

Syllabus

IN THE MATTER OF
GENERAL MOTORS CORPORATION AND GENERAL
MOTORS SALES CORPORATION

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

Docket 3173. Complaint, July 16, 1937—Decision, Mar. 5, 1941

Where a corporate manufacturer of automotive vehicles, and its wholly owned selling subsidiary, engaged in such manufacture and in competitive interstate sale and distribution to its retail dealers of their cars, under various names and in various models, as previously sold by five corporate subsidiaries, since dissolved;

In their extensive advertising in newspapers and various periodicals and on billboards and through sundry other advertising media as carried on by them, and as theretofore carried on by said manufacturer and its five corporate subsidiaries prior to assumption of their functions by such subsidiary;

Made use of pricing practices which were misleading and deceptive, in that prices featured in their advertisements, in which explanatory matter, if any, was either inadequate or so inconspicuous as to be of no value in removing or curing deceptive tendencies inherent therein, were not in fact prices of cars illustrated or described, as set forth in price lists supplied by them to their retail dealers; and, in thus deceptively and misleadingly advertising their prices—

- (1) Quoted price along with depiction of a higher priced car, with no explanation at all, in some instances, which would advise the most careful reader that the car illustrated could not be purchased for price quoted, and in other instances, with higher priced car depicted shown in conjunction with price of cheaper car and words "And Up," with effect of thereby conveying false impression that pictured car was obtainable at featured price, but that more expensive models were available at a higher one;
- (2) Featured price, in other cases, in large figures in conjunction with illustrative or descriptive matter qualified by another and higher, and sometimes true, price in very small figures placed in some inconspicuous location on face of the advertisement, with result that members of public reading such advertisements expected to obtain car illustrated at place of manufacture for price emphasized in large figures, plus actual transportation charges to place of purchase;
- (3) Quoted and advertised prices to which, in small type, were added further charges for accessories appearing on car illustrated or described, with result that members of public expected to purchase car with equipment exactly as shown for price designated in large figures on face of advertisement, notwithstanding such expressions, in small type, in such advertisements as "accessories extra," "white side wall tires extra," "fender wells extra," and "optional equipment extra," which seemed entirely to escape their attention;
- (4) Quoted and advertised prices to which, without disclosure in their said advertising, they added certain charges for intangible items, including,

Complaint

32 F. T. C.

among other things, delivery and handling charge, advertising, new car conditioning, and factory handling charge, with result of deception of public through such nondisclosure; and

- (5) Quoted and advertised prices without giving to the public adequate notice, through appropriate explanation adjacent to quoted price, that, in addition to other charges added to their advertised prices, extra charge was generally made for Federal, State, and local taxes, so that their said failure to give such notice as to said items, which it is impractical to include in price set forth in advertisement of Nation-wide circulation, constituted deception of public;

With result that effect of their said advertisements was to convey to purchasing public impression that their cars were obtainable at retail at prices much less than was the fact, and thereby to attract prospective purchasers who might not otherwise consider purchase of type of car thus advertised, except for low prices publicly quoted, into showrooms of their retailers where, once purchaser was interested in car by personal inspection, ultimate price was built up by additional charges until, in some instances, it was as much as \$500 or \$600 over and above what appeared to be retail selling price of car illustrated or described in their advertising, and that members of public were led erroneously to believe, through such misleading and deceptive advertisements, that each of cars illustrated or described could be purchased at point of manufacture for price featured in advertisements, and at points distant from place of manufacture for such price plus cost of transportation to place of purchase, and with effect, through said acts, practices, and methods in advertising, as above set forth, in connection with sale and distribution of their passenger motor vehicles, that substantial portion of purchasing public was induced to buy substantial volume of its said vehicles, and trade was thereby diverted unfairly to them from their competitors who truthfully advertise and represent prices of their cars and sell same at prices published, represented, or designated by them:

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

Before *Mr. John J. Keenan* and *Mr. John W. Addison*, trial examiners.

Mr. James M. Hammond for the Commission.

Mr. John Thomas Smith and *Mr. Anthony J. Russo*, of New York City, for respondents.

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 General Motors Corporation and General Motors Sales Corporation, herein-after 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. Respondents, General Motors Corporation and General Motors Sales Corporation, are corporations organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having their principal places of business in the General Motors Building, Detroit, Mich.

