that her report would be filed late, and that she should direct the report to my attention.

Her call and my subsequent review of the 1985 Consent Decree prompted me to check whether this office had received any consumer complaints about Electrolux in the last few years. The computer intake log shows that we have received inquiries from 19 consumers about Electrolux since January 1, 1986. The inquiries fall in the following categories: misrepresentation, improper billing, failure to perform adequately, failure to repair, defective product, failure to deliver, failure to provide refund, inferior work, and theft. Complaint petition were sent to 7 of the consumers. Two consumer complaints about improper billing were referred to the Bureau of Consumer Credit Protection.

Please let me know if you want me to follow-up further on these complaints to see whether Electrolux may have violated the Consent Decree.

LNS/kesp

10/22/85

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV85-511

STATE OF MAINE, BY AND THROUGH JAMES E. TIERNEY, ATTORNEY GENERAL and ROBERT A. BURGESS, Superintendent, Bureau of Consumer Credit Protection, Hallowell, County of Kennebec, State of Maine,	)	
Plaintiffs	)	
v.	)	CONSENT DECREE AND ORDER
ELECTROLUX CORPORATION, a Delaware Corporation, doing business in Augusta, County of Kennebec, State of Maine,	)	
Defendant	)	

The State of Maine and the Superintendent of the Bureau of Consumer Credit Protection ("Plaintiffs"), having filed their Complaint and Electrolux Corporation ("Defendant"), having consented to the entry of this Consent Decree and Order ("Order") without trial or adjudication on any issues of fact or law;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon the consent of the above-named parties, it is hereby Ordered, Adjudged, and Decreed as follows:

1. This Court has jurisdiction over Defendant and the subject matter of this action, pursuant to 5 M.R.S.A. § 209 (Supp. 1984); 4 M.R.S.A. § 105 (Supp. 1984); 14 M.R.S.A. § 6051 (1980) and pursuant to the Maine Consumer Credit Code, 9-A M.R.S.A. §§ 6-110, 6-111 and 6-113 (1980 & Supp. 1984).

2. The Complaint states a claim upon which relief may be granted against Defendant under the Maine Consumer Credit Code, 9-A M.R.S.A. §§ 1-101 et seq. (1980 & Supp. 1984).

3. Defendant admits that it has engaged in acts and practices, as alleged in the Complaint in this matter (which Complaint is incorporated herein by reference) which acts and practices constitute violations of the Maine Consumer Credit Code as more fully set forth in said Complaint.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Maine Rules of Civil Procedure.

5. Defendant waives any right it might have to appeal from this Order.

6. Defendant states that it enters into this Order voluntarily and that no promise or threat of any kind has been made by the Plaintiffs or their representatives to induce it to enter into this Order.

7. Plaintiffs and Defendant agree that this Order may be presented to the Court for entry and signature without further notice.

8. Defendant, and its affiliates, agents, servants and employees are enjoined permanently from:

A. Failing to provide its customers with Notices of the Right to Cure in compliance with 9-A M.R.S.A. §§ 5-110 and 5-111 (1980).

B. Repossessing collateral from its customers prior to the expiration of the Right to Cure period in compliance with 9-A M.R.S.A. § 5-111 (1980).

C. Failing to use the actuarial method to calculate unearned finance charges deducted from the debt balance due to Defendant by Defendant's customers following default, in compliance with 11 M.R.S.A. § 9-504(1) (Supp. 1984) and 9-A M.R.S.A. § 2-510(3) (1980 & Supp. 1984).

D. Failing to refund surplus proceeds realized from sale of repossessed collateral in compliance with the Assurance of Discontinuance dated October 1, 1981 and 11 M.R.S.A. § 9-504(1) (Supp. 1984).

E. Failing to provide Notice of Resale prior to selling repossessed collateral in compliance with 11 M.R.S.A. § 9-504(3) (Supp. 1984) provided, however, that these Notices may be given orally.

E. Failing to disclose the annual percentage rate of interest with regard to its installment sales contracts in compliance with 9-A M.R.S.A. §§ 8-103(2) and 8-201 (1980 & Supp. 1984) provided, however, that nothing herein is

intended to preclude or limit Defendant's right to cure its failure to disclose pursuant to 9-A M.R.S.A. § 8-208(2) (1980 & Supp. 1984).

F. Failing to disclose the total sales price in its installment sales contracts in compliance with 9-A M.R.S.A. §§ 8-103(2) and 8-201 (1980 & Supp. 1984) provided, however, that nothing herein is intended to preclude or limit Defendant's right to cure its failure to disclose pursuant to 9-A M.R.S.A. § 8-208(2) (1980 & Supp. 1984).

9. Defendant is ordered to pay the Plaintiffs, in complete satisfaction of the claims asserted against it in its Complaint, forty thousand ($40,000) dollars by two certified checks with ninety (90) days of the entry of this Order. One certified check, in the amount of $1204.68, shall be made payable to the Bureau of Consumer Credit Protection. The other check, in the amount of $38,795.32, shall be made payable to the State of Maine.

10. Defendant is ordered to make restitution of all charges collected or held in violation of the laws cited in subparagraphs 8(E) and 8(F) of this Order. Customers to whom restitution is due shall be agreed upon by Plaintiff and Defendant; restitution shall be made within ninety (90) days from the date of this Order. In the event that any restitution checks are returned "undeliverable," Defendant may deposit such checks in its account.

11. Defendant is ordered to comply with all the provisions of the Assurance of Discontinuance dated October 1, 1981 which is attached hereto and incorporated herein as Exhibit "A" except as modified in this Consent Decree and Order or the written statement as set forth at paragraph 12 below.

