

Complaint

IN THE MATTER OF

JERWIN, INC., DOING BUSINESS AS
JERWIN MOTORS, ETC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
TRUTH IN LENDING AND THE FEDERAL TRADE COMMISSION ACTS

Docket C-1792. Complaint Sept. 8, 1970—Decision, Sept. 8, 1970

Consent order requiring three affiliated Atlanta, Ga., dealers in used automobiles to cease violating the Truth in Lending Act by failing to state in terminology prescribed by Regulation Z the cash price of their cars, the amount of the downpayment, the number, amount and due date of scheduled payments, the annual percentage rates of the finance charge, and the deferred payment price.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jerwin, Inc., a corporation, trading and doing business as Jerwin Motors, and University Motor Co., Inc., a corporation, trading and doing business as University Motors, and Capital Discount, Inc., a corporation, and Jerry G. Greenway and Winston W. Massengale, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Jerwin, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1156 Memorial Drive, SE., Atlanta, Georgia. Jerwin, Inc., is trading and doing business as Jerwin Motors at the same address of the corporate respondent.

Respondent University Motor Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1202 Stewart Avenue, SW., Atlanta, Georgia. University Motor Co., Inc., is trading and doing business as University Motors at the same address as the corporate respondent.

Complaint

77 F.T.C.

Respondent Capital Discount, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1156 Memorial Drive, SE., Atlanta, Georgia.

Respondents Jerry G. Greenway and Winston W. Massengale are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their addresses are the same as those of 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 of used automobiles to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time last past have extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents have caused newspaper advertisements to be published which promote, aid, or assist directly or indirectly consumer credit sales of their automobiles. In these advertisements respondents have stated the amount of the downpayment without disclosing all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

1. The cash price;
2. The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
3. The amount of the finance charge expressed as an annual percentage rate; and
4. The deferred payment price of the item advertised.

PAR. 5. Subsequent to July 1, 1969, respondents, in connection with their credit sales, as "credit sale" is defined in the aforesaid Regulation Z, have caused and are causing customers to execute both conditional sales contracts and installment sales contracts which are payable by agreement in more than four installments. The respondents have caused and are causing customers to sign the installment sales contracts in blank. None of these contracts contains disclosures in the manner and form required by Section 226.8 of Regulation Z. Respondents have made no other written disclosures to their customers nor have they preserved evidence of compliance with Regulation Z as required by Section 226.6(i) of Regulation Z.

PAR. 6. In the ordinary course and conduct of their business, respondents do not state the prices of their automobiles until they determine whether their customers will pay cash for an automobile or will pay on an extended payment plan. If the respondents learn that the customer is planning to use an extended payment plan, then they state a higher price for the automobile than would be stated if the customer would pay cash. The difference between the cash price and the extended payment price is a finance charge within the meaning of Section 226.4(a) of Regulation Z. Respondents thereby do not disclose the amount of the finance charge as required by Section 226.8(c) (8) of Regulation Z.

PAR. 7. By and through acts and practices set forth in paragraphs four, five, and six hereof, respondents failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 105 of that Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of 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 has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public

Decision and Order

77 F.T.C.

record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Jerwin, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1156 Memorial Drive, SE., Atlanta, Georgia.

Respondent University Motor Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1202 Stewart Avenue, SW., Atlanta, Georgia.

Respondent Capital Discount, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1156 Memorial Drive, SE., Atlanta, Georgia.

Respondents Jerry G. Greenway and Winston W. Massengale are officers of said corporations. They formulate, direct and control the policies, acts and practices of said corporations and their 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 Jerwin, Inc., a corporation, trading or doing business as Jerwin Motors or under any other name, University Motor Co., Inc., a corporation, trading or doing business as University Motors or under any other name, Capital Discount, Inc., a corporation, Jerry G. Greenway and Winston W. Massengale, individually and as officers of respondent corporations, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with any advertisement or consumer credit sale of automobiles or any other merchandise or services, as "credit sale" is defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Representing, directly or by implication, in any advertisement as "advertisement" is defined in Regulation Z, the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the

period of repayment, or that there is no charge for credit, unless all of the following items are stated in terminology prescribed under Section 226.8 of Regulation Z:

- (i) The cash price;
- (ii) The amount of the downpayment required or that no downpayment is required, as applicable;
- (iii) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (iv) The amount of the finance charge expressed as an annual percentage rate; and
- (v) The deferred payment price.

2. Placing or causing to be placed any advertisement as "advertisement" is defined in Regulation Z which in any other manner fails to comply with the requirements of Section 226.10 of Regulation Z.

3. Consummating any customer "consumer credit" transaction as "consumer credit" is defined in Regulation Z, without first furnishing in writing to the customer all disclosures required to be made in the manner and form specified in Section 226.8 of Regulation Z.

4. Failing to disclose any finance charge, as "finance charge" is defined in Section 226.4 of Regulation Z, by representing as part of the "cash price" of goods or services any amount charged to the customer directly or indirectly which is in excess of the amount at which respondents would offer to sell the same goods or services for cash; or failing to disclose any finance charge as "finance charge" is defined in Regulation Z by any other means whatsoever.

5. Failing to preserve evidence of compliance with Regulation Z as required by Section 226.6(i) of Regulation Z.

6. Failing to deliver a copy of this order to cease and desist to all present and future employees, salesmen or other persons engaged in any aspect of the preparation, creation, and placing of respondents' advertising or engaged in the sale of respondents' merchandise or services; and failing to secure from each such employee, salesmen or other person a signed statement acknowledging receipt of said order.

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

It is further ordered, That each respondent shall, within sixty

Complaint

77 F.T.C.

(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 contained herein.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resultant 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.