PAR. 2. Respondent, General Motors Corporation, for a long time past has been engaged in the business of manufacturing passenger motor vehicles. Said manufacturing business was, prior to November 1936, primarily conducted through its several operating divisions, producing Chevrolet, Oldsmobile, Pontiac, Buick, Cadillac, and La Salle motorcars. The products thus manufactured were sold and shipped by the said General Motors Corporation either directly, or, prior to November 20, 1936, or thereabouts, through its wholly owned subsidiary corporations, to wit: Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Co. On November 30, 1936, or thereabouts, these subsidiary selling corporations were dissolved, and their operating or selling functions assumed by the respondent General Motors Sales Corporation, which was incorporated in October 1936, by the respondent General Motors Corporation for the purpose of assuming the operating or sales functions of the several subsidiary corporations above referred to at the time of their dissolution on November 30, 1936, or thereabouts. The acts and practices of the said Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Co., all now dissolved, are hereinafter alleged as the acts and practices of their parent corporation, the respondent General Motors Corporation, to the same effect as though specifically mentioned in each instance.

The said General Motors Sales Corporation is now, and since it commenced functioning on November 30, 1936, or thereabouts, has been engaged in the sale and shipment to dealers and distributors of the motor vehicles manufactured by its aforesaid parent company, General Motors Corporation, in interstate commerce and in foreign countries. These passenger motor vehicles, when sold, are transported from the State or States in which they are manufactured to the purchasers thereof located in a State or States other than the States in which such shipment or shipments originated. Said products also are extensively sold and shipped to various foreign countries.

Complaint

32 F. T. C.

In the course and conduct of their business, the respondents have been and are in competition with other corporations, firms, and individuals likewise engaged in similar businesses involving the offering for sale, sale, and distribution of motor vehicles in commerce among and between the various States of the United States, in the District of Columbia, and with foreign countries.

PAR. 3. In the course and conduct of their business as hereinabove described, the respondent General Motors Corporation, acting concertedly and in cooperation with its subsidiary, General Motors Sales Corporation, and, prior to November 30, 1936, or thereabouts, with each of its now dissolved subsidiary and selling corporations named hereinabove, sells and distributes its passenger motor vehicles to the purchasing and consuming public through designated agents or dealers located at points throughout the United States and in foreign countries. These agents or dealers are individuals, firms, partnerships, and corporations not owned or directly controlled by said General Motors Corporation, or the General Motors Sales Corporation, nor prior to November 1, 1936, by the aforesaid dissolved subsidiary corporation, except insofar as their relationship is sustained by contracts pertaining to the manufacture and delivery of motor vehicles by the respondents herein, and the purchase thereof by said agents and dealers, who in turn resell the same to the purchasing and consuming public at prices advertised, announced, or suggested by the respondents hereto. The respondents' prices are predicated upon an advertised f. o. b., list or delivered retail price, usually at their factories or assembly plants, plus additional charges for transportation from said factories or assembly plants to their retail dealers, plus the cost of certain equipment, such as bumpers, bumper guards, spare tire, safety glass, and similar material necessary for the proper or legal operation of the vehicle, which varies in accordance with the model or type of car delivered. This so-called extra equipment is charged for in addition to respondents' advertised retail sales prices. Other additional charges are generally or frequently made to retail purchasers by the respondents through their local dealers, such as taxes, advertising assessments, handling, and conditioning charges. All these charges are added to the advertised f. o. b. or delivered price of each vehicle sold by the respondents, and are, in turn, included in the retail prices charged local purchasers by respondents' local agents and dealers. The actual delivered price of respondents' cars to a retail purchaser is, therefore, far in excess of respondent's published f. o. b. prices at a designated point, plus actual transportation costs to place of sale and delivery, and retail purchasers are not

informed of these additional charges over and above respondents' advertised retail delivered or f. o. b. prices

PAR. 4. In the course and conduct of their business, as described hereinabove, respondents, for the purpose of promoting the sale of their passenger motor vehicles, conduct and have conducted a nationwide advertising campaign in newspapers, magazines, price lists, by radio broadcasts, and in other ways, whereby they describe and illustrate their products. Accompanying these illustrations or descriptions, they feature, usually in large numerals, a designated list or f. o. b. price for the passenger vehicles so illustrated or described, in such a way as to convey or create the impression in the minds of members of the purchasing public that fully equipped cars so illustrated or described may be purchased complete and ready for operation at the said f. o. b. or delivery point for the prices so designated and featured or at other and distant points for the designated and featured prices, plus actual costs of transportation thereto.

