

Modifying Order

88 F.T.C.

IN THE MATTER OF
WILLIAM R. CLARK

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8761. Complaint, April 30, 1968—Modifying order, July 13, 1976

Order modifying an earlier order dated August 6, 1969, 34 F.R. 15348, 76 F.T.C. 207, modified September 1, 1970, 35 F.R. 15807, 77 F.T.C. 1186, by deleting Paragraph 16 of the order because provisions of the newly promulgated *Trade Regulation Rule on the Preservation of Consumers' Claims and Defenses* supercedes it.

Appearances

For the Commission: *Margery Waxman Smith.*

For the respondent: *John W. Norwood, Washington, D.C.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

On June 17, 1976, respondent William R. Clark (Clark) by a paper entitled Motion to Modify Order Issued on August 6, 1969, and Modified on September 1, 1970, which will be treated as a petition to reopen this proceeding, has requested that Paragraph 16 be deleted from the order. The Bureau of Consumer Protection has filed an answer wherein it advises that it does not oppose Clark's request.

The Commission has determined that the request should be granted because the provisions of its newly promulgated Trade Regulation Rule on the Preservation of Consumers' Claims and Defenses have superseded Paragraph 16 of this order.

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist be, and it hereby is, modified by deleting Paragraph 16.

IN THE MATTER OF
FORD MOTOR COMPANY

Docket 9001. Order, July 13, 1976

Denial of respondent's petition for reconsideration of portions of opinion and order issued April 13, 1976 [87 F.T.C. 756], granting summary decision on issues concerning message conveyed to consumers by advertisements challenged in this proceeding.

Appearances

For the Commission: *Wallace S. Snyder, Heidi P. Sanchez, and Ellis M. Ratner.*

For the respondent: *Wald, Harkrader & Ross, Washington, D.C. and David R. Larrouy, Dearborn, Mich.*

ORDER DENYING MOTION TO RECONSIDER

Ford Motor Company has petitioned the Commission to reconsider portions of its opinion and order entered April 13, 1976, granting summary decision on issues concerning the message conveyed to consumers by the advertisements challenged in this proceeding. In respondent's view, the Commission ignored defense evidence which it believes raised genuine issues of material fact and abused its expertise in determining the meaning of respondent's advertisements in the context of a summary decision. We have determined that respondent's motion should be denied.

In reviewing the evidence submitted by Ford, and for purposes of interpreting the meaning of these ads, the Commission is not obliged to ignore its own expertise simply because the questions concerning how an advertisement may be perceived by the public arise in the context of a summary decision. As respondent notes, the Commission may accept extrinsic evidence to supplement its expertise, but such evidence does not supplant our expertise. Consequently, in affirming the administrative law judge's evidence to supplement its expertise, but such evidence does not supplant ruling, the Commission, based on its own evaluation of the advertisements themselves, rejected respondent's extrinsic evidence. Because these ads, upon analysis, indisputably, in the judgment of the Commission, contain the representation alleged in the complaint, neither the Burke study nor the conflicting opinions of the experts based on the survey data provoke a genuine controversy necessitating resolution by further adjudication. Accordingly, the matter was remanded to the administrative law judge for hearings in the public interest on issues concerning whether or not respondent had a reasonable basis for its advertising claims.