

Syllabus

IN THE MATTER OF
FORD MOTOR COMPANY AND UNIVERSAL CREDIT
CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3005. Complaint, Dec. 1, 1936—Decision, Dec. 8, 1939

Where a corporation engaged, as one of largest producers and with wide influence, in manufacture of all types of automobiles, including trucks, and in transportation and sale of its said products and parts from its place of business and assembly plants at various points in the United States to several thousand retail dealer outlets throughout the United States;

Acting concertedly and in cooperation with a concern which it originally organized and incorporated to furnish credit to its dealers and retail purchasers, and which concern confined its business entirely to financing sale of cars, accessories, and parts made by said corporation and sold to its dealers and to financing retail sales of said corporation's cars by dealers to public, excepting only such used cars of other makes as were taken in trade by dealers, and which simultaneously published advertisements similar to those hereinbelow set forth, and following the announcement and adoption of similar plans by various competitors of such corporation—

Announced, through press release and in newspaper advertisements, its "\$25-A-MONTH TIME PAYMENTS AND A NEW UCC 6% FINANCE PLAN," and referred thereto in many other advertisements, some of which, like original announcement, contained explanatory data with reference to working of plan in question, and others of which merely referred to so-called "6%" plan in some such way as "new UCC 6% finance plan" and "6% Plan of Financing. Total cost of credit is only $\frac{1}{2}$ % monthly on original unpaid balance and insurance. (6% for 12 months);"

Facts being plan in question, under which there was added to the original unpaid balance charge amounting to one-half of 1 percent a month for the number of months provided for payment thereof in particular contract, and sum thus arrived at, together with insurance coverage, was divided by said number of months to arrive at amount of customer's monthly payment, did not result in charge of 6 percent simple interest on amount owed under contract by customer as reduced from month to month by payments made, but amounted to approximately $11\frac{1}{2}$ percent simple interest per annum on indebtedness as provided by customer's contract;

With effect of misleading and deceiving substantial part of purchasing public into erroneous belief that said finance plan or method, as above set forth contemplated a simple interest charge at the rate of six percent per annum upon the deferred and unpaid balance of the purchase price of motor vehicles, and of causing such public to buy said products from it through its authorized dealers and agents because of such belief, and of causing trade to be unfairly diverted to it and to its authorized dealers from competitors who did not in any manner misrepresent the cost of the credit charge for

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purchasing motor vehicles on installment or deferred payment plan in offer or sale thereof; to the substantial injury of competitors in commerce among the various States and in the District of Columbia:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. James M. Hammond for the Commission.

Bodman, Longley, Bogle, Middleton & Farley, of Detroit, Mich., for Ford Motor Co.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C. and *Mr. Phillip W. Haberman*, of New York City, for Universal Credit Corp.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Ford Motor Co. and Universal Credit Corporation, hereinafter named and referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ford Motor Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Dearborn, in the State of Michigan. It is now, and for a number of years last past has been engaged in the business of manufacturing motor vehicles and in the sale and transportation thereof in commerce between and among various States of the United States, in Canada, and in other foreign countries. It causes and has caused said motor vehicles, when sold, to be shipped from its place of business in the State of Michigan to purchasers thereof located in different parts of the United States, in Canada, and in other foreign countries.

Universal Credit Corporation is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located in the city of Detroit, in the State of Michigan. It is now, and for some time past, has been concertedly and cooperatively engaged with the said respondent, Ford Motor Co., in the offering for sale and sale of motor vehicles manufactured by the said respondent, Ford Motor Co., in

commerce between and among the various States of the United States and with foreign countries.