In truth and in fact, the passenger motor vehicles described and illustrated in connection with or in immediate proximity with the featured list or f. o. b. prices are not the motor vehicles usually and commonly sold by the respondents for the featured prices, and generally the said featured price is the price charged by the respondents for their less expensive cars. The cars so described or illustrated in respondents' advertisements and price lists cannot be purchased at retail for the price featured in said advertisements and price lists at the f. o. b. or delivery point named therein or at ultimate destination plus actual freight or transportation charges thereto, without the payment of additional charges for added items, such as bumpers, bumper guards, spare tire, tube, safety glass, tire lock, and other accessories necessary or desirable for the actual or legal operation of a car, or constituting part of what the public understands to be a complete car ready for operation, as illustrated, described, or advertised by the respondents for sale at a designated point at a definite price. To these charges, over and above respondents' advertised delivered prices, are frequently and generally added further and additional charges to retail purchasers for items, among others, such as taxes, advertising, handling, and conditioning. In instances where statements are made of charges in addition to the specified f. o. b. price, such statements are set-out in such fine print as to be almost totally obscured by the large type or figures featuring the said f. o. b. price.

Complaint

32 F. T. C.

PAR. 5. The practice of the respondents in falsely advertising and representing fully equipped and higher priced passenger vehicles for sale at the price of lower priced cars, and charging purchasers a price therefor much higher than the featured price for the cars so described or illustrated, and in the other ways set-out hereinabove was and is calculated to mislead and deceive, and has misled and does mislead and deceive, a substantial portion of the purchasing and consuming public into the belief that upon the payment of the designated list or f. o. b. price, plus transportation charges to point of actual delivery, full title to and possession of said cars, fully equipped and ready for operation may be had. Respondents have also placed in the hands of retailers, agents, and dealers the means of making such false and misleading representations to the purchasing public, and have enabled their retailers, agents, and dealers to increase their own sales of respondents' products so described and represented, thereby lessening the market for similar goods made by other manufacturers of motor vehicles, the true delivered price of which is truthfully stated.

PAR. 6. Passenger motor vehicles of sundry competitors of respondents, likewise engaged in commerce as herein set-out, are and have been sold and distributed to the purchasing and consuming public in the various States of the United States and in the District of Columbia, in competition with respondents' passenger motor vehicles, but without fictitious and erroneous statements and representations in reference to the f. o. b. or delivered prices or retail sales prices as used or made by the respondents herein.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents as hereinabove set-out, in offering for sale and selling their passenger vehicles was and is calculated to, and had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and other representations of respondents, as hereinabove set-out, a substantial number of the purchasing and consuming public have purchased a substantial volume of respondents' passenger motor vehicles, with the result that trade has been unfairly diverted to the respondents from corporations, firms, partnerships, and individuals likewise engaged in the business of manufacturing, distributing, and selling passenger motor vehicles, who truthfully advertise and represent their products and who sell

the same at the retail delivered prices published, represented, or designated by them. As a result thereof, substantial injury has been, and is now being done by respondents to substantial competition in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondents have been, and are all to the prejudice of the public and respondents' competitors, as aforesaid, and have been and are unfair methods of competition within the meaning and intent 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 16, 1937, issued and served its complaint in this proceeding upon respondents, General Motors Corporation and General Motors Sales Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of separate answers on the part of both respondents thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James M. Hammond, attorney for the Commission, and in opposition to the allegations of the complaint by John Thomas Smith and Anthony J. Russo, attorneys for respondents, before John J. Keenan and John W. Addison, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, oral argument not having been requested; and the Commission, having duly considered the matter, and now being 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, General Motors Corporation (hereinafter referred to as General Motors), is a corporation organized in 1916, pursuant to the laws of the State of Delaware.

Findings

32 F. T. C.

At all times since its incorporation General Motors has been engaged in the manufacture and sale of motor vehicles. Among the principal products manufactured and sold by General Motors are passenger cars known as, and referred to by the names, Chevrolet, Oldsmobile, Pontiac, Buick, LaSalle, and Cadillac. Its extended interests are handled through the medium of a number of subsidiaries, by which means it promotes its various activities involving the sale of its cars, accessories, and parts to the purchasing public. Its principal office and place of business is at Detroit, Mich., in which city and State its principal factories also have their situs. It operates other factories and a considerable number of assembly plants in various other States. Its products are shipped from the State of Michigan and from its assembly plants to points throughout the United States and into the District of Columbia, for sale to the purchasing and consuming public through subsidiary corporations organized for that purpose.