12. Defendant is ordered to implement a program for a minimum six (6) year period from the date hereof, to insure that its agents, servants and employees will not engage in conduct in violation of the Maine Consumer Credit Code. This program shall include, but need not be limited to, the following:

A. Within sixty (60) days from the date hereof, Defendant shall develop, with the advice and consent of the Bureau of Consumer Credit Protection, a compliance program to prevent further violations of the Consumer Credit Code. Defendant shall forward a written statement describing the compliance program to the Superintendent of the Bureau of Consumer Credit Protection ("Superintendent") for review and approval, whose approval shall not be unreasonably withheld. This statement may be amended at any time upon written approval of the Defendant and the Bureau.

B. Within fifteen (15) days from receiving comments from the Superintendent, Defendant shall edit the statement as necessary to obtain the approval of the Superintendent for this statement.

C. Within thirty (30) days from the date of approval of the statement by the Superintendent, Defendant shall implement the compliance program.

13. Defendant is ordered to require its field personnel promptly to investigate all complaints which are brought to the attention of the branch, executive or treasury offices of Defendant concerning Defendant's consumer credit problems. Plaintiffs shall use their best efforts to bring to Defendant's attention all future consumer credit complaints against Defendant which Plaintiffs may receive by promptly sending copies thereof to Defendant's Executive Office: Attention General Counsel. Defendant shall complete a brief written report concerning each complaint which includes the name, address and phone number of the complainant, the name of the sales person, the nature of the complaint, the manner of the investigation, the conclusion reached by Defendant following the investigation, the remedial measures taken with regard to the consumer, if any, and the disciplinary measures against the sales person, if any. These reports shall be retained for at least five (5) years after the date of each report and shall be promptly made available to state agents upon written request.

14. Within ninety (90) days of the date hereof, and each anniversary of the date hereof for the next six (6) years, Defendant is ordered to submit to the Superintendent a written report setting forth in detail the manner and form in which Defendant is complying or has complied with this Order, together with such other information relating to compliance as may be requested by the State or its state agents.

15. The effect of this Order shall not exceed six (6) years from the date hereof, except as they relate to the record retention requirements.

DATED: 10/22/85

Sitting As JUSTICE, SUPERIOR COURT

DATED: Oct. 4, 1985

DENNIS J. HARNISH
Assistant Attorney General
State House Station #6
Augusta, ME 04333
ATTORNEY FOR THE PLAINTIFFS

DATED: Oct. 3, 1985

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Electrolux Corporation
3003 Summer Street
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EXHIBIT A

ASSURANCE OF DISCONTINUANCE

RE: Electrolux Corporation

WHEREAS, the Bureau of Consumer Protection conducted an examination of the Presque Isle office of Electrolux Corporation ("Electrolux") on January 12, 1981, the Augusta office on April 21, 1981, and the offices in Brewer, Skowhegan, Portland and Auburn on June 12, 1981; and,

WHEREAS, a pattern of conduct was discovered pertaining to the following provisions of The Maine Consumer Credit Code (9-A M.R.S.A.) and Uniform Commercial Code (11 M.R.S.A.):

(1) failure to send the notice of right to cure required by 9-A M.R.S.A. §5-111 and failure to wait until the end of the cure period prior to repossession;

(2) failure to credit the consumer whose collateral has been repossessed with surplus funds realized from the resale as required by 11 M.R.S.A. §9-504 and unearned finance charges as required by 9-A M.R.S.A. §2-510; and

(3) failure to send a notice of resale of repossessed collateral as required by 11 M.R.S.A. §9-504 (3).

WHEREAS, Electrolux acknowledges these violations;

NOW, THEREFORE, be it resolved that:

(1) the Bureau will notify all consumers whose repossessions occurred after March 28, 1980, and who failed to receive a "notice of right to cure default" of their rights and remedies pursuant to 9-A M.R.S.A. §5-201. Electrolux will adopt a system to insure documentation of the "notice of right to cure" and submit a

description of that documentation which shall be Appendix A of this Assurance.

(2) Electrolux will reimburse all consumers listed in the Report of Examination for each office who failed to receive a rebate of unearned finance charges and/or a rebate of surplus funds obtained in the resale of repossessed collateral. Electrolux will search its records of repossessions occurring in the Augusta office since January 1, 1980, and identify both surpluses and unearned finance charges. In all cases, documentation of compliance by Electrolux (including copies of letters and checks to affected consumers) with this item shall be provided to the Bureau by September 30, 1981.

(3) should Electrolux decide to implement the allowable charges described in 11 M.R.S.A. §9-504 for repossession and resale, Electrolux shall document the categories and amounts of charges on each consumer's account. A description of the manner in which Electrolux will comply with this item shall be attached as Appendix B to this Assurance.

(4) Electrolux will not repossess collateral prior to the expiration of the notice of right to cure default pursuant to 9-A M.R.S.A. §5-11 or the notice of resale provision of 11 M.R.S.A. §9-504(3).