In the course and conduct of their business, respondents, Ford Motor Co., and Universal Credit Corporation, have been at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in similar businesses involving the sale and distribution of motor vehicles in commerce as hereinabove set out.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents, Ford Motor Co. and Universal Credit Corporation, acting concertedly and in cooperation each with the other, and with the authorized dealers of the said respondent, Ford Motor Co., devised, worked out, effectuated, adopted, and used in connection with the offering for sale and sale of motor vehicles manufactured by the said respondent, Ford Motor Co., in commerce as herein set out, a plan or method of financing the purchase of such vehicles on a deferred- or time-payment plan. The said respondent, Ford Motor Co., its authorized dealers, and the said respondent, Universal Credit Corporation, acting concertedly and in cooperation each with the other, caused advertising matter to be distributed or circulated, between and among the various States of the United States and also internationally, through the media of newspapers, trade journals, circulars, posters, and other printed matter. In such advertising, said plan or method of financing was variously represented, designated, and referred to as follows:

With the usual low down-payment, \$25 a month buys any type of new Ford car. Financing at $\frac{1}{2}$ of 1% a month, or 6% for 12 months. You receive insurance at conference rates. Complete fire and theft insurance—and \$50 deductible collision, and protection against accidental physical damage to your car. The Universal Credit Company offers exclusively the Authorized Ford Finance Plan.

\$25 a month buys any model 1936 Ford V-8. Usual low down-payment. $\frac{1}{2}$ % per month, or 6% per year, includes insurance. Ask any Ford dealer about the Universal Credit Company \$25-a-month 6% Finance Plans.

\$25 a month with the usual low down-payment, buys any new Ford V-8 car on new U. C. C. $\frac{1}{2}$ % per month finance plans.

Ask about the \$25-a-month and $\frac{1}{2}$ % per month Finance Plans of the Universal Credit Company.

Ask your Ford dealer about the new \$25-a-month and U. C. C. 6% finance plan.

PAR. 3. In truth and in fact, the aforementioned plan or method of financing the purchase of motor vehicles is not properly, truthfully, or accurately referred to in the advertising matter as set forth in the preceding paragraph, in that it tends to convey and conveys to purchasers and prospective purchasers of motor vehicles the

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impression and belief that said plan or method is a 6 percent simple interest plan of financing, whereas it actually refers to a plan of financing involving a 6 percent interest charge on the full amount of of the account originally financed from the date it begins to run to the date the account is closed, regardless of the fact that the account is divided into, and amortized gradually and regularly by, monthly payments of equal amounts. For that reason, the said plan or method actually is a financing plan which involves the payment of interest at a rate much in excess of, or substantially 100 percent greater than, the "6%" feature in the aforesaid advertising.

PAR. 4. The representations contained in the advertising matter as set forth in paragraph 2 have the capacity and tendency to mislead and deceive, and do mislead and deceive a substantial part of the purchasing public into the erroneous belief that the said finance plan or method as above set forth contemplates a simple-interest charge at the rate of 6 percent per annum upon the deferred and unpaid balances of the purchase price of motor vehicles and tends to and causes such purchasing public to buy motor vehicles from respondents and their duly authorized agents in that belief. The interest rate of said finance plan or method actually amounts to almost 12 percent.

PAR. 5. The acts and practices of the respondents as herein set out, including the use of such advertising, as above set forth, have a capacity and tendency to, and do serve to cause trade to be unfairly diverted to respondent, Ford Motor Co., and its authorized dealers and to the respondent, Universal Credit Corporation, and its affiliated companies, from competitors who do not adopt or use equivalent methods of advertising in the offering for sale or sale of motor vehicles. As a result thereof, substantial injury has been, and is now being, done by each and all of the respondents to competition in commerce among and between the various States of the United States.

PAR. 6. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled "An Act to create a Federal Trade Commission to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued a complaint on December 1, 1936, against the respondents in this proceeding, the Ford Motor Co.

and the Universal Credit Corporation and caused the complaint to be served upon the respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act.

After the service of the complaint, and after the filing of a separate answer thereto by the respective respondents, and before the taking of testimony in support of the complaint, as to the Ford Motor Co., the Commission on April 9, 1937, approved a stipulation as to the facts, and agreement to cease and desist, executed by the respondent Universal Credit Corporation. Thereafter and on the 5th day of May 1937, the Commission issued an order dismissing the complaint, as to that respondent.¹

The respondent, Ford Motor Co., on January 10, 1938, filed a motion to dismiss the complaint, as to it, and the motion was denied by the Commission by an order issued on January 11, 1938.