PAR. 2. The respondent, General Motors Sales Corporation, was incorporated in October 1936, pursuant to the laws of the State of Delaware, and is a wholly owned subsidiary of General Motors, with its principal office and place of business in the General Motors Building, Detroit, Mich. It is now, and has been since its organization, engaged in selling substantially all of the cars manufactured by General Motors for domestic consumption and exercises within the General Motors organization all of the functions of five selling corporations which were in existence prior to the organization of General Motors Sales Corporation in 1936. These five selling corporations were the Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Car Co., and are hereinafter referred to as the Chevrolet, Olds, Pontiac, Buick, and Cadillac Cos. They were all wholly owned subsidiaries of General Motors and were dissolved in 1936, at which time their assets were transferred to the parent company. The respondent, General Motors Sales Corporation, assumed the functions theretofore exercised by all of these dissolved corporations. The dissolved companies had existed for many years prior to their dissolution as wholly owned subsidiaries of General Motors.

PAR. 3. General Motors manufacturers, and for a number of years has manufactured, all of its cars, regardless of the type or brand name under which they are commonly sold. Immediately following their manufacture, these cars were sold to the Chevrolet, Olds, Pontiac, Buick, and Cadillac Co's. up to the time of their dissolution as above stated. These companies functioned only as selling agents,

and, except for the small percentage of cars sold by them at their own retail stores or sold by General Motors itself, as hereinafter described, disposed of the entire General Motors production of cars to authorized retail dealers in General Motors cars, of whom there are several thousand located in all parts of the United States. General Motors and, prior to their dissolution, the Chevrolet, Oldsmobile, Pontiac, Buick, and Cadillac Co's. caused the motor vehicles manufactured by General Motors to be transported from the factory where made to the purchasers thereof located at various points in the several States of the United States other than the State in which such motor vehicles were made and in the District of Columbia, and since the dissolution of the Chevrolet, Oldsmobile, Pontiac, Buick, and Cadillac Co's. said respondents General Motors and General Motors Sales Corporation have caused, and now cause, said motor vehicles to be transported from the factory where made to the purchasers thereof located at various points in the several States of the United States other than the State in which such motor vehicles were made and in the District of Columbia. Said respondents have maintained, and now maintain, a course of trade in said motor vehicles in commerce between and among the several States of the United States and in the District of Columbia. The retail dealers in turn sold these cars to the public, being aided in that respect by the respondent General Motors Sales Corporation and, prior to its organization, by the five dissolved subsidiaries above referred to.

Since the dissolution of the Chevrolet, Oldsmobile, Pontiac, Buick, and Cadillac Co's. in 1936, the General Motors Sales Corporation has taken title to substantially all cars manufactured by General Motors for domestic distribution and disposed of them to the public through the medium of its authorized dealers in the same manner as the dissolved subsidiaries carried out the functions in this respect prior to their dissolution. The names of the dissolved companies were continued as division names in the new selling company, such as Buick Division, General Motors Sales Corporation. The retail stores formerly maintained by the dissolved companies continued to be, and still are, operated by the General Motors Sales Corporation.

PAR. 4. At the time of the institution of this proceeding, and for a long time prior thereto, General Motors, its wholly owned subsidiary, General Motors Sales Corporation, and, prior to their dissolution, the five selling subsidiaries, hereinabove referred to, were in open competition with other companies likewise engaged in the manufacture and sale of motor vehicles in commerce among and

Findings

32 F. T. C.

between the various States of the United States and in the District of Columbia.

PAR. 5. Prior to their dissolution, the Chevrolet, Pontiac, Buick, and Cadillac Co's. maintained retail stores in various States, wherein cars manufactured by General Motors were sold direct to the public. Since the organization of the General Motors Sales Corporation these retail stores have been operated by it. All of the balance of the cars manufactured by General Motors, except a few sold by General Motors itself, pass through the hands of its selling subsidiaries direct to the public through the medium of the authorized dealers in General Motors products. General Motors does not deal with these dealers direct, but through its selling subsidiaries.

The relationship between the dealer and the selling subsidiary of General Motors, with whom he deals, was and is established by contract which is subject to cancelation on short notice. Those contracts outline generally the way in which the dealer shall conduct his business and the manner in which he may purchase and sell the type of car in which he deals. Respondents furnish and make available to the dealers the necessary forms for keeping their accounts, making reports, purchasing, selling, and financing cars.

