

IN THE MATTER OF
HALEAKALA MOTORS, LTD.

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

Docket C-2852. Complaint, Nov. 15, 1976—Decision, Nov. 15, 1976

Consent order requiring a Wailuku, Maui, Hawaii, automobile dealer, among other things, to cease altering any invoices or other documents containing manufacturer's suggested retail price information; misrepresenting suggested retail prices; and including on extension stickers, any charges not specifically itemized.

Appearances

For the Commission: *Charles S. Litzof.*

For the respondent: *James Krueger*, Wailuku, Maui, Hawaii.

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 Haleakala Motors, Ltd., 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:

PARAGRAPH 1. Respondent Haleakala Motors, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its office and principal place of business at Main and High Sts., Wailuku, Maui, Hawaii.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of new automobiles at retail.

PAR. 3. Respondent's volume of business is substantial and its acts and practices, as hereinafter set forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its business, respondent receives, and has received, "delivery order" invoices from its supplier, General Motors Corporation. Each such invoice relates to an automobile which is delivered by the manufacturer to respondent, for sale to consumers. Each such invoice itemizes the factory equipment contained on said automobile, and shows the manufacturer's suggested list price for the basic automobile and for each item of factory equipment, transportation charges, and the total manufacturer's suggested retail price. Such

invoice resembles closely the manufacturer's "Monroney Sticker" label, which must be affixed to new automobiles, pursuant to 15 U.S.C. §1231, *et seq.*

PAR. 5. In the course and conduct of its business, respondent alters, and has altered, such "delivery order" invoices by substantially increasing the basic price of the automobile, as shown on such invoice, by adding substantial charges to such invoice, and by altering the total manufacturer's suggested retail price shown on such invoice to reflect such increases and additions.

PAR. 6. In the course and conduct of its business, respondent receives, and has received, automobiles from its supplier which do not have the "Monroney Sticker" label affixed to them, in the manner provided for in 15 U.S.C. §1231, *et seq.* In such cases, respondent affixes, and has affixed, to said automobiles the altered "delivery order" invoices referred to in Paragraphs Four and Five. By said practice, respondent is representing, and has represented that the prices shown on said altered invoice are the manufacturer's suggested retail prices, when in fact said altered invoice prices substantially exceed the manufacturer's suggested retail prices. Therefore, said practice is, and was, false, misleading, unfair or deceptive.

PAR. 7. In the course and conduct of its business, respondent shows or gives, and has shown or has given, to prospective customers, the original or a copy of the altered invoices referred to in Paragraphs Four and Five. By said practice, respondent is representing, and has represented, that the prices shown on said altered invoices are the manufacturer's suggested retail prices, when in fact said altered invoice prices substantially exceed the manufacturer's suggested retail prices. Therefore, said practice is, and was, false, misleading, unfair or deceptive.

PAR. 8. In the course and conduct of its business, respondent is now, and has been, attaching "extension stickers" adjacent to the Monroney Sticker labels on the windows of new automobiles. Said extension stickers itemize charges additional to those charges itemized or accounted for on the Monroney Sticker labels.

A. By and through the use of said extension stickers, respondent represents, and has represented, that additional charges are incurred by it for "Ocean Freight, Tolls, Marine Insurance, and Dockside Handling. Local Service." In truth and in fact, respondent does not incur charges additional to those charges itemized or accounted for on the Monroney Sticker labels, for ocean freight, tolls, or marine insurance. Such charges are included in the Monroney Stickers as amounts charged to respondent for transportation to the location at which the automobile is

delivered to respondent (cf., 15 U.S.C. §1232(f)(3)). Therefore, said representation is, and was, false, misleading, unfair and deceptive.

B. By and through the use of said extension stickers, respondent represents, and has represented, that the only additional charges respondent imposes are for "ocean freight, tolls, marine insurance and dockside handling. Local service." In truth and in fact, respondent imposes further additional charges by means of said extension stickers, for items not specifically itemized thereon, such as advertising costs and interest expense. Therefore, said representation is, and was, false, misleading, unfair and deceptive.

