

MICHAEL YACCARINO TRADING AS RENO'S AUTO SALES

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

Docket C-2349. Complaint, Feb. 1, 1973—Decision, Feb. 1, 1973.

Consent order requiring a Neptune, New Jersey, seller and distributor of used automobiles, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act. Respondent is further required to provide his customers who speak and read only Spanish with contracts and credit cost disclosures printed in Spanish.

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 Michael Yaccarino, an individual doing business as Reno's Auto Sales, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending 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 Michael Yaccarino, is an individual doing business under the trade name and style of, Reno's Auto Sales, under and by virtue of the laws of the State of New Jersey. Michael Yaccarino, the sole owner of Reno's Auto Sales, is the individual responsible for formulating, directing and controlling the acts and practices of the firm.

PAR. 2. Respondent is now and for some time last past has been engaged in the offering for sale, sale and distribution of used automobiles to the consuming public.

COUNT I

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 I as if fully set forth verbatim.

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PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly extends 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, respondent, in the ordinary course and conduct of his business, as aforesaid, and in connection with credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System, has caused and is causing customers to execute binding retail installment contracts for the sale of used automobiles. On these contracts, hereinafter referred to as "the contract," respondent provides certain consumer credit cost information. Respondent does not provide these customers with any other consumer credit cost disclosures.

PAR. 5. By and through the use of the contract set forth in Paragraph Four respondent:

1. Fails in some instances to use the term "cash downpayment" to describe the downpayment in money, made in connection with the credit sale, as required by Section 226.8(c) (2) of Regulation Z.

2. Fails in some instances to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment as required by Section 226.8(c) (3) of Regulation Z.

3. Fails in some instances to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8(c) (7) of Regulation Z.

4. Fails in some instances to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c) (3) (i) of Regulation Z.

5. Fails to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the total amount of the finance charge, and fails in some instances to describe that sum as the "deferred payment price," as required by Section 226.8(c) (8) (ii) of Regulation Z.

6. Fails in some instances to use the term "annual percentage

rate" to express the rate of finance charge as required by Section 226.8(b) (2) of Regulation Z.

7. Fails to disclose the annual percentage rate computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

8. Fails in some instances to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness as required by Section 226.8(b) (3) of Regulation Z.

9. Fails in some instances to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b) (7) of Regulation Z.

10. Fails to make full disclosure before the transaction is consummated and to furnish the customers with a duplicate of the instrument or a statement by which the required disclosures are made, as required by Section 226.8(a) of Regulation Z.

11. Fails to print the term "finance charge" more conspicuously than other terminology where such term is required to be used, as required by Section 226.6(a) of Regulation Z.

12. Fails to (a) obtain a specific dated and separately signed affirmative written indication of the customer's desire for credit life insurance to be written in connection with its credit sale and (b) disclose the cost of such insurance to the customer in the insurance authorization signed by the customer, as required by Section 226.4 of Regulation Z.

13. Fails to furnish a clear, conspicuous and specific statement in writing setting forth (a) the cost of insurance against loss or damage to the property purchased which is written in connection with the credit transaction and (b) the privilege of the customer to choose the person through whom the insurance is to be obtained, as required by Section 226.4(a) (6) of Regulation Z.

14. Fails to properly identify the creditor as required by Section 226.8(a) of Regulation Z.

15. Failed to obtain new contract forms or to alter the existing stock of contract forms prior to, during and subsequent to the period beginning July 1, 1969 and ending December 31, 1969, as required by Section 226.6(k) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provi-

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sions of Regulation Z constitute violations of that Act, and pursuant to Section 108, thereof, respondent has thereby violated the Federal Trade Commission Act.

COUNT II

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

PAR. 7. Respondent has, in the course and conduct of his business, offered for sale, sold or caused to be sold and delivered, automobiles to customers who reside in the States of New Jersey and New York.

PAR. 8. By virtue of the allegations in Paragraph Seven, respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. In the course and conduct of his business, respondent engages in the sale of used automobiles to customers who only speak, read and write Spanish. They understand little English and do not read or write it.

Some of these customers, who only read, write and speak Spanish, are given an oral sales presentation in Spanish by the respondent or one of his agents or employees during negotiations for the purchase of used cars. Such oral sales presentations often do not include a full and complete disclosure of all credit cost information and other terms and conditions of the written retail installment contract.