General Motors Sales Corporation now sells, and prior to its organization the five dissolved companies sold, the cars manufactured by General Motors to the dealers either for cash or on their credit. The dealers in turn sell these cars to the retail purchasers in like manner.

PAR. 6. Prior to their dissolution the Chevrolet, Oldsmobile, Pontiac, Buick, and Cadillac Cos. were, and the respondent General Motors Sales Corporation is, wholly owned and controlled by the respondent General Motors, and respondent General Motors and said subsidiaries acted jointly in the publication and circulation of the advertising matter hereinafter referred to.

PAR. 7. For the guidance of their retail dealers, respondents furnish them with retail price lists covering each new model, together with changes from time to time. These price lists indicate the list price or base price and the charges to be added thereto for handling, federal taxes, transportation and other items, as hereinafter shown, which make up the ultimate retail delivered price at place of sale. Federal taxes are referred to in said price lists and in invoices as "E. O. H.," or extra overhead. In some instances, these price lists are termed on their face "suggested price list," and, in other instances, they bear the designation "price list"; regardless of what they were termed, they were observed by retail dealers in the sale of respondents'

products to the public, and purchasers were charged in accordance therewith.

PAR. 8. In the course and conduct of their business in said commerce as aforesaid, respondents, and the Chevrolet, Oldsmobile, Pontiac, Buick, and Cadillac Cos. prior to their dissolution, advertised their products extensively in newspapers, magazines, and various other periodicals on billboards and through sundry other advertising media. During the period from 1934 to 1939, inclusive, the respondents and said dissolved subsidiaries used various types of advertisements in furtherance of the sale of their passenger cars. Some advertisements either illustrated or described definite models but set out no selling price whatever; other advertisements stated a price but did not illustrate the car described. The type of advertisement most used during this period was that in which a pictorial illustration of a definite car appeared, accompanied by a designated price in a conspicuous place in the advertisement. In some instances, the price stated was accompanied by, or through an asterisk referred to, explanatory matter in fine print at an inconspicuous place which gave detailed information as to the meaning and significance of the designated price and as to the price of the illustrated car as equipped.

In many of the advertisements where a definite car was illustrated or described and a designated price featured, the car illustrated or described could not be purchased as equipped for the price quoted. Because of variance in the language used and the many different models of cars illustrated or described in respondents' advertisements an actual comparison of each model with the actual selling price is necessary to determine the correctness of the prices appearing in each advertisement. These advertisements may be roughly grouped into four general types, as follows:

(a) Where an automobile is illustrated, coupled with a definite and specified price without any qualification whatsoever.

(b) Where a fully equipped car is illustrated or described for sale to the public at a definite price in large figures, accompanied by such words as "And Up," "List Price" or "Accessories Extra" in very small lettering.

(c) This type of advertisement is similar to type (b), with the exception that immediately adjacent to the car so illustrated and priced in large figures appears a fine print legend setting out either the true price or a price much nearer the true price than the price set out in conjunction with the illustration in very large numerals.

Findings

32 F. T. C.

(d) In some instances, a car is merely described as being for sale at a specified price and is not illustrated.

Analyses of the numerous advertisements of the respondents and said dissolved subsidiaries of the types hereinabove referred to, which are in evidence, and comparison of the same with the price lists in effect at the time these advertisements appeared show, and the Commission finds, that said respondents' pricing practices were misleading and deceptive, for the prices featured in such advertisements were not in fact the prices of the various cars illustrated or described, and the explanatory matter, when present, was either inadequate or so inconspicuous as to be of no value in removing or curing the inherent or deceptive tendencies present in respondents' advertisements.

PAR. 9. The effect of the advertisements used by the respondents as herein found was to convey to the purchasing public the impression that respondents' cars were obtainable at retail at prices much less than they were in fact obtainable; and through this means respondents attracted prospective purchasers, who might not otherwise consider purchasing the type of car thus advertised except for the low prices publicly quoted, into the show rooms of their retail dealers. Once the purchaser was interested in the car by personal inspection, the ultimate price was built up by additional charges until in some instances it was as much as five or six hundred dollars over and above what would appear to be the retail selling price of the car illustrated or described in respondents' advertising.

