

Complaint

92 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-2945. Complaint, Dec. 21, 1978 — Decision, Dec. 21, 1978

This consent order, among other things, requires a New York City car rental company to provide each charge account customer having five dollars or more as a credit balance with periodic statements reflecting that balance; notify such customers that credit balances are refundable; and automatically refund unclaimed credit balances within seven months of their occurrence. The order would additionally prohibit the company from writing off credit balances, and would require the firm to refund, upon request, any credit balance created during the past six years.

Appearances

For the Commission: *Micheal J. Vitale*, Atty. and *Irvin E. Abrams*, Investigator.

For the respondent: *Arthur K. Kahn*, Philadelphia, Pa.

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 thereto 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 business of offering to rent and the renting of automobiles to the general public.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent rents automobiles in various States of the United States and the District of Columbia. By these and other operations respondent engages in, and at all times mentioned has been engaged in, a substantial course of business in or affecting

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

PAR. 4. In the ordinary course and conduct of its business as aforesaid, respondent permits its customers who qualify for credit to charge the rental of respondent's automobiles. Respondent bills certain of its rental customers by having the rental station at which the customer rents the automobile invoice the customer following the completion of the rental. These customers, referred to by respondent as "direct billing customers," receive no other bill. Certain other customers of respondent, referred to by respondent as "central billing customers," are billed by respondent from a central office through the use of periodic billing statements. On occasion, direct billing and central billing customers make overpayments or duplicate payments. Consequently, a customer occasionally has a "credit balance" (an amount of money owed to the customer by respondent). This credit balance is the result of a previously described overpayment or duplicate payment by the customer.

PAR. 5. Prior to May of 1976, respondent had no system for informing direct billing customers that they had a credit balance and that they were entitled to request and receive a cash refund of this balance. Furthermore, respondent did not refund credit balances to its direct billing customers unless it received a request for a refund, nor did it make cash refund of credit balances to its central billing customers unless it received a request for such a refund.

PAR. 6. By thus failing to notify certain of its customers whose accounts reflected credit balances that the credit balances existed, and that they had the right to request and receive cash payment of their credit balances, and by failing to refund without request such credit balances which existed for a substantial period of time, a number of respondent's customers were deprived of the use of substantial sums of money. Therefore, the acts and practices described in Paragraph Five above were unfair.

PAR. 7. The acts and practices of respondent as set forth in Paragraphs Five and Six above, were to the prejudice and injury of the public and constituted unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

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, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issued 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 principal office and place of business located at 660 Madison Ave., New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of its proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That The Hertz Corporation, a corporation, its successors and assigns and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the extension of credit incident to the business of renting of automobiles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from:

I.

- A. Failing to mail to each customer having a credit balance in excess of five dollars (\$5.00), created after the date of service of this order, a statement in each billing period following the creation of the

credit balance, clearly setting forth such credit balance, except that with respect to central billing customers, as "central billing customer" is defined in Paragraph Four of the complaint or other customers with accounts cumulatively billed on periodic statements, such statement shall be mailed whenever a credit balance in excess of one dollar (\$1.00) is created; *provided, however*, that no statement need be sent once a credit balance is refunded or a fully offsetting purchase is made; and, *provided further*, that if the credit balance is created in connection with a direct billing customer, as "direct billing customer" is defined in Paragraph Four of the complaint, no statement need be sent if the balance is refunded within thirty (30) days following the time it was created.

B. Failing to notify each customer to whom respondent is required to send a statement under Paragraph I.A. of the customer's right to request and receive a refund in the amount of such credit balance, such notice to be accomplished by a clear and conspicuous disclosure on or enclosed with each statement required by Paragraph I.A. and accompanied by a return envelope, if it is the customary practice of the division or unit to accompany billing statements with return envelopes. Such notice shall in all material respects be consistent with, but need not be identical to, the following:

NO PAYMENT REQUIRED

This Credit Balance shown on the enclosed statement represents money we owe you. You may obtain a refund by returning this statement with a request for a refund. If you do not use your account or request a refund, a check will be mailed to you within seven (7) months after you were sent the statement on which this credit was first reflected. But a credit balance of five dollars (\$5.00) will not be refunded unless specifically requested.