Barbara R. Alexander

Barbara R. Alexander, Superintendent
Bureau of Consumer Protection

Dated: 10/1/81

Alexander N. Yeaman

Electrolux Corporation

Dated: 9/25/81

APPENDIX A

I. Compliance Procedures - Right to Cure Letter and Notification

In an effort to insure the highest possible compliance with the requirements of 9-A M.R.S.A. §5-110 (Notice of Consumer's Right to Cure), Electrolux Corporation has undertaken the following steps:

1. We have elected to comply with Section 5.110 (B), to wit; the required notice is being sent by ordinary mail but a Post Office Department certificate of mailing to the consumer is being retained in all instances.
2. Memos setting forth compliance requirements are being regularly sent to all branch managers within the State of Maine; particularly whenever a branch management personnel change occurs.
3. Where a default situation exists, the branch manager notifies our regional treasury organization which insures that the proper Section 5-110 (2) notice is sent to the consumer.
4. As a check on our level of compliance, the regional treasury copy of all repossession vouchers (branch documentation of an actual repossession) are being checked against the post office certificates to insure that proper notice was given and the grace period has lapsed.
5. As a regular aspect of the periodic internal audits of our branches, cross-checks between post office certificate lists and repossession voucher lists kept in the branch are now being made.

In any instance in which we learn that the requisite notice has not been sent, immediate, corrective steps will be taken in terms of notification of the consumer and reinstatement of the statutory period for the Consumer's Right to Cure. Additionally, the lapse in compliance will be brought to the attention of both the branch manager's superiors and my office. Any branch manager guilty of repetitive lapses of compliance will be removed. Because we are aware of the high rate of turnover in our own personnel, I am having a poster prepared for placement in the branch as a reminder to the cashier and branch manager. It will set forth the requirements of both Right to Cure time periods and Right to Redeem provisions applicable prior to resale of repossessed goods under Maine law. (Exhibit A-1)

If your office desires copies of representative proof of mailing certificates or instructional memos sent to the field, we will be happy to provide same. However, as this is an area of ongoing compliance, I did not see their value at this time.

II. As an additional part of Appendix A, please find enclosed copies of letters and checks to all consumers listed in your examination reports for each of our offices. Each listed individual who failed to receive a rebate of unearned finance charges and/or a rebate of surplus funds obtained in the resale of the repossessed collateral has now been issued the appropriate refund. (Exhibit A-2) Additonally, similar letter and check copies are enclosed reflecting an internal audit of the record of repossessions occurring in our Augusta, Maine, office covering the period from January, 1980, to date. (Exhibit A-3).

III. As was the case with the Presque Isle examination, a number of refund checks have been returned to us as "Address Unknown" or "Moved and No Forwarding Address". Copies of those individuals' letters and checks are set forth as a separate Exhibit A-4 in this Appendix. We propose to redeposit those checks to our own account. In the event that either Electrolux, or your Bureau is able to locate any of these parties, we will reissue and remail same.

Exhibit A-1

N O T I C E

1. After a consumer is one (1) month and ten (10) days late in making a payment, you may request a Notice of Right to Cure letter from Springfield Treasury.

2. You must not repossess any equipment until twenty-five (25) days after the date the Right to Cure letter is sent to the customer.

3. After repossession, the customer must be notified in writing of our intent to resell the repossessed unit thirty (30) days after the date of repossession.

I. Electrolux Corporation has decided to implement the allowable charges described in 11 M.R.S.A. §9504 for repossession and resale. In furtherance of this decision, we have modified the pertinent contract language to eliminate any question in the mind of the consumer. We have added a subsection (d) to the conditions of sale which states "that seller may deduct his expenses incurred in retaking, preparing for resale and reselling such Electrolux products" from amounts paid previously by the consumer.

II. In order to assure the return of any surplus of unearned finance charge and/or resale price in excess of the bad debt balance, we have instituted revised forms and procedures as follows:

1. The repossession voucher, a copy of which is filed by the branch each time a machine is repossessed, has been modified to capture the information necessary to document expenses incurred in retaking and preparing for resale of such repossessed unit. A copy of the modified form is attached hereto as Exhibit B-1 with the requisite sections highlighted. The revision provides a checklist of the twelve (12) most frequently required replacement parts and space for up to six (6) additional parts. It provides for expenses incurred for parts which are replaced due to damage as well as those parts not recovered from the customer although originally sold under the contract.

When the Treasury receives the repossession voucher, it will total the items of expense and enter that figure as a charge against the resale value of the unit on the customer's account history. In this way, we will be able to document expenses incurred, and assure an accurate computation of their use as an offset against any rebate due a customer on a repossessed unit.

2. In order to effectively insure compliance and issuance of rebates when due, it has been necessary for Electrolux Corporation to modify its master accounts ledger and to establish a ceiling price on repossessed machines. Additionally, we have established a repossession rebate program for our computer system which has been keyed to "flag" accounts in which rebates are due. The computation undertaken is as follows:

The resale value of the unit (predetermined ceiling value) and the resale value of additional parts recovered are added together to provide a total resale value. It should be noted that this does not reflect the actual resale value of the unit, but rather, the highest possible resale value of the unit under our price ceiling. From this total resale value, our documented expenses incurred in retaking and preparing for resale of the machine are subtracted to create a net resale income figure.

The full outstanding bad debt balance as of the date of repossession is reduced by the amount of unearned finance charge resulting in a net bad debt balance. Finally, the net bad debt balance is subtracted from the net resale income figure and if the resulting figure is a positive number, a rebate is due the customer. In all instances in which a positive number is derived, the account is "flagged" by the computer and brought to the attention of our accounting staff. (See Exhibit B-2)

In those instances in which a rebate appears due and owing, the actual resale contract will be checked when it comes in from the branch and the above-described calculation will be made on the basis of actual resale price. In this way we can be sure that an accurate rebate, when due, is issued to the customer promptly.

