

Complaint

IN THE MATTER OF

JORDAN MOTOR COMPANY, INC., ET AL.

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

Docket C-2195. Complaint, Apr. 18, 1972—Decision, Apr. 18, 1972

Consent order requiring an Akron, Ohio, new and used car dealer to cease violating the Truth in Lending Act by failing to disclose to customers the annual percentage rate, the total number of payments, the cash price, the unpaid balance of the cash price, the deferred payment price, and other disclosures required by Regulation Z of the said Act. Respondent is also required to include on the face of its notes a notice that any subsequent holder takes the note with all conditions of the contract evidencing the debt.

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 Jordan Motor Company, Inc., a corporation, and Jordan E. Alex, individually, and as an officer of said corporation, and also trading and doing business as American Acceptance Company, hereinafter referred to as respondents, have violated the provisions of said Acts and 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 Jordan Motor Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and only place of business located at 35 East Waterloo Road, Akron, Ohio.

Respondent Jordan E. Alex is the president and chief executive officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Jordan E. Alex, is an individual, and trades and does business as American Acceptance Company, a sole proprietorship with its office and principal place of business located at 35 East

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Waterloo Road, Akron, Ohio, the same address as that of corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, and sale of new and used automobiles to the public at retail. Respondent Alex, trading and doing business as the American Acceptance Company is now, and for some time last past has been, engaged in the financing of automobile purchases for customers of respondent Jordan Motor Company, Inc. Respondent Jordan Motor Company, Inc., is the only source of business for American Acceptance Company.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend and arrange for the extension of, and for some time last past have regularly extended and arranged for the extension of, 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. Corporate respondent, and its chief officer, respondent Alex, in the ordinary course of their business, negotiate to third parties, primarily the American Acceptance Company owned by respondent Alex, installment sales contracts or other instruments of indebtedness executed in connection with credit purchases.

PAR. 5. Subsequent to July 1, 1969, respondents, in the ordinary course of their business, as aforesaid, and in connection with the financing of their credit sales as "credit sale" is defined in Regulation Z, have caused, and are now causing, customers to execute retail installment security agreements containing Federal Truth In Lending Disclosure statements, hereinafter referred to as "the agreement." Respondents make no disclosures to customers in connection with their credit sales, except on the agreement.

By, in and through the use of the agreements respondents:

(1) Failed in some instances to disclose the "annual percentage rate" accurately to the nearest quarter of one percent in accordance with Section 226.5(b)(1) of Regulation Z, as prescribed by Section 226.8(b)(2) of Regulation Z.

(2) Failed in some instances to disclose accurately the total of payments as required by Section 226.8(b)(3) of Regulation Z.

(3) Failed in some instances to disclose accurately the deferred payment price as required by Section 226.8(c)(8)(ii) of Regulation Z.

(4) Failed in some instances to disclose accurately the unpaid balance of cash price as required by Section 226.8(c)(3) of Regulation Z.

(5) Retained a security interest in the automobile sold on consumer credit and in some instances failed to clearly identify the property to which the security interest related, as required by Section 226.8(b)(5) of Regulation Z.

PAR. 6. Subsequent to July 1, 1969, respondents, in the ordinary course of their business, as aforesaid, are and for some time last past have been, engaged in the advertisement of consumer credit, as the term "advertisement" is defined in Regulation Z. Some of the advertisements utilized by respondents to aid, promote, or assist directly or indirectly, respondent's credit sales, as the term "credit sale" is defined in Regulation Z which sales involve the extension of credit other than open end credit, state "no payments for 60 days" thereby implying that no downpayment is required, and further state the amount of various installment payments. The advertisements in question do not contain any other credit cost information.

By, in and through the use of the aforesaid advertisements, respondents state in advertising that no downpayment is required, and state the amount of an installment payment without also setting forth 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 or the amount of the loan, as applicable;
2. the number 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;
4. the deferred payment price or the sum of the payments as applicable.