In some instances, no explanation at all appeared in the advertisement which would advise the most careful reader that the car illustrated could not be purchased for the price quoted. In other instances, the pictorial illustration of a higher priced car was shown in conjunction with the price of a cheaper car and the words "and up" were coupled with the price quoted, thus conveying the false impression that the car pictured was obtainable at the price featured but that more expensive models were available at a higher price.

In other cases, a price shown in large figures in conjunction with an illustration or description was qualified by another and higher price in very small figures placed in some inconspicuous location on the face of the advertisement. Sometimes the price set-out in this smaller lettering was true. Nevertheless, the testimony of the members of the public who appeared for the purpose of giving the impressions they gained from reading these advertisements demonstrated, and the Commission finds, that they expected to obtain the car illustrated at place of manufacture for the price emphasized in large figures plus actual transportation charges to the place of purchase.

In many instances, additional charges were made for accessories appearing on the car illustrated or described. The testimony of the members of the public who appeared shows, and the Commission finds, that they expected to purchase the car illustrated or described, equipped exactly as shown, for the price designated in large figures on the face of the advertisement. Small type expressions, appearing in such advertisements, such as "accessories extra," "white side wall tires extra," "fender wells extra," and "optional equipment extra" seemed to escape their attention entirely.

It is further found from the evidence that respondents have been adding to their advertised price certain charges for intangible items, among others, "delivery and handling charge," "advertising," "new car conditioning," and "factory handling charge." The public is deceived unless all such charges are included in the price of the car referred to when a price is named.

In addition to all the other charges added by respondents to their advertised prices, the evidence shows that an extra charge was generally made for Federal, State, and local taxes, or some of them. The total amount of these charges varies from State to State; it is difficult or impractical to include them in any price set forth in an advertisement of Nation-wide circulation. The Commission finds that failure of the respondents to give the public adequate notice that such items are in addition to the selling price stated, by appropriate explanation to that effect adjacent to the price quoted, constitutes a deception of the public.

PAR. 10. A great number of illustrations of specific instances where the price designated on a definite advertisement was not the true price of the car illustrated or described either at the factory or at the point of delivery of the car could be made from the advertisements and price lists in evidence in this case, but to do so would only extend these findings unnecessarily. However, the following instances are typical illustrations of respondents' practices, as hereinabove discussed. The Commission finds that in an advertisement illustrating a completely equipped 1936 Oldsmobile car there was conspicuously displayed a price of \$675 unqualified by any other language at all on the face of the advertisement, and that the purchasing public was charged \$901.50 for this car at the place of manufacture. This price was built up as follows:

List price of car illustrated.....	\$820.00
Standard Accessories consisting of bumpers, bumper guards, spare tire and tube, metal spring covers (Note (a)).....	37.50

Findings	32 F. T. C.
Factory handling charge.....	3. 00
Federal taxes.....	22. 25
Delivery and handling charge (which includes advertising).....	17. 25
Transportation	1. 50

Retail price at place of manufacture..... \$901. 50

((a) Other accessories available but not visible in the illustration, consisting of dual horns, extra windshield wiper, booster pump, oil bath air cleaner, and lacquered sheet metal, cost \$23.50 more.)

The Commission finds that in this advertisement the public was deceived as to the price of the car illustrated to the extent of \$226.50.

In another advertisement it is found that a Chevrolet Standard Sedan was illustrated, accompanied by a price of \$465 in very large figures. Near the price featured, there appeared in small inconspicuous lettering the words "and up" followed in yet smaller lettering with the statements: "List price of new Standard Roadster at Flint, Mich., \$465.00. With bumpers, spare tire, and tire lock, the list price is \$20.00 additional." The Commission finds that the car illustrated in this advertisement actually cost the purchasing public at Flint, Mich., as follows:

List price of sedan illustrated.....	\$550. 00
Delivery and handling charge.....	16. 90
New car conditioning.....	18. 50
Spare tire, tube, lock and bumper guard.....	20. 00

Total retail price..... \$605. 40

The Commission finds that the roadster described in the fine print of the advertisement would have cost the public as follows:

List price of roadster at Flint.....	\$465. 00
Delivery and handling.....	15. 90
New car conditioning.....	18. 50
Spare tire, etc.....	20. 00

Total retail price..... \$518. 50

The Commission finds that in this advertisement the featured price in large figures, adjacent to the illustration, and the purported true price of the roadster illustrated which was set out in very fine print were both incorrect. The \$465 price described as "list price" and advertised to the public as a retail price was not a retail price and conveyed a false impression to the purchasing public, because neither the car pictured nor any car referred to in fine print in said advertisement sold at retail for a price as low as \$465.

