

IN THE MATTER OF
ROSENTHAL CHEVROLET CO., ET AL.

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

Docket 8975. Complaint, July 1, 1974—Decision, Sept. 30, 1975

Consent order requiring an Arlington, Va., new and used car dealership, among other things to cease misrepresenting that any vehicle is new when it has been used in any manner other than the limited use necessary in moving or road testing it prior to delivery to the customer. Further, the complaint is dismissed as to individual respondent Robert M. Rosenthal.

Appearances

For the Commission: *Jerry W. Boykin.*

For the respondents: *Basil J. Mezines, Stein, Mitchell [Mezines,*
Wash., D.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 Rosenthal Chevrolet Co., a corporation, and Robert M. Rosenthal and Harry Rosenthal, individually and as officers of said corporation, hereinafter referred to as respondents, have 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:

PARAGRAPH 1. Respondent Rosenthal Chevrolet Co. 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 3400 Columbia Pike, in the County of Arlington, Commonwealth of Virginia.

Respondents Robert M. Rosenthal and Harry Rosenthal are individuals and officers of the corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including those hereinafter set forth. Their business address is the same as that of the corporate respondent.

The respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, and sale to the public of new and used motor vehicles and in the servicing and repair thereof.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said motor vehicles to be sold to purchasers thereof located in various States of the United States and the District of Columbia, including the Commonwealth of Virginia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said motor vehicles in commerce, as "commerce" is defined in the Federal Trade Commission Act. Also in the course and conduct of their business, respondents have caused, and now cause, customers' notes, contracts, payments, checks, credit reports, title registrations, correspondence and other documents relating to payment of the purchase price for respondents' motor vehicles to be transmitted by various means, including but not limited to, the United States mails, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business, as aforesaid, and for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their motor vehicles and services, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation and by means of radio and television broadcasts transmitted by radio and television stations located in the District of Columbia, having sufficient power to carry such broadcasts across State lines, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical and illustrative of the statements and representations in said advertisements, published in October and November of 1970, disseminated as aforesaid, but not all inclusive thereof, are the following:

* * * * *

THERE ARE STILL 80 - 1970's LEFT!

These are the last of the
5 YR. WARRANTY CARS

SAVE \$500 to \$1200

* * * * *

Bob Rosenthal largest
Chevrolet dealer in Washington
Maryland and Virginia

21 HOUR

Price-cutting Selling Spree
 All day Friday Oct. 23rd and
 all day Sat. Oct 24th
 CLOSE-OUT 1970's
 Only 165 LEFT

save up to
 \$1000
 and even
 more

8 cars
 per hour
 will be
 our
 goal!

Huge
 Discounts
 on any
 remaining
 1970's

No acceptable
 offer refused

PLEASE NO DEALERS

1970's

are the last of the
FIVE YEAR WARRANTY CARS

* * * * *

PAR. 5. By and through the use of the above-quoted statements, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication:

1. That the motor vehicles described or referred to in respondents' advertisements are new;
2. That the motor vehicles described or referred to in respondents' advertisements carry a full five year warranty.

PAR. 6. In truth and in fact:

1. The motor vehicles described or referred to in said advertisements, in many instances, are not new. To the contrary, they have been

driven substantially in excess of the limited use necessary in moving or road testing a new vehicle prior to its delivery to the ultimate purchaser.

2. Some of the motor vehicles described or referred to in respondents' advertisements do not carry a full five year warranty, but merely the remaining balance of the factory warranty. The warranty starts to run from the date the motor vehicle is sold or from the original date the vehicle is placed in service. Many of the advertised motor vehicles have been driven a number of miles and/or have been placed in service for a number of months.

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, and for the purpose of inducing the purchase of their motor vehicles, respondents, through oral statements by their salesmen, have misrepresented the nature and extent of the prior use of said motor vehicles. Said salesmen have represented motor vehicles as demonstrators when, in truth and in fact, such vehicles were driver education vehicles used in high schools in the Washington, D.C. Metropolitan Area.

Therefore, such representations and statements are unfair, false, misleading and deceptive acts and practices.

