

It is ordered, That respondent Peacock Record Company, Inc., a corporation, shall, within sixty (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 the order to cease and desist.

IN THE MATTER OF
DISCOUNT MOTOR SALES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7912. Complaint, June 3, 1960—Decision, Sept. 29, 1960

Consent order requiring Washington, D.C., used car dealers to cease misrepresenting down payments, financing rates, and guarantees on their used cars, as in the order below specified, and representing falsely, by use of the name

"Military Discount Motor Sales, Inc." in advertising in publications circulating among Armed Forces personnel, or otherwise, that their business had some connections with the military forces.

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 Discount Motor Sales, Inc., a corporation, and John E. Kymingham, Leon N. Pappas and Pearl S. Kymingham, individually and as officers 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 the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Discount Motor Sales, Inc., is a corporation organized and existing under and by virtue of the laws of the District of Columbia. Its office and principal place of business is located at 1300 14th Street, NW., Washington, D.C.

Respondents John E. Kymingham, Leon N. Pappas and Pearl S. Kymingham are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia. Their volume of business is substantial.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of their used automobiles, respondents have made certain statements in newspapers published in the District of Columbia, and in television and radio broadcasts emanating from the District of Columbia. Typical, but not all inclusive, of said statements are the following:

\$1.00 Down on Approved Credit. Take Up to 36 Months to Pay.

No Small Loan—One Place to Make Payments—4% bank financing available—
1 yr. 100% parts & labor Warranty available.

\$1.00 Down on Approved Credit. Payments as low as \$14.60 per mo.

Special Bank Financing for Military Personnel.

4% Bank Financing Available on approved credit.

No Money Down to Officers and First 3 Enlisted Grades.

New Car Warranty.

Many, many cars at Discount Motor Sales leave the lot with only \$1. Down
... and this week-end special is a genuine example of top quality cars at un-

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believable low . . . low prices . . . this is just one of the many \$1. Down specials . . . this '54 2-door Chevy . . . a really beautiful looking car . . . comes completely equipped . . . radio, heater, whitewall tires . . . mechanically perfect . . . and full price is only \$195. . . . Yes, a dollar down and you can drive this Chevy right on home tonight . . . with \$19 a month for your low, low payments!

We don't have time to show you all the wonderful cars to be found at Discount Motor Sales for just \$1 Down . . . but we do have time to tell you that every car you see is positively guaranteed 100% to your satisfaction with the famous DMS Warranty . . . is offered to you along with a free trial . . .

. . . at Discount Motor Sales . . . You have over 200 cars to choose from . . . many Xmas specials priced from \$49 to \$295 . . . really neat looking and smooth running cars . . . each with the famous DMS Warranty! These specials can be yours for only a dollar down and monthly payments as low as \$19 a month.

. . . and for Officers and Enlisted Men in the first three grades . . . stationed anywhere in the U.S.A., you can buy a car with NO MONEY DOWN!

Discount Motor Sales . . . has price-slashed over 200 cars for the great August Sale . . . Every single car carries the famous DMS blue ribbon warranty! You just can't find a better deal any place than Discount Motors . . . for instance . . . Discount Motors has a beautiful '56 Oldsmobile hardtop—radio, heater, whitewall tires . . . all the trimmings and full price is only \$595 . . . Yes, total price tag is \$595 . . . a dollar down and your monthly payments can be as little as \$26 a month! Yes, for \$26 a month you can own a wonderful Discount Motors Car!

. . . every car you see is positively GUARANTEED 100% to your satisfaction . . . with the FAMOUS DMS WARRANTY . . . This 90-Day 100% No Cost Parts or Labor Warranty . . . is offered to you . . .

PAR. 4. Through the use of the aforesaid statements the respondents represent that:

- (a) They sell used automobiles on credit accounts with a minimum down payment of one dollar.
- (b) They offer bank rate financing at four percent interest.
- (c) No small loans are necessary to make a purchase of a used car.
- (d) Only one monthly payment in one place is required on their credit accounts.
- (e) No down payment is required of officers and the first three enlisted grades of the Armed Forces who wish to purchase a used car.
- (f) Used cars are sold with a new car warranty.
- (g) Their used cars are guaranteed 100% and have a 90-day no cost parts and labor warranty.