PAR. 9. Respondent has been at all times relevant hereto in substantial competition with others in the sale of new automobiles in or affecting commerce.

PAR. 10. The 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 methods of competition and unfair or 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 Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 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 procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Haleakala Motors, Ltd. is a corporation organized,

existing and doing business under and by virtue of the laws of the State of Hawaii, with its office and principal place of business located at Main and High Sts., Wailuku, Maui, Hawaii.

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

It is ordered, That respondent Haleakala Motors, Ltd., a corporation, its successors and assigns, and its officers, and respondent's 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 new automobiles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Altering in any manner, invoices, stickers, or other original documents or copies thereof, which contain manufacturer's suggested retail price information, where such price has been established by a manufacturer pursuant to 15 U.S.C. §1231, *et seq.*, except for relabeling as provided in 15 U.S.C. §1233(c).

2. Contradicting or negating, orally or in writing, directly or by implication, any information disclosed by a manufacturer pursuant to 15 U.S.C. §1232.

3. Misrepresenting, orally or in writing, directly or by implication, that respondent has incurred charges attributable to a new automobile which are in addition to those itemized, or accounted for, on the Monroney Sticker label for such automobile.

4. Including in the amounts contained in any representation of charges imposed by respondent in addition to those charges itemized or accounted for on the Monroney Sticker label, any amounts not attributable to a specifically-itemized additional imposed charge.

It is further ordered, That respondent notify the Commission at least 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 said corporation which may affect compliance obligations arising out of this order.

It is further ordered, That respondent forthwith distribute a copy of this order to each of its operating divisions, and to all present and future employees engaged in the advertising, offering for sale, or sale of new automobiles.

Commissioner Dole did not participate.

IN THE MATTER OF

FORD MOTOR COMPANY, ET AL. — DOCKET 9073

GENERAL MOTORS CORPORATION, ET AL. — DOCKET
9074*Interlocutory Order, Nov. 16, 1976*

Denial of (1) consolidated motions to stay portions of ALJ's orders of October 29 and November 2, 1976, requiring immediate action pending interlocutory appeal and Commission review of those orders; and (2) consolidated application for intervention and for disclosure of names of NADA members subpoenaed.

Appearances — Docket 9073

For the Commission: *Sharon S. Armstrong, Randall H. Brook, Barry E. Barnes, David R. Pender and Ronald G. Sims.*

For the respondents: *Robert L. Wald, Carleton A. Harkrader and Gloria P. Stewart, Wald, Harkrader & Ross, Washington, D.C.; Weil, Gotshal & Manges, New York City and Washington, D.C.; Mike Esler, Hoessler, Stamer & Esler, Portland, Ore.; David R. Larrony, Dearborn, Mich.; and Basil Mezines, Stein, Mitchell & Mezines, Washington, D.C., for the Intervenor, National Automobile Dealers Association.*

Appearances — Docket 9074

For the Commission: *Gregory L. Colvin, Sharon S. Armstrong, Sarah J. Hughes, Randall H. Brook and Ronald G. Sims.*

For the respondents: *James P. Melican, Jr. and Robert C. Weinbaum, Detroit, Mich.; John J. Higgins, New York City; Ira M. Millstein and Carl D. Lobell, Weil, Gotshal & Manges, New York City; Robert C. St. Louis and Charles E. Siljeg, Aiken, St. Louis & Siljeg, Seattle, Wash.; Howard Daniels, Weil, Gotshal & Manges, Washington, D.C.; and Basil Mezines, Stein, Mitchell & Mezines, Washington, D.C., for the Intervenor, National Automobile Dealers Association.*

ORDER DENYING CONSOLIDATED MOTIONS FOR STAY OF ORDERS
PENDING INTERLOCUTORY APPEAL AND FOR PERMISSION TO
INTERVENE

This matter is before us upon the applications of the National Automobile Dealers Association ("NADA") and four named dealers¹ acting on behalf of themselves and all other similarly situated NADA dealers, requesting an emergency stay of certain portions of the

¹ Brandy Ford, Inc., Fuller Ford Co., Inc., Berry Pontiac - GMC, Inc., and M&O Chevrolet Co.