REPOSSESSION VOUCHER

TREASURY OFFICE COPY

(1)			
NO. (2)	CONTRACT NO. (3)	VOUCHER NO. (4)	DATE (5)
OMER'S NAME (6)		SALES REPRESENTATIVE (7)	
STOMER'S ADDRESS (6)		DATE OF SALE (8)	

LL IN THIS SECTION FOR REPOSSESSION OF MACHINE WITH PARTS

(9)	(10) NEW OR REPO	(11)
DEL		MACH. NO.
DEL		MACH. NO.
DEL		MACH. NO.

LES TAX $ (12) DOWN PAYMENT $ (13)

POSSESSING ONE OR TWO MACHINES OF A TRIPLE SALE $ (14)

BE CREDITED TO ACCOUNT.

FILL IN THIS SECTION FOR PARTIAL REPOSSESSION OF PARTS ONLY. LIST PARTS REPOSSESSED FOR CREDIT ON ACCOUNT:

PART	PRICE

CHECK (√) PART REPLACED OR SOLD BUT NOT RECOVERED

- ☐ Power Nozzle
- ☐ Rug & Floor Tool
- ☐ OTHER-LIST PAR
- ☐ Sheath
- ☐ Electric Hose
- ☐ Steel Wand
- ☐ Aluminum Wand
- ☐ Rug Washer
- ☐ Dust Brush
- ☐ Scrubbing Pads
- ☐ Narrow Space Tool
- ☐ Carpet Beautifier
- ☐ Brush Set

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____

DO NOT WRITE BELOW THIS LINE

'B' COL. #1 FOR FULL REPO | TREASURY USE ONLY | REFER TO FIELD 62 TO 67 FOR ALL OTHER ADJUSTMENTS

	BRANCH AND CONTRACT NUMBER									VOUCHER NO.				MACHINE UNITS MOD.	NEW	REPO	MOD.	NEW	REPO	MOD.	NEW	REPO	MOD.	NEW	REPO
2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33

PN	CB	RW	'D' – FINANCE CHG. / 'E' – F/C ALLOWED	'B' 'D' – TAX REC. / 'C' 'E' – TAX RECOVERED	POSTING DATE	CODE 'D' – PARTIAL CREDIT / CODE 'E' – PARTIAL CREDIT / CODE 'C' – ORIG. CHG.	Total Dollars Parts Replaced or Sold But Not Recovered	DA UNI
41	42 43	44 45	46 47 48 49 50	51 52 53 54	55 56 57 58 59 60	61 62 63 64 65 66 67	68 69 70 71 72	73

RM BR108 REV. 11-77

ALL CHARGE OFF REQUESTS MUST BE SENT TO YOUR DIV. MGR. F APPROVAL ON LETTERHEAD BEFORE FORWARDING TO TREASU COLLECTION DEPT.

COLLECTION DEPARTMENT

Exhibit B-2

Repossession Rebate Calculation Form

Name John Smith

Address 4 Grey Drive, Booth Bay

Account # 4831-17504

Sale/Date 7/30/80

Repo/Date 2/28/81

1st Pay Date 8/30/80 Mnthly Paymt $ 35.00

Branch Presque Isle

Repo Voucher # 48013

Fin/Chge $ 42.10

Model XLX	Resale Value $ 306.00		
Additional Parts	Resale Value $ 75.00		
	Total Resale Value		$ 381.00
Itemization of Expenses		$ 34.74	
		$ 14.30	
	Total Expense (-)		$ 49.04
	Net Resale Income		$ 331.96
Bad Debt Balance		$ 232.10	
Unearned Finance Charge (-)		$ 12.95	
	Net Bad Debt Balance (-)		$ 219.15
Customer Rebate			$ 112.18

Exhibit B-2

Repossession Rebate Calculation Form

Name_____

Address_____

Account #_____

Sale/Date_____

Repo/Date_____

1st Pay Date_____ Mnthly Paymt $_____

Branch_____

Repo Voucher #_____

Fin/Chge $_____

Model_____ Resale Value $_____

Additional Parts Resale Value $_____

Total Resale Value $_____

Itemization of Expenses $_____

$_____

Total Expense (-) $_____

Net Resale Income $_____

Bad Debt Balance $_____

Unearned Finance Charge (-) $_____

Net Bad Debt Balance (-) $_____

Customer Rebate $_____

10/4/85

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV85-511

STATE OF MAINE, BY AND THROUGH JAMES E. TIERNEY, ATTORNEY GENERAL and ROBERT A. BURGESS, Superintendent, Bureau of Consumer Credit Protection, Hallowell, County of Kennebec, State of Maine,	)	
Plaintiff	)	
v.	)	COMPLAINT
ELECTROLUX CORPORATION, a Delaware Corporation, doing business in Augusta, County of Kennebec, State of Maine,	)	
Defendant	)	

INTRODUCTION

1. This is an action for injunctive relief, restitution and civil penalties under the Maine Consumer Credit Code, 9-A M.R.S.A. §§ 1-101 to 8-404 (1980 & Supp. 1984) (hereinafter the "Code") and under the Maine Unfair Trade Practices Act (hereinafter "Act"), 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984).

PARTIES

2. Plaintiff, State of Maine, is a sovereign State and commences this action through its Attorney General pursuant to the powers vested in him by the common law and 5 M.R.S.A. § 191-192 (1979) as the State's chief law enforcement officer and also pursuant to 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984), the Maine Unfair Trade Practices Act. This action is also commenced on behalf of Robert A. Burgess, the Superintendent of the Bureau of Consumer Credit Protection (hereinafter the "Bureau"), who is the Administrator of the Code (hereinafter the "Administrator") and who has authority pursuant to 9-A M.R.S.A. §§ 6-110, 6-111 and 6-113 (1980 & Supp. 1984), through the Attorney General, to seek injunctive relief, and civil penalties and restitution for violations of the Code.