Thereafter, testimony and other evidence in support of the allegations of the complaint, as to the respondent, the Ford Motor Co., were introduced by James M. Hammond, attorney for the Commission, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by the Commission.

At the conclusion of the introduction of testimony and evidence in support of the allegations of the complaint, the respondent, the Ford Motor Co., by its attorneys, Bodman, Longley, Bogle, Middleton & Farley, rested the case without the introduction of testimony or other evidence on the part of the Ford Motor Co. in opposition to the allegations of the complaint.

The testimony and other evidence introduced were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint; the answer of the respondent, the Ford Motor Co.; the testimony and other evidence; brief in support of the complaint and brief of respondent, the Ford Motor Co., in opposition thereto; and, upon oral arguments of counsel for the Commission and counsel for the respondent, the Ford

¹ Such order was as follows:

This matter coming on to be heard by the Commission and it appearing that the respondent Universal Credit Corporation has entered into a stipulation [See 24 F. T. C. 1399] whereby it agreed to cease and desist from separately, concertedly, cooperatively, or otherwise using any advertising matter or furnishing to authorized dealers or distributors any advertising matter in which the expression "6%" is used, without equally prominent use, in direct conjunction therewith, of explanatory language which makes it clear that the said 6 percent does not refer to or indicate 6 percent per annum, simple interest, and the Commission having duly considered the same, and being now fully advised in the premises:

It is ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent Universal Credit Corporation.

Motor Co.; and, the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Ford Motor Co., is a corporation organized and existing pursuant to the laws of the State of Delaware, having its principal office and place of business at Dearborn, Mich., at which point it engages in the business of manufacturing all types of automobiles, including trucks. Its products are shipped from its place of business, and from the assembly plants hereinafter referred to located at various points in the United States, to the purchasers thereof located in the various States of the United States and in the District of Columbia. To assist in carrying out the distribution of its products it maintains a number of assembly plants at points located in States other than the State of Michigan. Parts manufactured at the principal factory in Michigan are shipped to these assembly plants and there assembled into completed automobiles, including trucks, which are in turn shipped to purchasers or prospective purchasers in zones covering various States within shipping radius of said assembly plants.

The respondent, Ford Motor Co., is one of the largest producers of automobiles in the United States and has wide influence in the automobile manufacturing industry as a whole. During the calendar year 1935 it sold 1,065,000 automobiles in the United States including cars and trucks, 963,000 in 1936, and 975,000 in 1937.

PAR. 2. There are other corporations in the United States which are also engaged in the manufacture of automobiles in competition with respondent Ford Motor Co. and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Some of these competitors are as follows:

Chrysler Corporation, a Delaware corporation, having factories in the State of Michigan and other places. This corporation manufactures the Chrysler, DeSoto, Dodge, and Plymouth cars;

Nash-Kelvinator Corporation, having its factory and principal place of business at Kenosha, Wis.;

Graham-Paige Motors Corporation, having its principal place of business at Detroit, Mich.;

Hudson Motor Car Co., having its office and principal place of business located at Detroit, Mich.;

Reo Motor Car Co., having its office and principal place of business at Lansing, Mich.;

Packard Motor Car Co., having its office and principal place of business at Detroit, Mich.

All of these companies are now and have been for a long time last past engaged in the manufacture and sale of all types of automobiles in competition with respondent Ford Motor Co. Cars manufactured by these companies are shipped from their factories in the State of Michigan and elsewhere, to all parts of the United States for sale to the purchasing public.

In order to facilitate the sale of its cars to the purchasing public the respondent, Ford Motor Co., maintains several thousand retail dealer outlets throughout the United States. The relationship between the Ford Motor Co. and these dealers is established by contract. The manufacturer agrees to sell and the dealers agree to buy Ford cars at prices fixed by the manufacturer. The dealers agree to maintain places of business of a definite kind and nature and agree to sell the cars in the manner specified by the manufacturer. They purchase their cars from the Ford Motor Co. either for cash, sight draft, or through the Universal Credit Corporation on a credit basis. The dealers agree to take retail orders for new cars on a specified order blank and in other ways to operate their dealerships in the manner outlined in their contracts.

