

cease misrepresenting the superiority of the fuel economy of its automobile performance; disparaging competing products; and furnishing means and/or instrumentalities of misrepresentation or deception to its dealers.

Appearances

For the Commission: *H. Robert Field* and *Carleton C. Eastlake*.

For the respondent: *James P. Melican, Jr.* Detroit, Mich.

Complaint

84 F.T.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that General Motors Corp., a corporation, hereinafter referred to as respondent, has violated the provisions of said 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:

For the purposes of this complaint the following definitions shall apply:

1. "EPA test" shall mean the test of air pollution control, containing fuel economy data, conducted by the Environmental Protection Agency, the results of which were published in the Federal Register of Monday, Nov. 5, 1973.

2. "In Commerce" shall mean commerce as commerce is defined in the Federal Trade Commission Act.

3. "Advertisements" shall mean advertisements actually disseminated to the public as well as proposed advertisements or promotional materials.

4. "Data cars" shall mean the actual automobiles tested by the Environmental Protection Agency in the EPA test.

PARAGRAPH 1. Respondent General Motors Corp., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3044 W. Grand Boulevard, Detroit, Mich.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, distribution, sale, and advertising of various products including automobiles.

PAR. 3. Respondent causes the said products, when sold, to be transported from its place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course of its business respondent has furnished and caused to be furnished to its dealers located in various states certain advertisements including but not limited to the advertisements described below with the knowledge and expectation that these advertisements and/or advertisements based thereon and substantially similar

thereto would be disseminated directly or indirectly by at least some of said dealers to the general public.

PAR. 5. Among the advertisements so disseminated by respondent to its dealers is the advertisement attached as Exhibit A.

PAR. 6. At least some of said dealers did in fact disseminate in commerce an advertisement substantially identical to the advertisement attached as Exhibit A.

PAR. 7. Exhibit B is an example of an advertisement disseminated by one of said dealers, and is substantially similar to Exhibit A.

PAR. 8. Said Exhibits A and B and others substantially similar thereto contain one or more false, deceptive and misleading representations and fail to disclose facts which are material in light of the representations contained therein. Therefore, the representations contained in said advertisements were, and are, deceptive or unfair.

PAR. 9. Said Exhibits A and B and others substantially similar thereto (hereinafter referred to as said advertisements) represent *inter alia* that the Environmental Protection Agency (hereinafter EPA) had conducted a test of gasoline economy (hereinafter EPA test) and in that test had found the Eldorado model of Cadillac to be superior in terms of gasoline mileage to the other automobile models listed in said advertisements.

PAR. 10. In truth and in fact the Eldorado model of the Cadillac automobile was not shown in the EPA test to be superior in terms of gasoline mileage to all of the other models of automobiles listed in those advertisements. Therefore, the representations contained in the said advertisements were, and are, deceptive or unfair.

PAR. 11. Respondent failed to disclose in said advertisements that many of the other models of automobiles listed in said advertisements were represented by more than one data car in the EPA test and that in several cases one or more or even a majority of the data cars representing the models of automobiles listed were found to be superior in terms of gasoline mileage in the EPA tests to both data cars of the Cadillac Eldorado. For example, the American Motors Wagoneer, listed sixth on Exhibit A, was represented by three data cars, two of which were superior in terms of gasoline mileage to both data cars of the Cadillac Eldorado.

PAR. 12. Respondent failed to disclose in said advertisements that there were two Cadillac Eldorado data cars tested in the EPA test, and that in many cases, one of these two Eldorado data cars was inferior in terms of gasoline mileage to some or even to all of the data cars representing the other models of automobiles listed in those advertisements. For example, one of the two Eldorado data cars was inferior in

terms of gasoline mileage to both of the data cars representing the Mercedes MB-116, listed third on Exhibit A.

PAR. 13. The facts set forth in Paragraphs Eleven through Twelve are each material in light of the representation contained in said advertisements and their omission makes these advertisements misleading in a material respect. Therefore, the said advertisements were, and are, deceptive or unfair.

PAR. 14. The facts set forth in Paragraphs Nine through Twelve constitute, with regard to gasoline mileage, a false comparison by respondent of the Cadillac Eldorado with the other makes and models listed. Therefore, respondent has, through the use of the aforesaid acts and practices, disparaged other makes and models listed.

PAR. 15. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent General Motors Corporation has been and now is in substantial competition in commerce with corporations, firms and individuals engaged in the sale and distribution of automobiles of the same general kind and nature as that sold by respondent.

