

FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2053. Complaint, Sept. 28, 1971—Decision, Sept. 28, 1971

Consent order requiring an Arlington, Va., firm which sells, services and repairs used Volkswagen automobiles to cease misrepresenting that they are franchised Volkswagen dealers, that they sell new cars, failing to disclose that their cars are used, failing to reveal that the odometers have been altered and failing to disclose that their warranties are not the same as those of authorized Volkswagen dealers. Respondents are also required to make all the disclosures required by Regulation Z of the Truth in Lending Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that German Auto Agency, a corporation, and George Sprague, individually and as an officer of said corporation, and Ray Culbertson, individually, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 German Auto Agency 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 3000 North 10th Street, in the County of Arlington, Commonwealth of Virginia.

Respondent George Sprague is an individual and officer of corporate respondent and respondent Ray Culbertson is an individual. The said individual respondents cooperate and act together to formulate, direct and control the acts and practices thereof including the acts and practices hereinafter set forth. Respondent George Sprague's address is 5443 85th Avenue, Lanham, Maryland. Respondent Ray Culbertson's address is 6010 Softwood Trail, McLean, Virginia.

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, and other used automobiles, to the public.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in COUNT I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, said automobiles to be sold to purchasers thereof located in the District of Columbia and in Maryland and in 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 used Volkswagen auto-

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mobiles, respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers transmitted through the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

	(Located on either side,	
'69	of a silhouette of	'70
	a Volkswagen)	
	\$95 down	
\$58 mo.		36 mos.
\$2207	deferred payment price	
15.09	annual percentage rate	
	100% warranty	
	\$1,695 up	
Finance Manager on duty 9 A.M. 'til 9 P.M.		
All Federal Taxes Included		
German Auto Agency		
3000 10th Street, N. Arlington, Va.		
522-3444		
'Til 9 P.M.		

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.

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

PAR. 7. 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 have 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 which would be recognized only by trained and experienced persons, affected the performance of the automobile, the person's convenience, and the cost and time for repairs.

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

PAR. 8. 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 disclose to the purchasers the material fact that warranties provided by respondents are not identical in coverage and duration to new car 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 performed only by respondents. In the absence of said disclosures, and in the absence of disclosures that respondents are not authorized Volkswagen dealers and that said Volkswagen automobiles are not new and unused automobiles, prospective purchasers of said automobiles expect and believe that said warranties are the same in coverage and duration as said new car warranties, and that work thereunder can be obtained from authorized Volkswagen dealers.

Therefore, respondents' failure to disclose such material facts, as aforesaid, was and is, an unfair, 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 those sold by respondents.

PAR. 10. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of

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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.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in COUNT II as if fully set forth verbatim.

PAR. 12. Since July 1, 1969, in the ordinary course and conduct of their business, as aforesaid, respondents regularly extend, and for some time last past have regularly 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. 13. Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with other than open end credit sales, as "credit sale" is defined in Regulation Z, have caused and induced their customers to execute retail installment contracts, hereinafter referred to as "the contract." Respondents provide customers with no consumer credit cost disclosure other than on the contract.

By and through use of the contract, respondents have:

1. Failed, in some instances, to furnish customers with the disclosures required by Regulation Z to be furnished prior to consummation of the transaction, as required by Section 226.8(a) of Regulation Z.
2. Failed, in some instances, to disclose the annual percentage rate, computed accurately to the nearest quarter of one percent in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z. Thereby respondents in some instances understated and in some instances overstated the annual percentage rates.
3. Failed to include in the finance charge the amounts of charges or premiums for credit life insurance written in connection with the credit transaction, in instances where respondents failed to obtain from

the customer desiring such insurance coverage a specific dated and separately signed affirmative written indication of such desire, in violation of Section 226.4(a)(5) of Regulation Z; respondents thereby failed, in those instances, to disclose the finance charge accurately as computed in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z.

4. Failed, in some instances, to disclose the amount of the unpaid balance, as required by Section 226.8(c)(5) of Regulation Z.