The respondent, Ford Motor Co., does not sell cars direct to the public. All of its products are sold to its dealers, who in turn deal with the public. The title passes first to the dealer, then to the retail purchaser from the dealer. The Ford Motor Co., however, aids, assists, and promotes the sale of its automobiles by the dealers through wide and extensive advertising in newspapers, magazines, billboards, and in other ways.

PAR. 3. The Universal Credit Corporation is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal office and place of business in Detroit, Mich. It was originally incorporated and organized in 1928 by the Ford Motor Co. for the purpose of furnishing credit to its dealers and retail purchasers. In May 1933, the entire stock of the Universal Credit Corporation was sold by the Ford Motor Co. to the Commercial Investment Trust Co., of New York.

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The business of the Universal Credit Corporation is confined entirely to financing the sale of cars, accessories and parts manufactured by the Ford Motor Co. and sold to Ford dealers and to the financing of retail sales of Ford cars by Ford dealers to the public, with the exception that in instances where a Ford dealer in the sale of new Ford cars takes a used car of another make in trade, the Universal Credit Corporation will finance the sale by the dealer of said cars of such other make. These dealer retail purchase contracts are entered into between the retail buyer and the dealer. Pursuant to the provisions of these contracts the retail buyer makes a down payment either in cash or by trading in a used car, or both, thus leaving an unpaid balance which the purchaser agrees to pay over a period extending, usually, for 12, 18, or 24 months.

The Universal Credit Corporation pursuant to its arrangement with the Ford Motor Co. will, if the dealer desires, and the same is acceptable, purchase this installment contract from the dealer and collect the payments from the retail purchaser.

PAR. 4. The Ford Motor Co. sells its cars only at wholesale to dealers. In some instances the sales of its cars are made direct to the dealer on a cash and delivery basis, the payment for the cars being made by the dealer direct to the Ford Motor Co. at time of delivery.

In instances other than through cash sales to dealers the Ford Motor Co. receives payment for the cars sold to dealers through transactions such as bill of sale and trust receipt, conditional sale contract, lease, or chattel mortgage depending upon the State in which the dealer is located. Through the medium of these credit transactions the Ford Motor Co. transfers its interest and title in the cars sold dealers on a credit basis to the Universal Credit Corporation, receives cash therefor and the dealer thereafter deals direct with that company in making payment for the cars. The bulk of the cars manufactured by the Ford Motor Co. is sold to dealers in this manner.

PAR. 5. What is commonly known to the public and to the automobile industry as the "six percent plan" of financing the retail sale of automobiles was first featured by the General Motors Corporation through its wholly owned subsidiary, the General Motors Acceptance Corporation, by the publication of advertisements on October 21, 1935, reading as follows:

GENERAL MOTORS ACCEPTANCE CORPORATION
REDUCES TIME PAYMENT COSTS ON NEW CARS

With a new 6% plan

SIMPLE AS A, B, C

A—TAKE YOUR UNPAID BALANCE

B—ADD COST OF INSURANCE

C¹—MULTIPLY BY 6%—12 months' plan.

(One-half of one percent per month for periods more
or less than 12 months)

That's your *whole* financing cost. No extras. No
service fees. No other charges.

GMAC announces today a new, economical way to buy any new General Motors car from General Motors dealers all over the United States.

It's the plan you've been waiting for—a plan you can understand at a glance. It is far simpler and more economical than any other automobiles time payment arrangement you've ever tried.

Actually as simple as A, B, C—this new plan provides for convenient time payments of the unpaid balance on your car—including cost of insurance and a financing cost of 6%. This represents a considerable reduction in the cost of financing car purchases. It is not 6% interest, but simply a convenient multiplier anyone can use and understand. Nothing is added in the way of so-called *service* or *carrying* charges. There are no extras. Simply a straight forward, easy-to-understand transaction.

