

Complaint

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IN THE MATTER OF

ALL STATES LINCOLN-MERCURY, INC., TRADING AS CROSS
ROADS LINCOLN-MERCURY, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE FEDERAL
TRADE COMMISSION AND THE TRUTH IN LENDING ACTS*Docket C-2460. Complaint, Sept. 27, 1973—Decision, Sept. 27, 1973.*

Consent order requiring a Cleveland, Ohio, retailer of new and 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.

*Appearances*For the Commission: *Vivian L. Solganik.*For the respondents: *Charles Hyman, of Hyman, Zagrans & Carothers, Elyria, Ohio.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act, and Regulation Z, 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 All States Lincoln-Mercury, Inc., a corporation, d.b.a. Cross Roads Lincoln-Mercury, and Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum, individually and as officers of said corporation, 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 All States Lincoln-Mercury, Inc., d.b.a. Cross Roads Lincoln-Mercury, 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 9415 Broadway, in the city of Cleveland, State of Ohio.

Respondents Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the advertising, offering for sale, and sale of new and used automobiles to the public.

PAR. 3. In the course and conduct of their business as aforesaid respondents have caused, and are now causing, advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, to be placed in various media for the purposes of aiding, promoting or assisting, directly or indirectly, in the credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, of respondents' said automobiles.

PAR. 4. Subsequent to July 1, 1969, in certain of the advertisements referred in Paragraph Three hereof, the respondents have represented, in connection with an extension of consumer credit, the amount of an installment payment, the number of installments and the period of repayment, the amount of downpayment required, and the amount of the finance charge expressed as an annual percentage rate, 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 deferred payment price, or the sum of the payments of the item advertised.

PAR. 5. Subsequent to July 1, 1969, certain of the advertisements referred in Paragraph Three hereof stated the rate of financial charge expressed as an annual percentage rate without using the term "annual percentage rate," as required by Section 226.10(d)(1) of Regulation Z.

PAR. 6. Subsequent to July 1, 1969, certain of the advertisements referred to in Paragraph Three hereof used the term annual percentage rate without printing such term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

PAR. 7. By causing to be placed for publication the advertisements referred to 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 103(q) of that Act, such failure to comply constitutes a violation of the Truth in Lending 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 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 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 All States Lincoln-Mercury, Inc., d.b.a. Cross Roads Lincoln-Mercury, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located at 9415 Broadway, in the city of Cleveland, State of Ohio.

Respondents Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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 All States Lincoln-Mercury, Inc., a corporation, d.b.a. Cross Roads Lincoln-Mercury, its successors and assigns, and its officers, and Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the arrangement, extension, or advertisement of consumer credit in connection with the sales of automobiles or other products or services, as "advertisement" and "consumer credit" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) do forthwith cease and desist from:

(1) Causing to be disseminated to the public in any manner whatsoever, any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, which advertisement states the amount of 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 it states all of the following items in the manner and form 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 credit is extended;
- (d) The amount of the finance charge expressed as an annual percentage rate; and
- (e) The deferred payment price or the sum of the payments, as applicable.

(2) Failing in any consumer credit transaction of advertisement to state the rate of finance charge expressed as an annual percentage rate without using the term "annual percentage rate," are required by Section 226.10(d)(1) of Regulation Z.

(3) Failing in any consumer credit transaction or advertisement to use the term annual percentage rate unless such term is printed more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

(4) Failing in any consumer credit transaction or advertisement to make all the disclosures, determined in accordance with

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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 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, 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 this order.

It is further ordered, That individual respondents named herein each 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 show each respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

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

PEPSICO, INC.

Docket 8903. Interlocutory Order, Sept. 28, 1973.

Order (1) vacating ruling of law judge denying complaint counsel's request to offer into record subpoenaed data, once received, of third-party soft drink concentrate companies; (2) allowing complaint counsel to offer corrected sales data of Crush International, Inc., so as to give complete picture of market shares; (3) directing General Counsel to submit proposed orders containing an agreement to settle third-party subpoena enforcement actions to the D.C. District Court for approval; (4) remanding case for further proceedings in accordance with Commission's order; and (5) with respect