PAR. 7. Subsequent to July 1, 1969, respondents, in the ordinary course of their business, as aforesaid, and in connection with the financing of their credit sales as "credit sale" is defined in Regulation Z, have on some occasions, required their customers, when financing purchases from corporate respondent with the American Acceptance Company owned by respondent Alex, to sign a cognovit note and chattel mortgage, hereinafter referred to as "the note." The note contains the following statement: "Each of the undersigned hereby authorizes any attorney at law to appear in any court of record in the State of Ohio, or in any State of the United States, after the above obligation or any installment thereof becomes due and waive the issuing and service of process and confess a judgment against any one or more or all of the undersigned, in favor of any holder of this note, for the amount then appearing due, together with

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costs of suit, and thereupon to waive all errors and all rights of appeal and stay of execution * * *

By and through, the use of the aforesaid note in respondents' credit sales, respondents engaged in and were a part of credit transactions because of which respondent gained the right to acquire a security interest in any real property which was or is used or was or is expected to be used as the principal residence of respondents' customers. Therefore respondents' customers, who owned such real property, had the right to rescind the transaction in the manner prescribed in Section 226.9(a) of Regulation Z, and respondents were required to give notice of that fact, in the manner prescribed in Section 226.9(b) of Regulation Z, to those customers who had such right to rescind. Respondent failed to give such notice to customers who had the right to rescind said credit transaction in the manner prescribed in, and as required by, Section 226.9(b) of Regulation Z.

PAR. 8. By the aforesaid actions, described in Paragraphs Five, Six and Seven hereof, respondents have 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 103(q) of the Truth In Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that act, and pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

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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 Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Truth In Lending Act and the regulations promulgated thereunder and 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 Acts, 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 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 Jordan Motor Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 35 East Waterloo Road, Akron, Ohio. Respondent Jordan E. Alex is the president and chief executive officer of the corporate respondent. He formulates, directs and controls the acts and practices of said corporation.

2. Respondent Jordan E. Alex is an individual who also trades as American Acceptance Company, a sole proprietorship.

3. 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 Jordan Motor Company, Inc., a corporation, and Jordan E. Alex, individually, and as an officer of said corporation, and trading and doing business as American Acceptance Company, and respondents' successors and assigns and respondents' officers, agents, representatives, and employees directly or through any corporation, subsidiary, division or other device in connection with any extension or arrangement for the extension of consumer credit or any advertisement to aid, promote or 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 (Pub.L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with the requirements of Section 226.5 of Regulation Z, as prescribed by Section 226.8(b)(2) of Regulation Z.

2. Failing to disclose the total of payments accurately as required by Section 226.8(b)(3) of Regulation Z.

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3. Failing to disclose the deferred payment price accurately as required by Section 226.8(c)(8)(ii) of Regulation Z.

4. Failing to disclose accurately the unpaid balance of cash price as required by Section 226.8(c)(3) of Regulation Z.

5. Failing to make a clear identification of the property to which any security interest relates as required by Section 226.8(b)(5) of Regulation Z.

6. Failing to state, in terminology prescribed by Section 226.8 of Regulation Z, in any advertisement to aid, promote or assist directly or indirectly any credit sale involving the extension of credit other than Open End credit which states: 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, all of the following items as required by Section 226.10(d)(2) of Regulation Z:

(a) the cash price or the amount of the loan, as applicable.

(b) the amount of the downpayment required or that no downpayment is required, as applicable.

(c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(d) the amount of the finance charge expressed as an annual percentage rate.

(e) the deferred payment price or the sum of the payments, as applicable.

7. Failing in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, to give notice to the customer that he has the right to rescind the transaction, in the manner prescribed by Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

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 respondents cease and desist from:

Assigning, selling or otherwise transferring respondents' notes, contracts, or other documents evidencing a purchaser's

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indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract, or other documents evidencing the indebtedness.

It is further ordered, That respondents cease and desist from:

Failing to include the following statement clearly and conspicuously on the face of any note, contract, or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other instrument to the contrary notwithstanding.

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 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 each such person.

It is further ordered, That respondents notify the Commission at least thirty (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 respondents 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 contained herein.

IN THE MATTER OF

FARLAND-BUELL, INC., ET AL.

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