This simple step brings the world's finest cars within reach of thousands who have long needed new cars. When you buy a new Cadillac or Buick, Chevrolet or Pontiac, Oldsmobile or LaSalle, on this new plan, you actually save money!

And finally—buyers under this new plan receive an insurance policy in the *General Exchange Insurance Corporation* which protects them against Fire, Theft and Accidental Damage to their cars.

(Block here asking owners to make comparison with other finance plan.)

OFFERED ONLY BY DEALERS IN

CHEVROLET CARS & TRUCKS—PONTIAC—OLDSMOBILE—BUICK—
LASALLE—CADILLAC

Thereafter the General Motors Corporation through its subsidiaries published many thousands of advertisements featuring the "6%" plan. Some with the explanation as given above and others merely referred to a "6%" plan, without any explanation whatsoever.

¹ In some States a small legal documentary fee is required.

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In order to meet the selling advantage gained by the General Motors Corporation as a result of this highly publicized scheme of financing new car purchases, all other leading automobile manufacturing concerns promptly announced similar plans. All of these advertisements featured a "6%" plan computed approximately in the same manner as that described by the General Motors Corporation in the advertising as quoted above.

The first competitor to publish a similar plan was the Chrysler Corporation whose advertisements first appeared on November 10, 1935, to be followed in rapid succession by similar advertisements by the Nash Motors Co., Reo Motor Car Co., Hudson Motor Car Co., Graham-Paige Motors Corporation, Ford Motor Co., and Packard Motor Car Co. In order of appearance of these "6%" plan advertisements the respondent Ford Motor Co., was next to last with its first advertisement appearing on January 5, 1936, to be followed by the Packard Motor Car Co. on January 11, 1936. All of these advertisements appeared in newspapers of wide and general circulation.

All of these so-called "6%" plans featured in an outstanding manner the symbol "6%" or the words "Six Percent" and were computed in the same manner as that described hereinafter for the respondent, Ford Motor Company.

PAR. 6. Following the appearance of the "6%" plan advertisements, certain independent finance companies engaged primarily in the financing of retail sales of automobiles, were obliged to abandon their pre-existing methods of computing their charges in order to meet the competitive disadvantage to which they were put by the publication and operation of these "6%" plans. Prior to that time their charges and the charges of all automobile finance companies were slightly higher than those put into effect by the introduction of the "6%" plan. These pre-existing finance plans were predicated upon a flat charge for a specified credit over a definite period.

PAR. 7. On January 2, 1936, the Ford Motor Co. announced the adoption of a "6%" plan in a press release of that date, followed on January 5, 1936, by the issuance of a full page advertisement in Sunday newspapers throughout the country reading as follows:

F O R D
ANNOUNCES \$25-A-MONTH
TIME PAYMENTS
AND A
NEW UCC 6% FINANCE PLAN
Any New Ford V-8 Car
Can Now Be Purchased for \$25 a Month
with Usual Low Down-Payment

This \$25-a-month time payment plan enables you to buy a New Ford V-8 car through your Ford dealer on new low monthly terms.

After the usual low down-payment is made, \$25 a month is all you have to pay for any type of new car, including insurance and financing.

Your cost for this extension of credit is only one-half of 1 percent a month on your original unpaid balance and insurance. This plan reduces financing charges for twelve months to 6 percent. For example, if you owe a balance of \$400 for your car and in-

surance, you pay \$24 for the year of credit; if the balance is \$200 you pay \$12. Your credit cost for one year is the original unpaid balance multiplied by 6 percent.

UCC plans provide you with insurance protection at regular conference rates. You have not only fire and theft insurance, but \$50 deductible collision, and protection against other accidental physical damage to your car.

The Universal Credit Company has made these plans available through Ford dealers in the United States.

