

Complaint

58 F.T.C.

IN THE MATTER OF
ROOTES MOTORS INCORPORATED, ET AL.

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

Docket 8071. Complaint, Aug. 9, 1960—Decision, Feb. 2, 1961

Consent order requiring Long Island City, N.Y., distributors of imported cars to cease representing falsely in advertising in newspapers and periodicals that parts and services were immediately available to purchasers of their automobiles in all areas of the United States.

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 Rootes Motors Incorporated, a corporation, and John T. Panks and Peter Lloyd-Owen, 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 Rootes Motors Incorporated is a corporation organized, existing and doing business and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 42-32 21st Street, Long Island City, New York.

Respondent John T. Panks is Director and Vice President of said corporation and respondent Peter Lloyd-Owen is Secretary-Treasurer of said corporation. Their addresses are the same as that of the corporate respondent. The individual respondents formulate, direct and control the acts and practices of said corporate respondent, including those hereinafter alleged.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of imported automobiles.

In the regular and usual course and conduct of their business respondents now cause, and for more than two years last past have caused, said automobiles when sold to be transported from the ports of entry in various States of the United States to dealer-purchasers thereof, located in various other States of the United States and in the District of Columbia for resale to the purchasing public.

Respondents maintain, and at all times mentioned herein, have maintained, a substantial course of trade in said automobiles in

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

PAR. 3. At all times mentioned herein respondents have been, and are now, in direct and substantial competition with other corporations, firms and individuals engaged in the sale and distribution of automobiles in commerce.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the sale of their automobiles in commerce, respondents have caused, and now cause, the publication and dissemination of certain statements and representations in newspapers and periodicals having general circulation. Typical, but not all inclusive, of said statements are the following:

Service and parts readily available.

You can buy a Hillman, Sunbeam, Singer or Humber (and get parts and service for it) in over 700 U.S. towns—Hawaii and Alaska too.

They are backed by factory parts depots right here in the States, supplying a large truly reputable dealer organization that provides superior service close at hand.

* * * They know they can depend on Rootes coast to coast facilities for prompt and courteous service.

PAR. 5. By means of the aforesaid statements and representations respondents have represented, and do represent, directly or by implication, that parts and service are immediately available to purchasers of their automobiles in all areas of the United States.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive in that in many instances respondents and their dealers do not have available the parts for the repair of the automobiles sold by them, and in many instances such parts cannot be obtained for substantial periods of time and, therefore, prompt service cannot be rendered by respondents' dealers.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive 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 quantity of respondents' automobiles because of such erroneous and mistaken belief. As a result thereof, substantial trade has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been, and is being, done thereby to competition in commerce.

PAR. 8. 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 compe-

tion, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. John W. Brookfield, Jr., for the Commission.

Mr. Nathan Shapiro and *Mr. Berthold H. Hoeniger*, of New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on August 9, 1960, charging Respondents with violation of the Federal Trade Commission Act by the dissemination of false, misleading and deceptive statements and representations that parts and service are immediately available to purchasers of their automobiles in all areas of the United States.

Thereafter, on November 7, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director, Acting Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on December 5, 1960, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Rootes Motors Incorporated as a Delaware corporation, with its office and principal place of business located at 42-32 21st Street, Long Island City, New York, and Respondents John T. Panks and Peter Lloyd-Owen as Director and Vice President, and as Secretary-Treasurer, respectively, of said corporation, their addresses being the same as that of the corporate respondent.

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.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and 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. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and 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.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent Rootes Motor Incorporated, a corporation, and its officers and Respondents John T. Panks and Peter Lloyd-Owen, individually and as officers of said corporation, and Respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale and sale 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, that parts and service for said automobiles are immediately available in any area of the United States where such parts and service are not in fact so available.

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 2nd day of February, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Rootes Motors Incorporated, a corporation, and John T. Panks and Peter Lloyd-Owens, individually and as officers 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.