3. Defendant, Electrolux Corporation, is a Delaware corporation having its principal place of business at 3003 Summer Street in Stamford, Connecticut. Defendant's Maine business includes the sale and repair of new and used vacuum cleaners and parts thereto. Defendant does business in the State of Maine through offices located in Presque Isle, Augusta, Brewer, Skowhegan, Rockland, Brunswick, Lincoln, Portland and Auburn, Maine. Defendant, in connection with the sale of vacuum cleaners, engages in consumer credit transactions in the State of Maine, which transactions are within the scope of the Code.

JURISDICTION

4. This Court has jurisdiction over this matter pursuant to 4 M.R.S.A. § 105 (Supp. 1984) ("Superior Court Jurisdiction and Powers"), 14 M.R.S.A. § 6051(13) (1980) ("Equity Proceedings"), and pursuant to the Maine Consumer Credit Code, 9-A M.R.S.A. §§ 6-110, 6-111 and 6-113 (1980 & Supp. 1984).

STATUTORY BACKGROUND

5. Pursuant to § 6-110 of the Maine Consumer Credit Code ("Code"), the Administrator, through the Attorney General, may bring a civil action to restrain any person from violating the Code, to reform and rescind contracts between creditors and debtors and to award the Administrator his reasonable costs of investigation and attorneys' fees.

6. Pursuant to § 6-111(1)(C) of the Code, the Administrator, through the Attorney General, may bring a civil action to restrain a creditor from engaging in a course of fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions.

7. Pursuant to § 6-113(1) of the Code, the Court is empowered to order Defendant to refund any charges which arise from violations of the Code to its customers and to reform illegal contracts to conform to the Code or to rescind those contracts.

8. Pursuant to § 6-109 of the Code, the Administrator may accept an assurance in writing from a person who has engaged in conduct violative of the Code which conduct could be the subject of an administrative order or a court ordered injunction; pursuant to such an assurance, a creditor agrees to discontinue practices violative of the Code. A subsequent violation of such an assurance of discontinuance is, itself, a violation of the Code.

9. Pursuant to § 6-113(2) of the Code, the Court is empowered to assess a civil penalty of not more than $5,000 for each violation of an Assurance of Discontinuance as well as a separate civil penalty of not more than $5,000 for each group of repeated violations of the Code not necessarily contained within an Assurance of Discontinuance.

10. Pursuant to 11 M.R.S.A. § 9-504(1) (1964 & Supp. 1984) of the Maine Uniform Commercial Code (UCC), a secured party, after default by a debtor, may sell any and all collateral securing the debt in a commercially reasonable manner and may apply the proceeds from this sale to the satisfaction of the secured indebtedness as well as the secured creditor's reasonable expenses of repossessing, reconditioning and selling the collateral. Pursuant to § 9-504(2) of the UCC, and §§ 2-510(1) and 2-510(8) of the Code, the secured creditor must account to the debtor for any surplus.

11. Pursuant to §§ 5-110 and 5-111 of the Code, a secured creditor, in a consumer credit transaction, must provide a written notice of a right to cure to the debtor who has defaulted and must provide a period of 20 days after notice within which to cure before taking possession of or otherwise enforcing his security interest in collateral.

12. Pursuant to § 9-504(3) of the UCC, the secured creditor is required to notify the debtor of his intention to sell repossessed collateral and at least the time after which such a sale will take place.

13. Pursuant to § 8-103(2)(A) of the Code, violations of the regulations promulgated by the Bureau of Consumer Credit Protection (Bureau) constitute violations of the Code.

14. The Bureau has duly promulgated so-called truth-in-lending regulations at Chapter 240 including as pertinent: 1) § 240.226.18(e) which requires disclosure of the annual percentage rate of interest, and 2) § 240.226.18(j) which requires disclosure of the total sales price in consumer credit based installment sales contracts.

15. Pursuant to § 2-510(3) of the Code, a creditor in a consumer credit transaction, in the event of repossession and sale of collateral, must calculate the unearned finance charge to be deducted from the outstanding debt balance by applying the actuarial method.

FACTS

16. Between January 12, 1981 and June 12, 1981, the Bureau conducted examinations (the "1981 examinations") of Defendant's Maine offices, as set forth in paragraph 3, to determine compliance with the Code and the Maine Fair Credit Reporting Act.

17. The 1981 examinations disclosed a pattern of conduct pertaining to the following provisions of the Maine Consumer Credit Code (9-A M.S.R.A.) and Uniform Commerical Code (11 M.R.S.A.):

(1) failure to send the notice of right to cure required by 9-A M.R.S.A. § 5-111 and failure to wait until the end of the cure period prior to repossession;

(2) failure to credit the consumer whose collateral has been repossessed with surplus funds realized from the resale as required by 11 M.R.S.A. § 9-504 and unearned finance charges as required by 9-A M.R.S.A. § 2-510; and

(3) failure to send a notice of resale of repossessed collateral as required by 11 M.R.S.A. § 9-504(3).

18. On October 1, 1981, the Bureau and Defendant entered

into an Assurance of Discontinuance (AD) in which Defendant agreed:

(1) to send notices of the right to cure to affected customers and to refrain from repossessing collateral prior to expiration of the right to cure period.

(2) to provide notices of resale to affected customers, prior to selling repossessed collateral.

(3) to refund to its customers any proceeds realized from a commercially reasonable resale of collateral after deducting from the aggregate of balance due and earned financed charges (a.k.a. bad debt balance), the repossession and resale costs, i.e., the surplus.

