

Complaint

88 F.T.C.

IN THE MATTER OF
THE HERTZ CORPORATION

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

Docket C-2833. Complaint, Aug. 11, 1976 — Decision, Aug. 11, 1976

Consent order requiring a New York City dealer in used motor vehicles, among other things to cease misrepresenting and/or failing to disclose material facts relating to the history of used motor vehicles offered for sale by respondent. Further, respondent is required to keep accurate repair records, and to advise prospective customers of their right to inspect these records; and, additionally, a statement as to the availability of repair records for inspection must be conspicuously disclosed on sales contracts and receipts.

Appearances

For the Commission: *Michael Dershowitz and Frank H. Addonizio.*
For the respondent: *Jerrold G. Van Cise, Cahill, Gordon & Reindel,*
New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Hertz Corporation, a corporation, hereinafter sometimes 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:

PARAGRAPH 1. Respondent The Hertz Corporation 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 660 Madison Ave., New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, and sale to the public of used motor vehicles and in the servicing and repair thereof.

PAR. 3. In the course and conduct of its aforesaid business, respondent causes, and for some time last past has caused, its used motor vehicles to be shipped from respondent's various rental fleet locations to its retail outlet locations in various States of the United States and the District of Columbia.

Accordingly, the respondent maintains and has maintained a substantial course and conduct of business in or affecting commerce as

"commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its used motor vehicles, the respondent has made numerous statements and representations in advertisements inserted in newspapers of interstate circulation.

Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

HERTZ NOT-SO-USED CARS

* * * * *

Professionally maintained cars

* * * * *

Hertz reputation of Number 1 quality

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondent has represented, directly or by implication, that:

The used motor vehicles described or referred to in respondent's advertisements were of superior quality.

PAR. 6. In truth and in fact, the used motor vehicles described or referred to in respondent's advertisements, in many instances, were not of superior quality. In fact, many had sustained varying degrees of damage.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof, were false, misleading and deceptive.

PAR. 7. In the further course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its used motor vehicles, the respondent and its employees, salesmen, or representatives at some retail outlets had failed to disclose to prospective purchasers in either respondent's advertisements or oral solicitations, prior to the consummation of sale, that respondent's used motor vehicles, in many instances, had sustained varying degrees of damage. Respondent's failure to disclose such material facts, prior to the consummation of sale was unfair, false, misleading and deceptive.

PAR. 8. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices and the failure to disclose material facts, as aforesaid, has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations

were true and complete and into the purchase of respondent's used motor vehicles by reason of said erroneous and mistaken belief.

PAR. 9. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as those sold by the respondent.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, were all to the prejudice and injury of the public and of respondent's competitors and constituted unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Washington, D. C. Regional Office 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, as amended; and

The respondent, its attorney 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 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 sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Hertz 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 660 Madison Ave., New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For purposes of this order, the following definitions shall apply:

(a) The term "used motor vehicle" refers to any used motor vehicle offered for sale to the public by respondent.

(b) The term "major damage" refers to that degree of damage sustained by a used motor vehicle which may adversely affect either the vehicle's safety or performance, whether or not such damage has been repaired.

(c) The term "repair records" refers to any and all written statements in regard to the repair of any damage sustained by a used motor vehicle.

It is ordered, That respondent The Hertz Corporation, a corporation, its successors and assigns and its officers, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and repair of 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, directly or indirectly, orally or in writing, that used motor vehicles are not-so-used or describing them by any other such term or terms of similar import and meaning or misrepresenting in any manner the condition of any used motor vehicle.

2. Failing to disclose clearly and conspicuously, in any advertisement for the sale of each specifically identified used motor vehicle:

(a) the prior use of each such used motor vehicle (*e.g.* rental);

(b) the extent of such use (*e.g.* mileage); and

(c) any major damage sustained by such used motor vehicle and known to respondent.

3. Failing to maintain repair records or true copies thereof, for each used motor vehicle at the retail outlet where such used motor vehicle is offered for sale.

4. Failing to disclose in all oral solicitations for the sale of used

motor vehicles that the repair records for each such used motor vehicle will be furnished to prospective purchasers for perusal upon their request prior to the consummation of sale of such used motor vehicle.

5. Failing to furnish any prospective purchaser of used motor vehicles with the repair records for any such used motor vehicle subsequent to the purchaser's request to peruse such records prior to the consummation of sale of such used motor vehicle.

6. Failing to furnish all purchasers of used motor vehicles with a copy of any contract or receipt pertaining to the sale of such used motor vehicle which contains or has superimposed in immediate proximity to the space reserved in the contract for the signature of the purchaser or on the front page of any receipt if a contract is not used and in bold-faced type of a minimum size of 10 points, a clear and conspicuous statement in the following form:

YOU, THE PURCHASER, MAY INSPECT,
PRIOR TO PURCHASE, THE REPAIR
RECORDS OF THIS OR ANY OTHER USED
MOTOR VEHICLE OFFERED FOR SALE TO
THE PUBLIC BY HERTZ.

7. Misrepresenting or disparaging, directly or indirectly, orally or in writing, the purchaser's opportunity to peruse the repair records for any used motor vehicle prior to the consummation of sale of such used motor vehicle.

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 the respondent shall forthwith deliver a copy of this order to cease and desist to all present and future personnel engaged in any aspect of preparation, creation, or placing of advertising and in the offering for sale, or sale, of any used motor vehicle, and that the respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the 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 it of this order, file with the Commission a

report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Complaint

88 F.T.C.

IN THE MATTER OF

NAGLE, SPILLMAN & BERGMAN, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2834. Complaint, Aug. 18, 1976 — Decision, Aug. 18, 1976*

Consent order requiring a Los Angeles, Calif., advertising agency, among other things to cease misrepresenting that Adolph's salt substitute tastes like salt; misrepresenting the causal relationship between sodium intake and hypertension; salt reduction will result in better health; and that salt substitutes may be safely used without medical approval. Further, the order prohibits respondent from advertising salt substitutes without a warning statement that product should not be used by persons on potassium restricted diets, or without prior medical approval. Additionally, the order requires specific disclosures with regard to endorsements by professionals.

*Appearances*For the Commission: *Sharon S. Armstrong.*For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nagle, Spillman & Bergman, Inc., a corporation, hereinafter referred to as respondent, has violated Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent is a California corporation with its office and principal place of business located at 1800 North Highland, Los Angeles, California.

All allegations stated in the present tense include the past tense.

PAR. 2. Respondent was the advertising agency for Adolph's Ltd. (hereinafter Adolph's) from January 1972 to March 1974, and at all times relevant to this complaint. In such capacity respondent created, prepared, placed for publication and disseminated advertisements for Adolph's, including but not limited to the advertisements described herein, to promote the sale of Adolph's salt substitute, a "food" and "drug" (as those terms are defined in the Federal Trade Commission Act) which consists of potassium chloride and other ingredients and is used in place of table salt by persons who seek to restrict their intake of sodium.

PAR. 3. In the course and conduct of its business, respondent