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Many other similar advertisements were published by Ford Motor Co. Some of these advertisements contained the explanatory data set forth in the advertisement quoted above, others merely referred to the "6%" plan in this manner:

Ask your Ford dealers about the new \$25-a-month new UCC 6% finance plan.
6% Plan of Financing. Total cost of credit is only $\frac{1}{2}\%$ monthly on original unpaid balance and insurance. (6% for 12 months)

The advertisements quoted above were all paid for in their entirety by the Ford Motor Co. Many similar advertisements were inserted and paid for by the Ford Motor Co. from a fund collected and controlled by it called the "Local or Dealers' Fund." This fund was created by collecting from the local dealers a fixed charge for advertising on each car sold by them. It was charged the dealer on the invoice to him; he in turn passed it on to the public. They were substantially the same as those quoted above. The advertisement of the "6%" plan was entirely discontinued by the Ford Motor Co. about the middle of 1936.

PAR. 8. Simultaneous with the appearance of the advertisements of the Ford Motor Co. as above outlined, similar advertisements were published by the Universal Credit Corporation entirely at its own expense. These advertisements were substantially the same as the Ford Motor Co.'s advertisements quoted above. All of the Universal Credit Co.'s advertisements referred to and promoted the sale of Ford cars and were designed to further the sale of these cars.

PAR. 9. The Ford Motor Co. and the Universal Credit Corporation were acting concertedly and in cooperation each with the other in the publication and operation of the "6%" plan for the purpose

of furthering the sale of motor vehicles manufactured by the Ford Motor Co.

PAR. 10. Approximately simultaneous with the issuance of the complaint in this case, similar complaints were issued by the Commission against all the other larger automobile manufacturing companies in the United States. The docket number and the name of the principal respondent in each of these cases are as follows:

- Docket 3000—Nash Motors Company;
- “ 3001—General Motors Corp., et al.;
- “ 3002—Chrysler Corporation, et al.;
- “ 3003—Graham-Paige Motors Corp., et al.;
- “ 3004—Hudson Motor Car Company, et al.;
- “ 3006—Reo Motor Car Company;
- “ 3007—Packard Motor Car Company.

All of these cases, except those pertaining to the General Motors Corporation and the respondent Ford Motor Co., were disposed of by the Commission by accepting from the respondents stipulations as to the facts and agreements to cease and desist from the practices with which they were charged in these complaints. All of these agreements are substantially the same in context. The following statement, quoted from Comm. Ex. 75, pertaining to the Packard Motor Car Co. is exemplary:

Certain purchasers and prospective purchasers did interpret and understand that the advertising of said finance plan or method as above set forth did contemplate a simple interest charge at 6% per annum upon the deferred and unpaid balance of the purchase price of motor vehicles, and this did cause such members of the purchasing public to buy motor vehicles in that belief.

For competitive reasons the type of advertising above quoted was discontinued before the issuance of the complaint herein.

The respondent hereby stipulates and agrees, To cease and desist from separately, concertedly, cooperatively, or otherwise using any advertising matter or furnishing to authorized dealers or distributors any advertising matter in which the expression “6%” is used without equally prominent use, in direct conjunction therewith, of explanatory language which makes it clear that the said 6% does not refer to or indicate 6% per annum simple interest.

And it is further stipulated and agreed, That the respondent will not at any time use or employ any advertising which, regardless of lack of any deceptive intent, may reasonably be construed as indicating that the additional cost of purchasing on time payments is only 6% or any other percent simple interest per annum on unpaid balances of the purchase price of motor vehicles, if such is not the fact.

PAR. 11. The Universal Credit Corporation, co-respondent with Ford Motor Co. in this proceeding, entered into a similar stipulation and agreement to cease and desist on April 9, 1937, and thereafter on

May 5, 1937, the case was dismissed as to that company. This stipulation and agreement contains provisions substantially the same as that quoted hereinabove in reference to the agreements with the other companies.

All of the concerns which executed these agreements to cease and desist have carried the same into effect. The testimony establishes, and the Commission finds, that in the event the respondent herein, Ford Motor Co., should again commence the advertisement of a "6%" plan, in the manner hereinabove described, it would result in placing the companies who have heretofore agreed to cease and desist from this practice at a competitive disadvantage in the industry.