19. The AD incorporated by reference documents prepared by Defendant which Defendant asserted that it would utilize to implement the above-described undertakings. These documents included a Repossession Voucher, a Repossession Rebate Calculation Form, a written explanation to Defendants' personnel of procedures regarding Notice of the Right to Cure, Notification of Resale letters, and a Notice of Repossession and Resale Procedures designed to be posted in Defendant's offices.

20. The Bureau conducted subsequent examinations of Defendant's Augusta office on January 3, 1984; Defendant's Auburn office (which also contained records from the Brunswick office) on January 26, 1984; Defendant's Brewer office (which

also contained records from the Lincoln office) on January 5, 1984; Defendant's Portland office on February 7, 1984; Defendant's Presque Isle office on March 5, 1984; Defendant's Rockland office on January 12, 1984; and Defendant's Skowhegan office on January 11, 1984 (the "1984 examinations"). The 1984 examinations were conducted to determine compliance with the Maine Consumer Credit Code and the Maine Fair Credit Reporting Act. During these examinations 1005 Retail Installment Contracts and the documents concerning 405 repossessions were reviewed.

21. The 1984 examinations disclosed the following violations of the 1981 Assurance of Discontinuance (AD):

A. Defendant failed to provide its customers with Notices of the Right to Cure prior to repossession of collateral in several instances.

B. Where it did send Notices of Right to Cure, Defendant repossessed collateral prior to the expiration of the Right to Cure period in numerous instances.

C. Defendant failed to provide its customers with written Notices of Resale prior to selling repossessed collateral in all instances.

D. Defendant failed to make refunds of surplus following repossession and resale of collateral in an unknown number of instances prior to January 1, 1983. Plaintiff has determined that Defendant has failed to make

these refunds in certain instances but, due to the absence of Defendant's documentation, Plaintiff is unable, at this point, to determine the number of other such instances.

D. Defendant used a Repossession Voucher and a Repossession Rebate Calculation Form but, in numerous instances failed to utilize the Repossession Voucher and the Repossession Rebate Calculation Form, and in all instances, failed to utilize the Notification of Resale letters, described in Defendant's Assurance of Discontinuance.

22. Defendant failed to disclose the annual percentage rate (APR) of interest in numerous of the contracts reviewed as required by § 240.226.18(e) of the Bureau's regulations.

23. Defendant failed to disclose the total sales price in several of the contracts reviewed as required by § 240.226.18(j) of the Bureau's regulations.

24. In all examined repossessions Defendant used an improper method, the Rule of 78's, instead of the actuarial method which is required by § 2-510(3) of the Code, to compute unearned finance charges which were deducted from the consumer's unpaid balance due to the Defendant. Use of the Rule of 78's, a.k.a. the sum of the digits method, produces a smaller unearned finance charge than does use of the actuarial method.

FIRST CAUSE OF ACTION

Failure to Provide Notice of the Right to Cure

25. Plaintiff realleges and incorporates herein by reference paragraphs 1-24 of its Complaint.

26. Defendant's failure to provide its customers with a Notice of the Right to Cure in several cases constitutes several separate violations of the Assurance of Discontinuance in violation of 9-A M.R.S.A. § 6-109 (1980); further these actions constitute several separate violations of 9-A M.R.S.A. §§ 5-110 and 5-111 (1984 and Supp. 1984).

SECOND CAUSE OF ACTION

Repossession Prior to End of Cure Period

27. Plaintiff realleges and incorporates herein by reference paragraphs 1-24 of its Complaint.

28. Defendant's repossession of collateral in numerous instances prior to the expiration of the Right to Cure period constitutes numerous separate violations of the Assurance of Discontinuance in violation of 9-A M.R.S.A. § 6-109 (1980) as well as numerous separate violations of 9-A M.R.S.A. § 5-111 (1980 and Supp. 1984).

THIRD CAUSE OF ACTION

Failure to Calculate Correctly Unearned Finance Charges

29. Plaintiff realleges and incorporates by reference herein paragraphs 1-24 of the its Complaint.

30. Defendant's failure to calculate correctly the

unearned finance charge to be deducted from the consumer's bad debt balance, which failure resulted from Defendant's use of the rule of 78's rather than the actuarial method in all examined repossessions, constitutes numerous separate violations of 11 M.R.S.A. § 9-504(1) & (2) (Supp. 1984) as well as numerous separate violations of 9-A M.R.S.A. §§ 2-510(3) and 2-510(8) (1980 & Supp. 1984).

FOURTH CAUSE OF ACTION

Failure to Refund Proceeds From Sale of Repossessed Collateral

31. Plaintiff realleges and incorporates by reference herein paragraphs 1-24 of its Complaint.

32. Defendant's failure to refund any of the surplus realized from sale of repossessed collateral in several cases constitutes a like number of separate violations of the Assurance of Discontinuance in violation of 9-A M.R.S.A. § 6-109 (1980) and a like number of separate violations of 9-A M.R.S.A. §§ 2-510(1) and 2-510(8) (1980) as well as a like number of separate violations of 11 M.R.S.A. § 9-504(2) (Supp. 1984).

FIFTH CAUSE OF ACTION

Failure to Disclose Annual Percentage Rate

33. Plaintiff realleges and incorporates by reference herein paragraphs 1-24 of its Complaint.

34. Defendant's failure to disclose the annual percentage rate of interest in numerous installment contracts constitutes

numerous separate violations of Bureau of Consumer Credit Protection Regulation § 226.18(e) and 9-A M.R.S.A. § 8-103(2)(A) (Supp. 1984) as well as numerous separate violations of 9-A M.R.S.A. § 8-201 (Supp. 1984).