PAR. 5. Said statements and representations are false, misleading and deceptive. In truth and in fact:

- (a) Respondents do not sell used cars on credit with a minimum down payment of one dollar. When one dollar is accepted by respondents it is not as a down payment but is for the purpose of providing a consideration for a contract of purchase.

(b) Bank rate financing at four percent interest is not offered by the respondents with respect to sales of used cars.

(c) Purchasers of respondents' used cars have been and frequently are required to contract for small loans, mostly with sources outside of the District of Columbia, in addition to installment financing in order to meet respondents' down payment requirements. The representation of "low monthly payments" does not include the small loan charges.

(d) Where purchasers of respondents' used cars contract for small loans to meet down payment requirements and finance the unpaid balance over a term of months or years with a finance company, which is frequently the case, monthly payments are required by each of the lenders involved and at their respective places of business.

(e) Officers and enlisted men of any pay grade cannot purchase a used car without a substantial down payment, unless they have an automobile to trade in lieu thereof.

(f) Respondents do not sell used automobiles with a new car warranty.

(g) Respondents' used cars are not guaranteed or warranted 100% and a 90-day no cost parts and labor guarantee or warranty is given infrequently and only in connection with the sale of late model cars.

PAR. 6. Respondents use the name "Military Discount Motor Sales, Inc.," in advertising their used cars in publications circulating among the personnel of the Armed Forces, thereby representing, contrary to the fact, that their business has some connection with the military forces or offers some special consideration or advantages to members of the military services.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of used automobiles.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of a substantial number of respondents' used automobiles by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substan-

tial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Ames W. Williams and *Mr. Michael P. Hughes* for the Commission.

Mr. Bernard T. Levin, of Washington, D.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia, with violation of the Federal Trade Commission Act, by the use of false, misleading and deceptive statements and representations in newspapers published in the District of Columbia, in television and radio broadcasts emanating from the District of Columbia, and in publications circulating among the personnel of the Armed Forces, with respect to said used automobiles.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, Associate Director, and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Discount Motor Sales, Inc., is a corporation existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1300 14th Street, NW., Washington, D.C., and that respondents John E. Kymingham, Leon N. Pappas and Pearl S. Kymingham are officers of the corporate respondent, their business address being the same as that of the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this

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agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

A deposition attached to and incorporated in the agreement indicates that the deponent, individual respondent Pearl S. Kymingham, while a nominal officer, did not participate in the formation and direction of corporation policy respecting the acts and practices set forth in the complaint, and all parties to the agreement assent to the dismissal of the charges as to Pearl S. Kymingham, individually.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Accordingly,

It is ordered, That respondents Discount Motor Sales, Inc., a corporation, and its officers, and John E. Kymingham and Leon N. Pappas, individually and as officers of said corporation, and Pearl S. Kymingham, as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That used cars can be purchased with a minimum down payment of one dollar or any other amount not in accord with the facts;
2. That they offer or make available 4% bank rate financing, or misrepresenting the financing rates under which their used cars are sold;
3. That no small loans are necessary to make a purchase of a used car; or only one monthly payment in one place is required on their credit accounts, unless such is the fact;

4. That no down payment for the purchase of a used car is required of officers and enlisted men of the first three grades of the Armed Forces; and that no down payment is required of any other person, unless such is the fact;

5. That used cars are sold with a new car warranty;

6. That their used cars are guaranteed 100%; or are guaranteed to any other extent, that is not in accord with the facts, or have a 90-day no-cost parts or labor warranty, unless such is the fact, or have a warranty for any other period of time or for any other coverage, that is not in accord with the facts;

7. That they are connected with or endorsed by the military services.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Pearl S. Kymingham, individually.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Discount Motor Sales, Inc., a corporation; John E. Kymingham and Leon N. Pappas, individually and as officers of said corporation; and Pearl S. Kymingham, as an officer of said corporation, shall, within sixty (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 the order to cease and desist.