

shall, within sixty (60) days after service of this order upon it, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the terms of the order to cease and desist contained herein.

IN THE MATTER OF
BILL'S MOTORS, INC., DOING BUSINESS AS ORUSIN MOTORS,
ET AL.

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

Docket C-1647. Complaint, Dec. 16, 1969—Decision, Dec. 16, 1969

Consent order requiring a Falls Church, Va., dealer in used Volkswagens and other used automobiles to cease misrepresenting that it is an authorized Volkswagen dealer, that its used cars are new, failing to disclose that odometers on its used cars have been replaced, claiming that its Volkswagens carry manufacturer's guarantees, and failing to disclose that component parts of certain of its cars differ from those produced for sale in the domestic American market.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the

Complaint

76 F.T.C.

Federal Trade Commission, having reason to believe that Bill's Motors, Inc., a corporation, doing business as Orusin Motors, and William H. Burnett, individually and as an officer 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 Bill's Motors, Inc., doing business as Orusin Motors, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 624 South Washington Street in the city of Falls Church, State of Virginia.

Respondent William H. Burnett is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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, and service and repair of used Volkswagen automobiles, as well as other used automobiles, to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now advertise, and for some time last past have advertised their said products in newspapers of interstate circulation published in the District of Columbia and circulated in the District of Columbia and in Virginia and Maryland thereby inducing persons in the District of Columbia and Maryland to travel to respondents' place of business in Virginia and to purchase respondents' products which were thereafter returned to the District of Columbia and to Maryland, and at all times mentioned herein respondents have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their used Volkswagen automobiles, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers respecting respondents' dealership, the warranty for their automobiles, and the quality and characteristics of their automobiles.

885

Complaint

Typical and illustrative of such advertising representations, but not all inclusive thereof, is the following:

Volkswagens
IMMEDIATE DELIVERY—
BRAND-NEW 1968 DELUXE SEDANS
AND SQUARE BACKS, AUTOMATIC
OR STAND., ANY COLOR. FULL
FACTORY WARRANTY. ALSO MANY
LIKE-NEW 1967's, 4000 MILES,
100% WARRANTY. BANK-RATE
FINANCING, TINY DOWN PAYMENT,
TRADES ACCEPTED. USED VW's,
FROM \$395.

Orusin Motors

624 S. Wash. St. (Lee Hwy.)
Falls Church, Va. JE 4-2422

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. The respondents are an authorized Volkswagen dealer franchised by the manufacturer to sell Volkswagen automobiles.
2. The respondents have in stock and sell new and unused Volkswagen automobiles to the public.
3. The Volkswagen automobiles sold by the respondents are fully guaranteed by the manufacturer and therefore such guarantee will be honored by any and all authorized Volkswagen dealers.

PAR. 6. In truth and in fact:

1. The respondents are not an authorized Volkswagen dealer and are not franchised by the manufacturer to sell Volkswagen automobiles.
2. The respondents do not have in stock and do not sell new and unused Volkswagen automobiles to the public. The respondents sell only used automobiles. A number of used Volkswagen automobiles advertised and sold by respondents have previously been reconditioned by, among other things, the replacement of the odometer so that purchasers are unable to tell from the indicated mileage or the appearance of used Volkswagen automobiles that the automobiles had been used. Because of respondents' advertisements, the oral representations of respondents' employees

and the appearance of the aforesaid automobiles, purchasers have failed to note the terms of the respondents' bill of sale form which refer to the car as used, and said purchasers have been deceived and were likely to be deceived into purchasing respondents' used Volkswagen automobiles in the erroneous and mistaken belief that such automobiles were new.

3. The Volkswagen automobiles sold by the respondents are not guaranteed in any manner by the manufacturer. Such guarantee as is provided by the respondents is neither a full guarantee nor will it be honored by any dealer other than the respondents.