PAR. 16. The use by respondent of the aforesaid unfair or deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of automobiles manufactured by General Motors. As a result thereof, substantial trade is being unfairly diverted to respondent from its competitors.

PAR. 17. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair or deceptive acts or practices in commerce and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

EXHIBIT A

* * * * *

A CADILLAC ELDORADO
BEAT THESE OTHER CARS IN THE
EPA'S OFFICIAL MILEAGE TEST!

- | | |
|---------------------------------------|---------------------------------------|
| 1. Toyo Kogyo Mazda RX4 Coupe | 38. Chrysler |
| 2. Oldsmobile Cutlass Salon | 39. Ford Ranchero |
| 3. Mercedes Benz MB-116 | 40. Oldsmobile Delta 88 Royal |
| 4. Ford Torino Station Wagon | 41. Pontiac GTO |
| 5. Plymouth Intermediate | 42. Buick Regal |
| 6. American Motors Wagoneer | 43. Buick Century 350 |
| 7. Buick Century | 44. Pontiac Grand Am |
| 8. Chevrolet Impala Custom | 45. Chevrolet C-10 Suburban |
| 9. Ferrari Dino 246 GT | 46. Chevrolet Caprice Station Wagon |
| 10. American Motors Matador | 47. Oldsmobile Vista Cruiser |
| 11. Ford F-100 | 48. Pontiac Trans Am |
| 12. Ford Galaxie | 49. Pontiac LeMans Safari |
| 13. Buick LeSabre | 50. Chevrolet G-10 Beauville |
| 14. Chevrolet Impala Station Wagon | 51. Pontiac Stageway Coach |
| 15. Pontiac Ventura | 52. Pontiac Grand Prix SJ |
| 16. Ford Torino | 53. Pontiac Grand Safari |
| 17. Chevrolet Malibu Classic | 54. Ford Torino Station Wagon |
| 18. Pontiac LeMans | 55. Buick Electra 225 |
| 19. Plymouth Full Size | 56. Oldsmobile Toronado |
| 20. Mercury Montego | 57. Pontiac Catalina Safari |
| 21. American Motors Universal | 58. Dodge Full Size |
| 22. Jaguar E Type Series III | 59. Dodge GE Full Size Station Wagon |
| 23. Toyota Land Cruiser Station Wagon | 60. Pontiac Grand Ville |
| 24. Buick Century Station Wagon | 61. Buick Estate Station Wagon |
| 25. Ford E-200 | 62. Mercury |
| 26. Dodge Station Wagon | 63. Plymouth Full Size Station Wagon |
| 27. Buick Estate Station Wagon | 64. Mercury Station Wagon |
| 28. Chevrolet Caprice | 65. Lincoln |
| 29. Oldsmobile Cutlass | 66. Pontiac Bonneville |
| 30. Ford Station Wagon | 67. Chevrolet Laguna |
| 31. Oldsmobile Cutlass Supreme | 68. Oldsmobile Delta 88 |
| 32. Mercury Cougar | 69. Lamborghini Jarama 400 GT |
| 33. Buick Estate | 70. Lamborghini Espada 411 GT |
| 34. Plymouth Intermediate | 71. Chevrolet C-20 Suburban |
| 35. Pontiac LeMans Sport | 72. Oldsmobile Delta 88 Station Wagon |
| 36. Pontiac Catalina | 73. Ferrari 365 GTB-4 |
| 37. Buick Gran Sport | |

Hometown Cadillac, Inc. (Picture of Cadillac)
(trademark symbol)

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(Depiction of exhibit made in the interest of economy)

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Exhibit B

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(PICTURE OF AUTOMOBILE)

A CADILLAC ELDORADO

(With Cadillac's Largest Engine)

BEAT THESE OTHER CARS IN THE
ENVIRONMENTAL PROTECTION AGENCY
OFFICIAL MILEAGE TEST!