PAR. 12. The manner in which the "6%" plan was computed in actual practice is exemplified by the following example deduced from the testimony and exhibits introduced in this case. Assume a time payment purchase and sale transaction of a new Ford car under the 6-per cent plan as advertised by the Ford Motor Co. between a member of the public and an authorized Ford dealer, in which the cash delivered price of the new car is \$643 and the purchaser is credited with a payment of \$243 in cash, or with the trade-in value of a used car received by the dealer as a down payment in a like sum. This leaves an unpaid balance of \$400 on the purchase price of the car.

To the above unpaid balance, which the purchaser must pay over a period of months, assume there is added a charge for insurance coverage for the same period. This insurance is not sold by the Ford Motor Co. but is arranged for by the dealer to protect the car until paid for by the purchaser. If the retail buyer furnishes his own insurance, which he is at liberty to do, the cost of such insurance would not enter into the computation of the 6-percent plan. Where the amount for insurance coverage in the above transaction is \$15, and the premium is paid by the dealer, the total amount to be paid by the retail purchaser to the retail dealer in deferred payments is, therefore, \$415. Where this amount is paid in accordance with the so-called "6%" plan (one-half of 1 percent per month) in 18 consecutive monthly payments of substantially \$25 each, the charge of one-half of 1 percent a month for 18 months, or 9 percent of the sum of \$415, amounts to \$37.35. This sum added to the original balance of \$415 makes a total sum of \$452.35 which must be paid by the purchaser to obtain title to the car.

If this same transaction with an unpaid balance of \$415 were paid in a like manner at \$25 per month over a period of 18 months, on a straight 6 percent simple interest per annum basis, computed on the declining balance as reduced by the monthly installments, the total

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interest charge would only amount to \$19.34, or \$18.01 less than the charge made pursuant to respondent's "6%" plan. Comparative tables, prepared by an expert accountant, in evidence in this case, indicate that the credit charge under respondent's "6%" plan amounted to approximately 11½ percent simple interest per annum.

The 6 percent plans of the competitors of the Ford Motor Co. were all computed in the manner described above. The average member of the public construed the "6%" plan, as advertised by the Ford Motor Co., to mean six per cent simple interest per annum of the unpaid balance remaining after the deduction of each successive monthly payment. The "6%" plan of the respondent Ford Motor Co. or that of its competitors was not computed at the rate of 6 percent simple interest per annum on the unpaid balance as reduced by the monthly payments of retail purchasers.

PAR. 13. There is a regular flow of commerce from Dearborn, Mich., in the cars manufactured by Ford Motor Co., through said retail dealers, to the retail purchasers thereof, located in the various states of the United States and in the District of Columbia.

The Ford Motor Co. aided and assisted the promotion and sale of its cars by said dealers through the medium of the said "6%" or "six per cent" plan of financing deferred or installment payments on new cars, and the advertisement of this plan by the Ford Motor Co. individually and in cooperation with its dealers and Universal Credit Corporation, as hereinabove described, increased the retail sale of cars so manufactured by the Ford Motor Co., to its benefit.

PAR. 14. The representations contained in the advertising matter of the respondent Ford Motor Co., as set forth in paragraph 7 hereof, have the capacity and tendency to mislead and deceive, and do mislead and deceive, a substantial part of the purchasing public into the erroneous belief that the said finance plan or method as above set forth contemplates a simple interest charge at the rate of 6 percent per annum upon the deferred and unpaid balance of the purchase price of motor vehicles and tends to cause, and has caused, such purchasing public to buy motor vehicles from the respondent Ford Motor Co., through its authorized dealers and agents, because of this erroneous and mistaken belief, when in truth and in fact the total of the credit charge, computed in accordance with said "6%" or "six per cent" plan, amounts to approximately 11½ percent simple interest per annum upon the deferred and unpaid balance, as diminished by the installment payments made, of the price of the motor vehicles sold to the purchasing public.

