
IN THE MATTER OF

D'ARCY-MacMANUS & MASIUS, INC.

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

Docket C-2757. Complaint, Oct. 31, 1975—Decision, Oct. 31, 1975

Consent order requiring a New York City advertising agency, among other things to
cease making deceptive fuel economy claims for automobiles.

1042

Complaint

Appearances

For the Commission: *H. Robert Field* and *Richard A. Bloomfield*.

For the respondent: *Lewis E. Striebeck, Jr.*, St. Louis, Mo.

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 D'Arcy-MacManus & Masius, Inc. 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 definition 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 material.

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

PARAGRAPH 1. Respondent D'Arcy-MacManus & Masius, Inc. 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 437 Madison Ave., New York, N.Y.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising and promotion of certain motor vehicles, including but not limited to that model of automobile designated by the Cadillac Division of the General Motors Corporation as the Cadillac Eldorado.

PAR. 3. In the course and conduct of its aforesaid business, respondent causes the advertising and promotional materials it prepares to be transported from its places of business located in various States of the United States to various media and clients 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 substantial course of trade in said advertising and

promotional materials in commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business, respondent has disseminated, has caused the dissemination of, or has prepared for dissemination advertisements for the aforementioned Cadillac Eldorado, said dissemination having been by means of magazines and newspapers and by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcast across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said Cadillac Eldorado automobiles.

PAR. 5. In the course and conduct of its said business, respondent has prepared to be furnished to Cadillac Eldorado dealers located in various States certain advertisements 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 the said dealers to the general public.

PAR. 6. Among the advertisements so disseminated, prepared, or furnished to dealers as aforesaid in Paragraphs Four and Five above is the advertisement attached as Exhibit A.

PAR. 7. At least some of said dealers did in fact disseminate in commerce an advertisement, substantially identical to the advertisement attached as Exhibit A.

PAR. 8. Exhibit B is an example of the advertisement disseminated by one of said dealers, and is substantially similar to Exhibit A.

PAR. 9. Said Exhibit A and B and other 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. 10. 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. 11. 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. 12. 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 Wagoner, 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. 13. Respondent failed to disclose in said advertisement 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. 14. The facts set forth in Paragraphs Twelve through Thirteen 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. 15. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent D'Arcy-MacManus & Masius, Inc. has been and now is in substantial competition in commerce with corporations, firms and individuals engaged in the advertising of automobiles of the same general kind and nature as the Cadillac Eldorado.

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 clients of respondent including General Motors. As a result thereof, substantial trade is being unfairly diverted to respondent and to clients of respondent from their 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 unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

EXHIBIT A

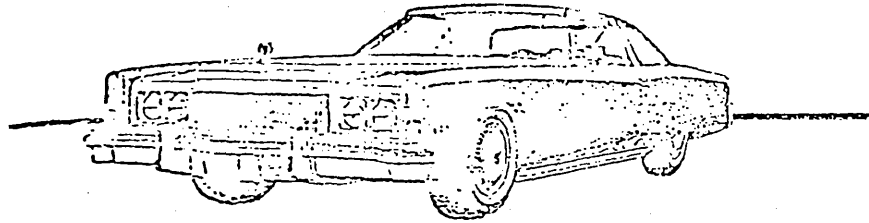
IV (1)

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 GT0 |
| 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.





A Cadillac Eldorado

(With Cadillac's Largest Engine)

beat these other cars in the
Environmental Protection Agency
official mileage test!

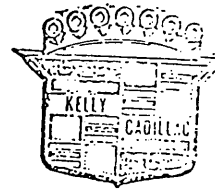
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| 2. Oldsmobile Cutlass | 37. Ford Ranchero |
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| 4. Ford Torino Station Wagon | 39. Pontiac GTO |
| 5. Plymouth Intermediate | 40. Buick Regal |
| 6. American Motors Wagoner | 41. Buick Century 350 |
| 7. Buick Century | 42. Pontiac Grand Am |
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| 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 |
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| 29. Ford Station Wagon | 64. Oldsmobile Delta 88 |
| 30. Oldsmobile Cutlass Supreme | 65. Lamborghini Jarama 400 GT |
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| 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

"Choose the car you've always wanted"



900 Riverfront Parkway
Phone 267-1104

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 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 had 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 D'Arcy-MacManus & Masius, Inc. 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 437 Madison Ave., New York, N.Y.

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 D'Arcy-MacManus & Masius, Inc., its successors and assigns, 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 products 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 automobile is superior with regard to fuel economy to any other automobile, 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 consumer automotive product has been tested either alone or in comparison with other consumer automotive products 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 any consumer automotive product.

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. It shall be a defense under Paragraphs 1-4 of this order that respondent neither knew nor should have known of the facts concerning the test, fuel economy or performance which make the advertising false or misleading.

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.

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.