PAR. 8. In the further course and conduct of their aforesaid business, respondents have engaged in the following acts and practices in connection with the sale of their said motor vehicles:

1. A \$40 dealer handling and service charge is added to the price of respondents' used motor vehicles, the first indication that such a charge is being made, in many instances, occurs at the time the buyer receives a copy of the sales invoice and the conditional sales contract. The purchaser, in many said instances, believes that the motor vehicle will be delivered in satisfactory condition and appearance without the imposition of additional charges. The dealer handling and service charge becomes an undisclosed cost that should have been made known prior to the consummation of the sale.

2. Respondents have repaired or repainted, or have caused to be repaired or repainted, damaged cars, said repairs or repainting hide damage that may adversely affect a vehicle's performance and life expectancy. Respondents have failed to disclose to prospective purchasers and purchasers of respondents' motor vehicles that said damage has been hidden by repairs or repainting.

Therefore, respondents' failure to disclose such material facts, prior to the time of sale was, and is, unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale, service and repair of new and used motor vehicles of the same general kind and nature as that sold, serviced and repaired by respondents.

PAR. 10. The use by the respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices and the failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete and into the purchase of substantial quantities of respondents' motor vehicles and services by reason of said erroneous and mistaken belief. Respondents' aforesaid acts and practices unfairly cause the purchasing public to assume debts and obligations and to make payments of money which they might otherwise not have incurred.

PAR. 11. The acts and practices of the respondents, as set forth above, 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 or 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 issued a complaint charging that the respondents named in the caption hereof have violated the provisions of the Federal Trade Commission Act; and

The Commission having duly determined upon motion submitted by complaint counsel and respondents that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order; and

The respondents and counsel for the Commission having executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 the complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of

sixty (60) days, now in further conformity with the procedures described in Section 2.34 of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Rosenthal Chevrolet Co. 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 3400 Columbia Pike, in the County of Arlington, Commonwealth of Virginia.

Respondent Harry Rosenthal is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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 Rosenthal Chevrolet Co., a corporation, its successors and assigns and its officers, and Harry Rosenthal, individually and as an officer of said corporation, and respondents' 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, service and repair of new and used motor vehicles, or any other products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, orally or in writing, directly or by implication, that any vehicle is new when it has been used in any manner other than the limited use necessary in moving or road testing a new vehicle prior to delivery of such vehicle to the customer.

2. Offering for sale or selling any vehicle of the current or previous model year, which has been used in any manner, other than the limited use referred to in paragraph 1. above, without orally disclosing, prior to any sales presentation the nature and extent of such previous use of said vehicle.

3. Advertising any vehicle of the current or the previous model year which has been used in any manner, other than the limited use referred to in paragraph 1. above, without clearly and conspicuously disclosing in any and all advertising thereof the nature of such previous use of said vehicle.

4. Displaying, offering for sale or selling any vehicle of the current or the previous model year which has been used in any manner, other than the limited use referred to in paragraph 1. above, without clearly and conspicuously disclosing by decal or sticker affixed to the inside of

the side window containing the manufacturer's suggested retail price or "Monroney sticker," or if space is not available thereon, in close proximity thereto, so as to be clearly visible, the nature of such previous use of said vehicle. Said decal or sticker shall also contain the following statement: "FOR EXACT mileage, see odometer."

5. Misrepresenting, orally or in writing, directly or by implication, the nature or extent of previous use or condition of any vehicle displayed, offered for sale or sold.

6. Representing, orally or in writing, directly or by implication, that any of their motor vehicles are warranted, unless the nature and extent of the warranty, the identity of the warrantor and the manner in which the warrantor will perform are clearly and conspicuously disclosed; misrepresenting, in any manner, the terms, conditions and extent of any warranty.

7. Failing to disclose both orally and in writing, prior to the signing of the completed retail order for a used motor vehicle, and in any and all advertising of such vehicles, the precise amount of handling and service charges which will be added to the cost of respondents' used motor vehicles.

It is further ordered, That respondent Robert M. Rosenthal be dismissed from the complaint as an individual and named officer of the corporate respondent.

It is further ordered:

(a) That respondents shall forthwith distribute a copy of this order to each of their operating divisions;

(b) That respondents deliver a copy of this order to cease and desist to all present and future personnel engaged in the offering for sale, or sale, of any motor vehicle, and 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;

(c) 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;

(d) 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 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.

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(e) 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 this order.