PAR. 15. The acts and practices of the respondent Ford Motor Co., as herein set out, including the use of the advertising described in paragraph 7 hereof, had the capacity and tendency to, and did serve to, cause trade to be unfairly diverted to respondent Ford Motor Co. and its authorized dealers from competitors who did not, and who (including those stipulating to cease and desist) do not, in any manner misrepresent the cost of the credit charge for purchasing motor vehicles on the installment or deferred-payment plan in the offering for sale or sale of motor vehicles. As a result thereof, substantial injury has been done by the respondent Ford Motor Co. to competitors in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Ford Motor Co., as herein found, were all to the prejudice of the public, and of competitors of the respondent Ford Motor Co., and constitute an unfair method of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the stipulation as to the facts, agreement to cease and desist and dismissal heretofore entered herein as to the respondent, Universal Credit Corporation, the answer of respondent, Ford Motor Co., the testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint, briefs filed herein and oral arguments by James M. Hammond, counsel for the Commission, and by Henry C. Bogle, counsel for the respondent, Ford Motor Co., and the Commission having made its findings as to the facts and its conclusion that said respondent Ford Motor Company, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ford Motor Co., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of motor vehicles in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "six per cent" or the figure and symbol "6%," or any other words, figures, or symbols indicating percentage, in connection with the cost of, or the additional charge for, the use of a deferred

Order

30 F. T. C.

or installment payment plan of purchasing motor vehicles, when the amount of such cost or charge collected from, or to be paid by, the purchaser of a motor vehicle under such plan is in excess of simple interest at the rate of 6 percent per annum, or at the rate indicated by such words, figures or symbols, calculated on the basis of the unpaid balance due as diminished after crediting installments as paid.

2. Acting concertedly or in cooperation with any company, firm, or individual, or with any of its agents or dealers, in a way calculated to further the sale of motor vehicles through use of the methods referred to in paragraph 1 of this order.

It is further ordered, That the respondent Ford Motor Co., shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

BEN BRAUDE, TRADING AS SALES STIMULATORS AND
GLOBE CLOCK COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3873. Complaint, Aug. 18, 1939—Decision, Dec. 9, 1939*

Where an individual engaged in sale and distribution of a sales stimulator plan and, in connection therewith, in sale and distribution of tableware, electric shavers, clocks, and other merchandise, to purchasers thereof in various States other than the State of origin of shipment and in District of Columbia, in substantial competition with others engaged in sale and distribution of such plans or merchandise as above-described;

In selling, through salesmen or distributors, said plan to retail merchants and said articles or merchandise to such merchants for distribution to their customers as premium merchandise, for sale to customers of such merchants at prices represented by said individual, and by such merchants to their customers, as substantially lower than ordinary retail value thereof when customers had been credited on cards, supplied to merchant under plan and by merchant to customer, with the \$5, \$10, or \$20, or other sum, in trade as marked thereon—

- (a) Represented, in periodicals and other publications of general circulation among the various States, in furtherance of sale of his said plan and merchandise and in order to procure salesmen or distributors to sell same, that his salesmen were making up to \$32 daily and approximately \$350 a month in the ordinary course of their business of selling said plan and merchandise, through such statements as "Brand new guaranteed business plan * * * Sweeping the country. Inexperienced salesmen cleaning up * * *," "This means that the least you should make from an original \$4.95 sale is \$8.64 for repeat commissions plus \$2 original commission, or a total of \$10.64. Three sales a day should mean total earnings of \$32 daily for you," and "WHAT SALESMEN SAY. Thanks for the commission check for \$175.86. I know these twice-a-month checks are going to grow," facts being said distributors did not make any such sums in the ordinary course of their business of selling his plan and other merchandise, but amounts set forth were gross exaggerations of earnings made by his said salesmen in the ordinary course of their said business; and
- (b) Represented as the customary or regular prices for or values of premiums used by him in connection with his said plan, prices, or values which were fictitious and substantially exaggerated, through such statements as "\$2.50 value silverware set for only 59¢," "Guaranteed time piece, \$7.50 value," and statement that jewelers and department store executives had valued clock involved "all the way from \$25 down to \$10," and "Guaranteed. Has the quality, appearance, and performance of any \$15 shaver," facts being ordinary retail value of the set of premium merchandise known as "Lady Esther Silverware" was substantially less than \$2.50,