It is found that in another advertisement published in 1939 in many newspapers having a general circulation, a Model 41 Buick Sedan was illustrated and that above and immediately adjacent to this illustration in very large numerals almost 2 inches high there appeared a price of \$894. Underneath these figures in small letters appeared the words "And Up, Delivered in Flint, Mich.," and immediately beneath the illustration of the car in very small print appeared the statement "The Model Illustrated is the Buick Special Model 41, 4 Door Touring Sedan \$996.00, Delivered at Flint, Michigan." The car in question did sell to the public at Flint, Michigan, for \$996 as stated in fine print but that price was \$102 more than the price featured in the large figures in the advertisement. The true price of the car in fine print was utterly submerged and obscured by the price appearing adjacent to the illustration in much larger and more conspicuous figures.

In an advertisement in which was illustrated a Cadillac Touring Sedan it is found that the price demonstrated in large figures was \$1,445, accompanied by an asterisk leading to a statement in very fine print reading: "Price List at Detroit. Subject to change without notice. Special equipment extra." Another fine print statement beneath the car illustrated quoted the price of the car pictured as being \$1,545 "Price List at Detroit." In fact, the car illustrated sold at Detroit for \$1,660 which was \$215 more than the price featured in large figures and \$115 more than the price quoted in the fine print statement beneath the illustration.

The advertisement last above-mentioned also exemplifies very clearly the typical method used by the respondents by which the advertised price was built up by additional charges to create the ultimate selling price to the purchaser. The price featured in the large figures of \$1,445 did not relate to the car illustrated but was the list price of a coupe which, if purchased, would cost the retail buyer at Detroit, Mich., as follows:

List price of coupe.....	\$1, 445. 00
Accessory group.....	38. 00
Handling and delivery.....	35. 00
Federal taxes.....	38. 75
Minus adjustment to create an even-money price to the consumer --	(1. 75)
Total retail price.....	\$1, 555. 00

The actual selling price at Detroit, Mich., of the Cadillac car illustrated in this advertisement was made up as follows:

Findings	32 F. T. C.
List price (as stated in fine print)-----	\$1,545.00
Standard accessories-----	38.00
Delivery and handling-----	35.00
Federal taxes-----	41.00
Plus adjustment to create an even-money price-----	1.00
Actual retail price at place of manufacture-----	\$1,660.00

In addition to the federal taxes added in making up the total retail price, State and local taxes were also added, although no notice to that effect was set forth on the face of the advertisement to put the buyer on notice of these additional charges.

These fine print prices which frequently appeared on respondents' advertisements in conjunction with an illustration of a car which also featured a price in very large figures were in many instances so small as to be practically illegible. A widely publicized advertisement of an Oldsmobile car, which appeared in 1939, is a typical illustration of this practice. In this instance it is found that the price of \$777 appeared in very large figures immediately adjacent to the car illustrated, accompanied by the words "and up" in small lettering. By means of an asterisk, this price was connected with another fine print legend which advised that this was the "Delivered Price at Lansing, Michigan." The car illustrated was not sold to the public by respondents' dealers at Lansing, Mich., for \$777, but for \$889. The actual selling price of the car illustrated was shown in very fine print inconspicuously placed below the rear wheel of the car pictured.

It is found that in another typical advertisement illustrating a Buick car at the large print price of \$765 "and up List at Flint," the small print price was \$1,275 "List at Flint, Fender Wells Extra." The car illustrated retailed at Flint, Mich., for \$1,457.65 which was \$692.65 more than the large print price featured and \$142.65 more than the fine print price, exclusive of the price of the fender wells.

As heretofore stated, the advertisements specifically mentioned are but typical illustrations of respondents' practices in advertising their passenger cars.

PAR. 11. The testimony of members of the purchasing public shows, and the Commission finds, that respondents' advertisements are misleading and deceptive and lead the public erroneously to believe that each of the cars illustrated or described can be purchased at the point of manufacture for the price featured in the advertisement and at points distant from the place of manufacture for the price featured in the advertisement plus cost of transportation to place of purchase.