- | | |
|---------------------------------------|---------------------------------------|
| 1. Toyo Kogyo Mazda RX 4 Coupe | 36. Chrysler |
| 2. Oldsmobile Cutlass | 37. Ford Ranchero |
| 3. Mercedes Benz MB-116 | 38. Oldsmobile Delta 88 Royal |
| 4. Ford Torino Station Wagon | 39. Pontiac GTO |
| 5. Plymouth Intermediate | 40. Buick Regal |
| 6. American Motors Wagoneer | 41. Buick Century 350 |
| 7. Buick Century | 42. Pontiac Grand Am |
| 8. Chevrolet Impala Custom | 43. Chevrolet C-10 Suburban |
| 9. Ferrari Dino 246 GT | 44. Chevrolet Caprice Station Wagon |
| 10. American Motors Matador | 45. Oldsmobile Vista Cruiser |
| 11. Ford F-100 | 46. Pontiac LeMans Safari |
| 12. Ford Galaxie | 47. Pontiac Trans AM |
| 13. Buck LeSabre | 48. Chevrolet [sic] G-10 Beauville |
| 14. Chevrolet Impala Station Wagon | 49. Pontiac Stageway Coach |
| 15. Pontiac Ventura | 50. Pontiac Grand Prix SJ |
| 16. Ford Torino | 51. Pontiac Grand Safari |
| 17. Chevrolet Malibu Classic | 52. Buick Electra 225 |
| 18. Pontiac LeMans | 53. Oldsmobile Toronado |
| 19. Plymouth Full Size | 54. Pontiac Catalina Safari |
| 20. Mercury Montego | 55. Dodge Full Size |
| 21. American Motors Universal | 56. Dodge GE Full Size Station Wagon |
| 22. Jaguar E Type Series III | 57. Pontiac Grandville |
| 23. Toyota Land Cruiser Station Wagon | 58. Mercury |
| 24. Buick Century Station Wagon | 59. Plymouth Full Size Station Wagon |
| 25. Ford E-200 | 60. Mercury Station Wagon |
| 26. Dodge Station Wagon | 61. Lincoln |
| 27. Buick Estate Station Wagon | 62. Pontiac Bonneville |
| 28. Chevrolet Caprice | 63. Chevrolet Laguna |
| 29. Ford Station Wagon | 64. Oldsmobile Delta 88 |
| 30. Oldsmobile Cutlass Supreme | 65. Lamborghini Jarama 400 GT |
| 31. Mercury Cougar | 66. Lamborghini Espada 411 GT |
| 32. Buick Estate | 67. Chevrolet C-20 Suburban |
| 33. Pontiac LeMans Sport | 68. Oldsmobile Delta 88 Station Wagon |
| 34. Pontiac Catalina | 69. Ferrari 365 GTB-4 |
| 35. Buick Gran Sport | |

You don't have to sacrifice room, ride and safety for economy . . .

Kelly Cadillac

(picture of Cadillac trademark symbol)

(with Kelly Cadillac inserted)

"Choose the car you've always wanted"

900 Riverfront Parkway Phone 267-1104

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(Depiction of exhibit made in the interest of economy.)

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 record for a period of sixty (60) 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 General Motors Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3044 West Grand Boulevard, Detroit, Mich.

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 respondent General Motors Corporation and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of automobiles, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by reference to a test or tests, that any of respondent's automobiles is superior with regard to fuel economy to any other automobiles, whether manufactured by respondent or others, unless:

(a) such superiority has been demonstrated, as to the model(s) for which it is claimed, by such test or tests with respect to each sample, or the valid average of all identical samples, of each model represented to have been tested; or

(b) the valid test results for each sample, or the valid average of all identical samples, of each model so compared, including the advertised model as well as such makes and models to which the advertised model is compared, are clearly and conspicuously disclosed.

For the purpose of this order "sample" shall mean an actual automobile tested. *It is provided, however,* That nothing contained in this paragraph is intended to conflict with any guidelines, rules or regulations with respect to fuel economy testing or advertising that may hereafter from time to time be promulgated by any agency of the United States Government, and, if such conflict does occur, the guidelines, rules or regulations shall govern.

2. Misrepresenting in any manner the fuel economy of any automobiles or the superiority of any automobile over competing products in terms of fuel economy.

3. Representing, directly or by implication, by reference to a test or tests, that the performance of any automobile has been tested either alone or in comparison with other automobiles unless such representation(s) accurately reflect the test results and unless the tests themselves are so devised and conducted as to substantiate each such representation concerning the featured tests.

4. Misrepresenting in any manner the purpose, contents or conclusion of any test, report or study relating to the performance of its automobile.

For purposes of Paragraphs 3 and 4 of this order, "test" shall include demonstrations which are claimed to be proof of the representations made.

5. Disparaging the quality or properties of any competing product or products through the use of false or misleading comparisons relative to fuel economy.

6. Placing in the hands of dealers for any of the products of the company an advertisement which contains any of the representations prohibited by Paragraphs 1-5 above.

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 respondent 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 the respondent 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 this order.

IN THE MATTER OF

LOWER SUNRISE TRADING POST, ETC., ET AL.

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