

IN THE MATTER OF
ARLINGTON IMPORTS, INC.,
DOING BUSINESS AS
CAPITAL IMPORTS, ETC.

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

Docket 8813. Complaint, Apr. 2, 1970—Decision, July 31, 1970

Consent order requiring a Washington, D.C., seller of new and used automobiles to cease selling used Volkswagens as new, failing to notify customers that a new odometer has been placed on a used automobile, and failing to disclose that the warranties on used cars are not those of the Volkswagen company.

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 Arlington Imports, Inc., a corporation doing business as Capital Imports, and Crystal Cars, Inc., a corporation and Dominick P. DeCantis, individually and as an officer of each of said corporations, 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 Arlington Imports, Inc., doing business as Capital Imports, is a corporation organized, existing and formerly doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business formerly located at 1301 Good Hope Road, S.E., in the city of Washington, District of Columbia.

Respondent Crystal Cars, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 1301 Good Hope Road, S.E., in the city of Washington, District of Columbia.

Respondent Dominick P. DeCantis is an individual and is an officer of each of the corporate respondents. Prior to June 1968, he formulated, directed and controlled the acts and practices of Arlington Imports, Inc., including the acts and practices hereinafter set forth. In June 1968, he formed Crystal Cars, Inc., in which he formulates, directs and controls the acts and practices of said corporation, including the acts and practices alleged hereinafter. His address is the same as the corporate respondents.

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 new and used automobiles, to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, the aforesaid automobiles to be sold to purchasers thereof located in the District of Columbia and Virginia and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said automobiles 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 automobiles, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of interstate circulation, typical and illustrative of which are the following:

VWS—1968
IMMEDIATE DELIVERY
ALL COLORS IN STOCK
ALSO AUTOMAT. TRANS.
ALSO LEFTOVER '67s
PRICED FROM
\$1,695

1109

Complaint

Can finance with \$95 down
trades accepted

CAPITAL IMPORTS

1301 Good Hope Road, S.E.

1 Block from 11th St. Bridge

Via Rt. 295 & Beltway, 584-0500

* * * * *

'68-'69 VOLKSWAGEN

Sedans & Sunroofs

IMMEDIATE DELIVERY

Over 20 to choose from

PRICED FROM \$1695

Can finance with \$95 down

Sales & Service at both fine locations

CRYSTAL CARS

D.C.

1301 Good Hope Rd. S.E.

Foot of 11th St. Bridge

Via Beltway & Rt. 295

581-8700

VA.

3311 Wash. Blvd.

Arlington

Opposite Kanns

525-5355

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.

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 odometers so that purchasers are unable to tell from the indicated mileage or the appearance of used Volkswagen automobiles that the automobiles have 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

Complaint

77 F.T.C.

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.

Therefore, the statements and representations as set forth in Paragraph 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 the 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 automobiles 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 automobiles, the purchasers 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 further course and conduct of their aforesaid business, respondents have, in many instances, provided purchasers of Volkswagen automobiles with warranties for service and repair of the automobiles. In such instances, respondents have failed to advise said purchasers of the material fact that warranties provided by respondents are not identical in extent of coverage or duration to warranties provided by authorized Volkswagen dealers. Further, respondents, in some instances, have failed to inform said purchasers that

work to be done under the warranties is to be only performed by respondents.

Therefore, respondents' failure to disclose such material facts, as aforesaid, was and is a false, misleading and deceptive act and practice.

PAR. 10. 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 and other new and used automobiles of the same general kind and nature of that sold by respondents.

PAR. 11. 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. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and the 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 issued its complaint on April 2, 1970, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provision of Section 2.34(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

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

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Arlington Imports, Inc., a corporation, doing business as Capital Imports, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 1301 Good Hope Road, S.E., in the city of Washington, District of Columbia.

Respondent Crystal Cars, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 1301 Good Hope Road, S.E., in the city of Washington, District of Columbia.

Respondent Dominick P. DeCantis is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his address is the same as that of said corporations.

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 Arlington Imports, Inc., a corporation, and its officers, doing business as Capital Imports, or under any other name or names, and Crystal Cars, Inc., a corporation, and its officers, and Dominick P. DeCantis, individually and as an officer of each of said corporations, 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 any used Volkswagen automobiles or other new and used 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, affiliations, associations or status.

2. Representing, directly or by implication, that respondents have in stock or sell any new or unused Volkswagen automobiles,

or misrepresenting, in any manner, the types of 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 vehicle 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 vehicles have been driven.

6. Offering for sale or selling any vehicle 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 vehicles have been driven.

7. Failing to orally disclose prior to the time of sale, and in writing on any bill of sale or any other instrument of indebtedness, executed by a purchaser of respondents' Volkswagens and with such clarity as is likely to be observed and read by such purchaser, that:

Warranties provided by respondents are not identical to warranties provided by authorized Volkswagen dealers and that service and repair of Volkswagens under said warranties will only be performed by respondents.

8. Representing, directly or by implication, that automobiles are warranted by respondents, unless the nature, conditions and extent of the warranty, identity of the warrantor and the manner in which the warrantor will perform thereunder are clearly and conspicuously disclosed.

9. 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.

10. Failing to disclose orally and in specific detail to its 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.

Decision and Order

77 F.T.C.

11. 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 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 effect 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.

IN THE MATTER OF

IMPERIAL BUILDERS SUPPLY, INC., ET AL.

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