SIXTH CAUSE OF ACTION

Failure to Disclose Total Sale Price

35. Plaintiff realleges and incorporates by reference herein paragraphs 1-24 of its Complaint.

36. Defendant's failures to disclose Total Sale Price in several of its installment sales contracts constitute several separate violations of 9-A M.R.S.A. § 8-201 (Supp. 1984) as well as several separate violations of § 226.18(J) of Chapter 240 of the Bureau's Rules and 9-A M.R.S.A. § 8-103(2)(A) (Supp. 1984).

SEVENTH CAUSE OF ACTION

Failure to Provide Notice of Resale

37. Plaintiff realleges and incorporates by reference herein paragraphs 1-24 of its Complaint

38. Defendants failure to provide its customers with written Notices of Resale in any instance constitutes violations of the Assurance of Discontinuance in violation of 9-A M.R.S.A. § 6-109 (1980).

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully requests that this Court:

1. Issue a preliminary and permanent injunction pursuant to 9-A M.R.S.A. § 6-110 (Supp. 1985) and § 6-111 (Supp. 1985) enjoining the Defendant, its agents, employees, assigns or other persons acting for or under the control of the Defendant from:

A. Failing to provide its customers with Notices of the Right to Cure as required by the AD and 9-A M.R.S.A. §§ 5-110 and 5-111 (1980).

B. Repossessing collateral from its customers prior to the expiration of the Right to Cure period as provided by the AD and 9-A M.R.S.A. § 6-109 (1980).

C. Failing to correctly calculate unearned finance charges deducted from its customers' unpaid balances after repossession of collateral as required by the AD and 11 M.R.S.A. § 9-504(1) (Supp. 1985) and 9-A M.R.S.A. § 2-510(3) (1980).

D. Failing to refund surplus proceeds realized from sale of repossessed collateral as required by the AD and 11 M.R.S.A. § 9-504(1) (Supp. 1985).

E. Failing to disclose the annual percentage rate of interest with regard to its installment sales contracts as required by 9-A M.R.S.A. §§ 8-103(2) and 8-201 (1980 & Supp. 1985).

F. Failing to disclose the total sales price in its installment sales contracts as required by 9-A M.R.S.A. §§ 8-103(2) and 8-201 (1980 & Supp. 1985).

G. Failing to provide Notices of Resale prior to selling repossessed collateral, in the manner and to the extent, required by 11 M.R.S.A. § 9-504(3) (Supp. 1985).

2. Order the Defendant to make restitution of all excess charges collected in violation of the truth-in-lending portions of the Code, 9-A M.R.S.A. § 8-101 et seq. (Supp. 1985), pursuant to 9-A M.R.S.A. § 6-113(1) (1980 & Supp. 1985).

3. Order the Defendant to pay civil penalties pursuant to 9-A M.R.S.A. § 6-113(2) (1980 and Supp. 1985). Penalties should be assessed for each of the violations of the Assurance of Discontinuance as well as each of the groups of violations of the Code which were not covered by the Assurance of Discontinuance. Pursuant to 9-A M.R.S.A. § 6-113(2) (1980), the maximum penalty for each violation is $5,000. Plaintiff does not request this Court to assess this theoretical maximum for each violation, but Plaintiff does suggest that the number as well as the pervasive and continued nature of Defendant's violations supports a substantial assessment of penalties.

4. Order the Defendant to pay the costs of this suit, including reasonable attorney's fees, and costs of the investigation of the Defendant made by the Attorney General and the Bureau, pursuant to 9-A M.R.S.A. § 6-110 (1980) and 5 M.R.S.A. § 209 (1979).

5. Order the Defendant to develop and implement, with the advice and consent of the Bureau, a compliance program to prevent further violations of the Code, the orders of this Court and any other applicable law.

6. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

JAMES E. TIERNEY
Attorney General

DATED: Oct. 4, 1985

Dennis J. Harnish

DENNIS J. HARNISH
Assistant Attorney General
State House Station #6
Augusta, ME 04333
ATTORNEY FOR PLAINTIFF

9/30/85

IN RE ELECTROLUX CORP. A DELAWARE CORPORATION, 3003 SUMMER STREET STAMFORD, CONNECTICUT 06905	)	ASSURANCE OF DISCONTINUANCE

WHEREAS, the Consumer and Antitrust Division of the Department of the Attorney General of the State of Maine (hereinafter "State") is empowered and has the duty to enforce Maine's Unfair Trade Practices Act;

WHEREAS, Electrolux Corporation (hereinafter Electrolux), a Delaware corporation whose principal place of business is in Stamford, Connecticut, conducts business, including the door-to-door sales of vacuum cleaners, in the State of Maine, through offices located in Presque Isle, Augusta, Brewer, Skowhegan, Rockland, Brunswick, Lincoln, Portland and Auburn; and,

WHEREAS, the State has received statements from several former employees of Electrolux including, but not limited to, allegations that they and other Electrolux employees engaged in the following unfair trade practices:

A. Conducting deceptive product suction comparisons between Electrolux vacuum cleaners and consumers' vacuum cleaners, by using an empty bag in Electrolux vacuum cleaners, but not in consumers' vacuum cleaners;

B. Using unfair practices to gain admission to the residences of potential customers by failing to identify themselves as Electrolux sales personnel;

C. Making unrealistic claims concerning the medicinal advantages of using Defendant's vacuum cleaners without substantiation;

D. Failing to provide notice to consumers of their right to cancel the installment sales contracts they enter with Electrolux within 3 days of sale in compliance with 9-A M.R.S.A. § 3-503 (1980 & Supp. 1984);

WHEREAS, the State alleges that Electrolux's conduct, as described above, constitutes a pattern of unfair and deceptive conduct in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207 et seq. (1979); and

WHEREAS, Electrolux does not admit the validity of any of the allegations of the State but, nevertheless, is willing to enter into this Assurance of Discontinuance with the Attorney General of the State of Maine, pursuant to 5 M.R.S.A. § 210 (1979).