Therefore the statements and representations as set forth in Paragraphs Four and Five hereof, were and are false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their products, by and through oral statements of respondents or their salesmen, the respondents have represented to customers and prospective customers that Volkswagen automobiles which respondents offered for sale had been used solely as demonstrators or had been driven only a limited number of miles, when in fact, the respondents did not have knowledge of the prior use of the automobiles or the number of miles the automobile had been driven.

Therefore, respondents' representations, as aforesaid, were and are false, misleading and deceptive.

PAR. 8. In the further course and conduct of their business, as aforesaid, the respondents have failed to disclose to purchasers of Volkswagen automobiles that said automobiles had been manufactured specifically for sale in a foreign market rather than the United States and that therefore the specifications of the Volkswagen automobiles sold by respondents differed, among other ways, in components, such as engine size, from new and unused Volkswagen automobiles of the same year manufactured specifically for, and sold by authorized Volkswagen dealers in the United States. These differences, which are not readily apparent to the public and would be recognized only by trained and experienced persons, affected the performance of the automobile, the purchaser's convenience and the cost and time for repair.

Therefore, respondents' failure to disclose such material facts,

as aforesaid, was and is a false, misleading and deceptive act and practice.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of used Volkswagen automobiles of the same general kind and nature as that sold by respondents.

PAR. 10. 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 substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 11. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determinations and with a copy of the complaint the Commission intended to issue, together with a proposed form or order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of

thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bill's Motors, Inc., doing business as Orusin Motors, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 624 South Washington Street in the city of Falls Church, State of Virginia.

Respondent William H. Burnett is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Bill's Motors, Inc., a corporation, and its officers, doing business as Orusin Motors, or under any other name, and William H. Burnett, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of used Volkswagen automobiles or any other product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents are an authorized Volkswagen dealer or are a franchised dealer of the Volkswagen factory; or misrepresenting, in any manner, respondents' trade or business connections, associations, affiliations or status.

2. Representing, directly or by implication, that respondents have in stock or sell new or unused Volkswagen automobiles; or misrepresenting, in any manner, the vehicles which respondents stock or sell.

3. Advertising any used vehicle or group of used vehicles without clearly and conspicuously disclosing in any and all advertising thereof that the vehicle or vehicles are used.

4. Offering for sale or selling any Volkswagen automobile which has been used or reconditioned without clearly and conspicuously disclosing by decal or sticker attached thereto that the vehicle is used and the nature of reconditioning.

5. Failing orally to disclose to prospective customers prior to the showing of any vehicle to a prospective customer in which the odometer has been replaced, that the mileage indicated thereon does not reflect the actual miles the vehicle has been driven.

6. Offering for sale or selling any used Volkswagen automobile in which the odometer has been replaced without clearly and conspicuously disclosing by decal or sticker attached thereto that the mileage indicated on the vehicle does not reflect the actual miles the vehicle has been driven.

7. Representing, directly or by implication, that the used Volkswagen automobiles sold by respondents are guaranteed by the manufacturer; or that any guarantee afforded by respondents will be honored by any party other than the respondents.

8. Representing, directly or by implication, that any of respondents products are unconditionally guaranteed when in fact such guarantee is not an unconditional guarantee; or misrepresenting, in any manner, the nature, terms, or conditions of any guarantee.

9. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

10. Representing, in any manner, the nature or extent of previous use of any vehicle offered for sale unless in each such instance respondents have on hand and maintain records which will establish the nature and extent of previous use of each such vehicle offered for sale.

11. Failing to disclose orally and in specific detail to a prospective customer, if a vehicle being offered for sale to that customer differs, in any of its components or in any other manner, from new and unused vehicles of the same make and year produced for sale in the domestic American market.

12. Offering for sale, or selling, any vehicle which differs in any of its components or in any other manner, from new and unused vehicles of the same make and year produced for sale

Decision and Order

76 F.T.C.

in the domestic American market, without clearly and conspicuously disclosing by decal or sticker attached thereto that there are such differences and itemizing them in detailed and specific terms.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein 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 this order.
