



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

52, 159

Bureau of Consumer Protection

May 13, 1999

By Facsimile Transmission to (617) 523-7398

Jonathan Sheldon  
National Consumer Law Center  
18 Tremont Street, Suite 400  
Boston, MA 02108

Dear Mr. Sheldon:

I am providing the following citations in response to your inquiry regarding the stated intent of the Federal Trade Commission ("Commission" or "FTC"), in adopting its Trade Regulation Rule concerning Preservation of Consumers' Claims and Defenses ("Rule"), to provide consumers with an affirmative right to bring seller-related claims against holders of credit agreements that comply with the Rule and contain the FTC-mandated "Holder" notice. At the outset, I note that the purpose of the Commission's Statement of Basis and Purpose for the Rule (Preservation of Consumers' Claims and Defenses), 40 Federal Register 53506 (November 18, 1975) ["SBP"], notes that the Commission's aim in publishing the SBP is "to state, with particularity, the purpose of each provision of the rule . . .". SBP at 53506. This objective of the Statement of Basis and Purpose is reiterated in the "History of the Proceeding" (*id.* at 53506 - 53507).

Language in Chapter III, *passim*, addresses the Commission's findings and concern regarding consumers' loss of claims and defenses. See, *e.g.*, SBP at 53510.

With respect to the specific intent of the Commission to enable consumers affirmatively to assert sales-related claims, the clearest Commission statements are in Chapter VII, starting at 53522, and in Chapter VIII, A. For example, "This rule is directed at the preservation of consumer claims and defenses. It will require that all consumer credit contracts generated by consumer sales include a provision which allows the consumer to assert his sale-related claims and defenses against any holder of the credit obligation. From the consumer's standpoint, this means that a consumer can (1) defend a creditor suit for payment of an obligation by raising a valid claim against the seller as a set-off, and (2) maintain an affirmative action against a creditor who has received payments for a return of monies paid on account." SBP at 53524.

Chapter VIII, Section A., specifically states that the Commission rejected the notion that the consumer should be limited to a defense or set-off, and explains at length the reason for not adopting that limitation. (SBP at 53526 - 53527.)

Thank you for your continued interest in the Commission's work.

Very truly yours,

A handwritten signature in cursive script that reads "Chris Keller".

Christopher W. Keller  
Attorney