NOW, THEREFORE, the State of Maine and Electrolux, as identified above, without the filing of suit or the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon the consent of the above-named parties, and specifically without Electrolux having admitted that it has heretofore engaged in any violations of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207 et seq. (1979), Electrolux hereby:

A. Assures the State of Maine that, in the State of Maine,

1. its sales personnel will inform potential customers of their connection with Electrolux before seeking admittance to the potential customer's residence;

2. its sales personnel will refrain from making any unsubstantiated claims concerning the medicinal benefits of using any Electrolux product;

3. its sales personnel will inform each customer in a home solicitation sale of the customer's right to cancel his or her installment sales contract with Electrolux within 3 business days of purchase, in compliance with 9-A M.R.S.A. § 3-502 (1980 & Supp. 1984), and will provide a written right-to-cancel notice to such customers;

4. its sales personnel, when conducting any comparison of the suction power of its vacuum cleaners to that of the vacuum cleaner of a potential customer, will ensure that the customer's vacuum cleaner has an empty bag or advise the customer that the presence of dirt or debris in his or her vacuum cleaner bag may adversely affect the performance of his or her vacuum cleaner;

B. Agrees to implement a permanent and on-going program to insure that its agents, servants and employees will comply with the above-referenced assurances. This program shall include, but need not be limited to, the following:

1. Within 90 days from the date hereof, Electrolux shall prepare a script for a video cassette and the text of a statement on the subject of consumer law relating to door-to-door sales. This script and text shall address at least all of the assurances set forth in paragraph A above. Electrolux shall forward the script and text to the Department of the Attorney General for review and approval. Approval of the script and text shall not be unreasonably withheld.

2. Within 15 days from receiving comments from the Department of the Attorney General, Electrolux shall edit the script and text as necessary to obtain the approval of the Department of the Attorney General.

3. Within 60 days from the date of approval of the script and text by the Department of the Attorney General, Electrolux shall prepare the video and statement and distribute this video as well as an adequate supply of the written statement to each of its branch offices located in the State of Maine and to all branch offices containing personnel who have or will be regularly conducting solicitations within the State of Maine.

4. Within 30 days from the date of distribution to each of its branch offices located in the State of Maine, Electrolux

a) shall make this video available to all existing sales persons and shall encourage these existing sales persons to view this video;

b) shall provide a copy of the written statement to each existing sales person; and

c) shall ensure that each newly hired sales person will receive his or her copy of the written statement within one week of beginning employment and will sign a receipt after reading of the written statement representing that he or she has read the statement in its entirety and understands its contents.

For purposes of this Assurance, "sales person" shall mean any outside sales person employed by Electrolux who regularly makes solicitations in the State of Maine.

5. Electrolux shall distribute the statement at least once every calendar year to each of its sales persons. The statement shall reflect the current state of consumer law and shall be annually reviewed by Electrolux for this purpose. Any amendments to the statement shall be submitted to the Department of the Attorney General for its approval, which approval shall not unreasonably be withheld.

6. Electrolux shall retain the signed receipts for at least five (5) years after the date of each receipt and shall promptly make these receipts available to State agents upon request.

7. Electrolux shall require its field personnel promptly to investigate all complaints concerning Electrolux sales persons which are brought to the

attention of the executive or treasury offices of Electrolux or to any of its branch managers. Electrolux shall complete a brief written report concerning each complaint which includes the name, address and phone number of the complainant, the name of the sales person, the nature of the complaint, the manner of the investigation, the conclusion reached by Electrolux following the investigation, the remedial measures taken with regard to the consumer, if any, and the disciplinary measures against the sales person, if any. These reports shall be retained for at least five (5) years after the date of each report and shall be promptly made available to state agents upon written request. State shall use its best efforts to aid Electrolux in complying with this requirement by bringing to the attention of Electrolux's General Counsel complaints from consumers against Electrolux which the State may receive, provided that: failure of State to furnish any complaints from a consumer to Electrolux shall not be a basis for a defense against an action based upon this Assurance of Discontinuance or of any other violation of law and provided, further, that State, in the exercise of its prosecutorial discretion, may withhold consumer complaints during investigation or in anticipation of litigation.

8. Within ninety (90) days of the date hereof, and each anniversary of the date hereof for the next six (6)

years, Electrolux shall submit to the Department of the Attorney General of the State of Maine a written report setting forth in detail the manner and form in which Electrolux is complying or has complied with this Assurance, together with such other information relating to compliance as may be requested by the State or its state agents.

9. The effect of this Assurance shall not exceed six (6) years from the date hereof, except as it relates to the record retention requirements.

10. Electrolux shall conduct periodic (but at least annual) audits of the above-described compliance procedures and shall make reports of these audits available to State agents upon request.

DATED: Sept 30, 1985

STEVEN D. COOPER
Vice President and General
Counsel, Electrolux Corporation

DATED: October 4 1985

STEPHEN WESSLER
Assistant Attorney General
State House Station #6
Augusta, Maine 04333