After the oral sales presentation has been made in Spanish, customers are presented with a contract form written in English without being afforded an opportunity of having anyone read or explain all the terms and conditions of said contract to them. These customers who only read and understand Spanish, therefore, do not receive full and adequate disclosure of all credit cost information and other terms and conditions of the contract.

Therefore, respondent's practice of providing to its customers, who only speak and read Spanish, a partial oral disclosure in Spanish of the terms and conditions of the contract, without reading all the terms and conditions of the retail installment

contract which are written in English, is deceptive, misleading and confusing to the Spanish speaking customers and constitute an unfair and deceptive act and practice in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. The aforesaid acts and practices of respondent, as alleged herein, were and are all to the prejudice and injury of the public and of respondent's competitors and 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of the draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission would charge the respondent with violation of the Federal Trade Commission Act; and

Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent 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 respondent 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 has reason to believe that the respondent has 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 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 Michael Yaccarino is an individual doing business as Reno's Auto Sales. Respondent's office and principal place

of business is located at 312, Highway #35, Neptune, New Jersey.

Respondent Michael Yaccarino formulates, directs and controls the policies, acts and practices of said proprietorship and his address is the same as that of the sole proprietorship.

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

ORDER

I

It is ordered, That respondent Michael Yaccarino, an individual doing business as Reno's Auto Sales, and respondent's agents, representatives, employees, successors and assigns, directly or through any corporate or other device or under any other name in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 C.F.R. 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 use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c) (2) of Regulation Z.

2. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment as required by Section 226.8(c) (3) of Regulation Z.

3. Failing to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8(c) (7) of Regulation Z.

4. Failing in some instances to use the term "finance charge" to describe the sum of all charges required by Sections 226.4 of Regulation Z to be included therein, as required by Section 226.8(c) (8) (i) of Regulation Z.

5. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and failing in some instances to describe that sum as the "deferred payment price," as required by Section 226.8(c) (8) (ii) of Regulation Z.

6. Failing in some instances to use the term "annual percentage rate" to express the rate of finance charge as required by Section 226.8(b) (2) of Regulation Z.

7. Failing to disclose the annual percentage rate computed in accordance with Section 226.8(b) (2) of Regulation Z.

8. Failing to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness as required by Section 226.8(b) (3) of Regulation Z.

9. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b) (7) of Regulation Z.

10. Failing to make full disclosure before the transaction is consummated and to furnish the customers with a duplicate of the instrument or a statement by which the required disclosures are made, as required by Section 226.8(a) of Regulation Z.

11. Failing to print the term "finance charge" more conspicuously than other terminology where such term is required to be used, as required by Section 226.6(a) of Regulation Z.

12. Failing to (a) obtain a specific-dated and separately signed affirmative written indication of the customer's desire for credit life insurance to be written in connection with its credit sale and (b) disclose the cost of such insurance to the customer in the insurance authorization signed by the customer, as required by Section 226.4(a) (5) of Regulation Z.

13. Failing to furnish a clear, conspicuous and specific statement in writing setting forth (a) the cost of insurance against loss or damage to the property purchased which is written in connection with the credit transaction and (b) the privilege of the customer to choose the person through whom the insurance is to be obtained, as required by Section 226.4(a) (6) of Regulation Z.

14. Failing to properly identify the creditor as required by Section 226.8(a) of Regulation Z.

15. Failing to comply with Section 226.6(k) of Regulation Z by continuing to use printed retail installment contract forms subsequent to December 31, 1969 which did not con-

form to the specific disclosure requirements of Regulation Z.

16. 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 respondent prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction consummated.

II

It is further ordered, That respondent, Michael Yaccarino, an individual doing business as Reno's Auto Sales, and respondent's agents, representatives and employees, and their successors and assigns, directly or through any corporate or other device or under any other name or names, in connection with the advertising, offering for sale, sale and distribution of used automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to provide customers who speak and read only Spanish with contracts and credit cost disclosures printed in Spanish.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit or in any aspect or preparation, creation or placing of advertising, and that respondent secures a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

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 dissolu-

tion of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.