5. Failed, in some instances, to disclose the amount financed, as required by Section 226.8(c)(7) of Regulation Z.

6. Failed, in some instances, to make all disclosure required to be made by Sections 226.8(b) and 226.8(c) of Regulation Z, computed in accordance with Sections 226.4 and 226.5 of Regulation Z and disclosed in the form and manner prescribed under Section 226.6 of Regulation Z, in violation of Sections 226.6 and 226.8 of Regulation Z.

PAR. 14. Subsequent to July 1, 1969, in the ordinary course and conduct of their business, respondents have caused to be published advertisements for their used cars, as "advertisement" is defined in Regulation Z, which advertisements aid, promote or assist directly or indirectly extensions of consumer credit. Through these advertisements, respondents:

1. Failed to accurately disclose the "deferred payment price," as required by Section 226.10(d)(2)(v) of Regulation Z.

2. Stated that a downpayment in the amount of \$95 would be accepted in connection with the advertised extensions of credit, when in fact respondents did not usually and customarily accept and were not willing to accept downpayments in that amount.

PAR. 15. Pursuant to Section 103(k) of the Truth in Lending Act, respondents' aforesaid failures to comply with Regulation Z constitute violations of that Act, and pursuant to Section 108 thereof, respondents thereby violated 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 determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of 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

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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 upon public 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent German Auto Agency 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 3000 North 19th Street, County of Arlington, Commonwealth of Virginia.

Respondent George Sprague is an individual and officer of said corporation and respondent Ray Culbertson is an individual. Respondent George Sprague's address is 5443 85th Avenue, Lanham, Maryland. Respondent Ray Culbertson's address is 6010 Softwood Trail, McLean, Virginia.

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

I

It is ordered, That respondents German Auto Agency, a corporation, and its officers, and George Sprague, individually and as an officer of said corporation, and Ray Culbertson, individually, 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 products 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, the 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 condition or character of 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 without clearly and conspicuously disclosing by decal or sticker attached thereto that the vehicle is used.

5. Failing orally to disclose to prospective customers prior to the showing of any vehicle to a prospective customer on which the odometer has been replaced or the true mileage altered, 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 on which the odometer has been replaced, or the true mileage altered, 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. Failing to disclose orally and in specific detail to a prospective customer if a vehicle being offered for sale to that prospective 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.

8. Offering for sale or selling any used Volkswagen without clearly and conspicuously disclosing by decal or sticker attached thereto that the vehicle being offered for sale 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, and itemizing such differences in detailed and specific terms.

9. 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.

10. 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.

II

It is ordered, That respondents German Auto Agency, a corporation, and its officers, and George Sprague, individually and as an officer of said corporation, and Ray Culbertson, individually, and respondents' agents, representatives and employees, directly or through corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, assist directly, or indirectly, any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Public Law 90-321, U.S.C. 1601, *et seq.*) to forthwith cease and desist from:

1. Failing to make all disclosures required to be made by Regulation Z prior to consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

2. Failing to disclose the "annual percentage rate," using that term accurate to the nearest quarter of one percent, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

3. Failing to disclose accurately the amount of the finance charge computed in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c) (8) (i) of Regulation Z, whether by failing to comply with Section 226.4(a) (5) of Regulation Z, or otherwise.

4. Failing to disclose the amount of the "unpaid balance," using that term, as required by Section 226.8(c) (5) of Regulation Z.

5. Failing to disclose the "amount financed," using that term, as required by Section 226.8(c) (7) of Regulation Z.

6. Stating in any advertisement 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, without stating 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:

- (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 repayment 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.

7. Failing, in any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z, to accurately disclose the amount of the "deferred payment," when that amount is required to be disclosed under the provisions of Section 226.10(d) (2) of Regulation Z; or stating that no downpayment or any specific amount of downpayment will be accepted in connection with the advertised extension of credit unless respondents do, in fact, usually and customarily accept or will accept downpayments in that amount.

8. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, 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 this order.

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 deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, or sale of any products, or in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from such persons.

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 the order.

IN THE MATTER OF

ROBERT W. RICKLES TRADING AS CORTLAND MUSIC
COMPANY

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

Docket C-2054. Complaint, Sept. 28, 1971—Decision, Sept. 28, 1971

Consent order requiring a Cortland, Ohio, seller and distributor of new pianos to cease misrepresenting that the pianos are repossessed or being offered