PAR. 12. Certain competitors of respondents herein likewise engaged in the sale and distribution of passenger cars in commerce

between and among the several States of the United States and in the District of Columbia, who adopted and used advertising picturizations, descriptions, or representations of passenger cars so sold and distributed by them similar to those found to have been used by respondents herein, as more fully set forth in the preceding paragraphs, entered into stipulations and agreements with the Commission in 1937 not to represent, among other things, by picturization or description of a car in connection or conjunction with a designated price, that the car illustrated, including all equipment and accessories as illustrated and described or necessary for its operation, might be purchased at the price designated, unless the designated price is in fact the price of the car so pictured or described.

PAR. 13. The acts, practices, and methods of the respondents in using advertisements of the type hereinabove described in connection with the sale and distribution of said passenger motor vehicles in said commerce have had, and now have, the capacity and tendency to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public, and have induced, and now induce, a substantial portion of the purchasing public, because of said mistaken and erroneous belief engendered as aforesaid, to purchase a substantial volume of respondents' said passenger motor vehicles with the result that trade has been, and now is being, unfairly diverted to respondents from their competitors who truthfully advertise and represent the prices of their cars and sell them at the price published, represented, or designated by them.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and the competitors of said respondents and constitute unfair methods 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 separate answers of respondents, testimony and other evidence taken before John W. Addison and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by John Thomas Smith and Anthony J. Russo, counsel for the respondents,

and by James M. Hammond, counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, General Motors Corporation and General Motors Sales Corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their automobiles, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Representing as the price of any automobile, in or through the quotation of prices in connection with illustrations or descriptions of automobiles, or otherwise, in any advertisement promoting the sale of such automobile at retail, any price other than the true retail price of said automobile at the place designated for its sale, said retail price to include all charges for any equipment or accessories illustrated or described in said advertisement or necessary for said automobile's operation or customarily included as standard equipment, and any charge or charges whatsoever for advertising, delivery, handling, or for any similar or like purposes, or for any other purpose, except transportation charges where the automobile so advertised is transported from the point where advertised for sale to another or different point for delivery to a retail purchaser. The provisions of this subparagraph (a) are subject to the provisions of subparagraph (c) hereof with respect to taxes.

(b) Using a designated price in any advertisement illustrating an automobile offered for sale at retail, unless the true retail price, as defined in subparagraphs (a) and (c) hereof, of the automobile illustrated is set out in juxtaposition thereto in words or figures equal in size and conspicuousness to the words or figures designating the price of any other automobile referred to in said advertisement.

(c) Advertising automobiles for sale at retail at a designated price, unless the said retail price includes all Federal, State, and local taxes, or unless the advertisement clearly and legibly states, immediately adjacent to the price quoted, that the price is subject to additional charges for Federal, State, or local taxes, or any of them, as the case may be.

(d) Advertising or representing an automobile as being for sale at retail at a designated price unless such automobile is in fact made available and sold to the public, at the point specified, for the price stated, or at a point distant therefrom for the price stated plus trans-

807

Order

portation charges thereto. This paragraph is subject to the provisions of subparagraph (c) hereof regarding taxes.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
**THE COAL CARBURETOR COMPANY, AND THORNTON W.
PRICE, INDIVIDUALLY AND AS PRESIDENT THEREOF**

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

Docket 4070. Complaint, Mar. 20, 1940—Decision, Mar. 5, 1941

Where a corporation engaged in manufacture of its "Coal Carburetor" equipment to facilitate combustion of coal and gases in coal burning furnaces and in interstate sale and distribution thereof, and an individual who was its president and dictated its business policies, and had been owner of said business prior to such corporation; in advertising material circulated to purchasers and prospective purchasers—

- (a) Represented or implied that said "Coal Carburetor" was officially indorsed by the United States Government, and that use thereof was advocated and approved by the United States Bureau of Mines and indorsed and approved by public health authorities and other recognized health groups or organizations; facts being it had not been officially indorsed by the Government or by any of the branches thereof, or otherwise, as above set forth; and
- (b) Represented that it was the most efficient means known for producing heat from coal, and that such efficiency had been established by comparative tests with other equipment and devices designed for same general purposes; facts being any such claim was greatly exaggerated and not based on any known facts or upon any such comparative tests;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of their said "Coal Carburetor" into the erroneous belief that such representations were true, and thereby induce their purchase thereof:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Henry S. Thomas, of New Brunswick, N. J., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Coal Carburetor Co., a corporation, and Thornton W. Price, individually and as president of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in