

IN THE MATTER OF
LUSTINE CHEVROLET, INC., ET AL.

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

Docket 8974. Complaint, July 1, 1974-Decision, Nov. 25, 1975

Consent order requiring a Hyattsville, Md. new and used car dealer, 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 prior to delivery; and to disclose, orally and in writing, specific information with respect to used motor vehicles.

Appearances

For the Commission: *Jerry W. Boykin, Michael E.K. Mpras, Michael Dershowitz, Frank H. Addonizio and Robert G. Day.*

For the respondents: *Jacob Stein, 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 Lustine Chevrolet, Inc., a corporation, and Phillip Lustine and Burton Lustine, 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 Lustine Chevrolet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5710 Baltimore Ave., in Hyattsville, Md.

Respondents Phillip Lustine and Burton Lustine 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 State of Maryland, 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 the purchase of their motor vehicles, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation, 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 November of 1970, disseminated as aforesaid, but not all inclusive thereof, are the following:

SAVE \$400 to \$1200 ON EVERY CAR IN OUR INVENTORY OF UNSOLD '70 MODELS!

SPECIAL PURCHASE LAST OF THE 5-YEAR WARRANTY CARS AT 400 BELOW ORIGINAL COST

1970 MALIBU 2-DOOR HARDTOP AIR COND. AUTO. PWR. ST. & DISC. BR.,

RADIO, WWT, WHEEL COVERS, TINTED GLASS, VINYL TOP, GREEN AMERICA'S LARGEST SPECIAL PURCHASE DEALER * * *.

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 said advertisements are new;
2. That Lustine Chevrolet, Inc. is America's largest special purchase dealer.

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. Lustine Chevrolet, Inc. is not America's largest special purchase dealer.

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 said motor vehicles, respondents, directly or through their representatives and employees, have engaged in the deceptive act and practice of representing to customers that lease buy-back motor vehicles purchased from various metropolitan Washington, D.C. area motor vehicle leasing operations were demonstrator motor vehicles; by such representations, respondents misled and deceived purchasers as to the actual prior use of said lease buy-back motor vehicles.

Therefore, respondents' statements and representations, and their failure to reveal in their advertisements and during their sales representations, the material facts as to the nature and extent of such previous use of said motor vehicles, are unfair, false, misleading and deceptive.

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 \$35 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 herein alleged, 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 the respondents named in the caption hereof with violation 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 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 Lustine Chevrolet, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5710 Baltimore Ave., Hyattsville, Md.

Respondents Phillip Lustine and Burton Lustine 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 Lustine Chevrolet, Inc., a corporation, its successors and assigns and its officers, and Phillip Lustine and Burton Lustine, 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 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 vehicles 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. Offering for sale or selling any motor vehicle of the current or the previous model year which has been used and which respondents have reason to believe has been damaged to the extent that it may adversely affect said motor vehicle's performance and life expectancy and the repair and repainting of said motor vehicle may hide said damage, without:

(a) Disclosing, both orally and in writing, the manner in which the motor vehicle has been damaged and the nature of the damage sustained by the vehicle; and

(b) clearly and conspicuously disclosing by decal or sticker attached thereto, as required by Paragraph 4., above, that the motor vehicle has been damaged.

6. 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.

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.

8. Representing, orally or in writing, directly or by implication, that respondent Lustine Chevrolet, Inc. is America's largest special purchase dealer, or using words of similar import, unless it does occupy such purchasing position, at the time aforesaid representation is made;

misrepresenting, in any manner, the size, status, sales or purchasing position of respondents' dealership.

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 respondents post in a prominent place in each salesroom or other area wherein respondents sell motor vehicles or other products or services, a copy of this cease and desist order, with the notice that any customer or prospective customer may receive a copy on demand;

(e) That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities; and

(f) 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.