The notice furnished in compliance with this paragraph shall not provide any additional information relating to credit balances, shall be set forth separately from any other written matter, and shall be made either entirely on the face of the statement, or entirely on the reverse side of the statement, or entirely on one side of a separate page. In the event such notice is not on the face of the statement, then the statement shall state clearly and conspicuously on its face: "Credit balance. Do not pay. For refund see (enclosed instructions) OR (reverse side)."

C. Failing to refund to each customer with a credit balance of more than five dollars (\$5.00) created after the date of service of the order the full amount of said credit balance no later than the end of the seventh (7th) consecutive month after the first statement reflecting the credit balance was sent to the customer and during which the customer neither transacts any business on the account nor requests a refund, unless such credit balance is not in fact owed to the customer; *provided, however*, that nothing contained in this

Paragraph C. shall prevent such a refund being made by giving a credit certificate or refund letter in the full amount of the credit balance which may, at the customer's option, be applied to subsequent rental charges or returned for a cash refund. Such certificate or refund letter or an accompanying notice attached to the certificate or refund letter shall clearly and conspicuously disclose that it is redeemable for cash if the customer returns the certificate or refund letter by mail with a request for a cash refund or that it may be applied to subsequent rental charges if the customer returns the certificate or refund letter in full or partial payment for such charges.

D. Writing off, deleting or transferring any credit balance of more than one dollar (\$1.00) created after the date of service of this order from a customer's account before a refund has been made or the customer has made a fully offsetting purchase, unless such credit balance is not in fact owed to the customer or unless there has been compliance with Section III. of this order.

II.

It is further ordered, That respondent shall:

A. Within one hundred and eighty (180) days after service of this order, mail or deliver to each customer having a credit balance in excess of five dollars (\$5.00) created during the three (3) year period immediately preceding the date of service of this order a statement clearly setting forth such credit balance; *provided, however,* that no statement need be sent if a credit balance has been refunded or a fully offsetting purchase has been made.

B. Within one hundred eighty (180) days after service of this order, notify each customer to whom respondent is required to send a statement under Paragraph II.A. of the customer's right to request and receive a refund in the amount of such credit balance, such notice to be accompanied by a clear and conspicuous disclosure on or enclosed with the statement required by Paragraph II.A. and accompanied by a return envelope, if it is the customary practice of the division or unit to accompany billing statements with return envelopes. The first such notice shall in all material respects be consistent with, but need not be identical to, the following:

NO PAYMENT REQUIRED

The Credit Balance shown on the enclosed statement represents money we owe you. You may obtain a refund by returning this statement with a request for a refund. If you do not use your account or request a refund, a check will be mailed to you within seven (7) months.

The disclosure furnished in compliance with this paragraph shall not provide any additional information relating to credit balances, shall be set forth separately from any other written matter, and shall be made either entirely on the reverse side of the statement, or entirely on one side of a separate page. In the event such disclosure is not on the face of the statement, then the statement shall state clearly and conspicuously on its face "Credit balance. Do not pay. For refund see (enclosed instructions) or (reverse side.)"

C. Refund to each customer with a credit balance of more than five dollars (\$5.00) created during the three (3) year period preceding the date of service of this order the full amount of said credit balance no later than seven (7) months following the date the statement provided in Paragraph B. of this Section II. is sent and the customer neither transacts any business on the account nor requests a refund, unless such credit balance is not in fact owed to the customer; *provided, however*, that nothing contained in this Paragraph C. shall prevent such a refund from being made by giving a credit certificate or refund letter in the full amount of the credit balance which may, at the customer's option, be applied to subsequent rental charges or returned for a cash refund. Such certificate(s) or refund letter or any accompanying notice attached to the certificate or refund letter shall clearly and conspicuously disclose that it is redeemable for cash if the customer returns the certificate or refund letter by mail with a request for a cash refund or that it may be applied to subsequent rental charges if the customer returns the certificate or refund letter in full or partial payment for such charges.

D. Refrain from writing off or deleting or transferring any credit balance of more than five dollars (\$5.00) created during the three (3) year period immediately preceding the date of service of this order from a customer's account before a refund has been made or the customer has made a fully offsetting purchase, unless such credit balance is not in fact owed to the customer or unless there has been compliance with Section III. of this order.

III.

It is further ordered, That:

A. Each refund required or permitted to be made by this order shall be given to the customer by mailing a check payable to the order of the customer or mailing a credit certificate or a refund letter which clearly states that it may be returned for a cash refund or returned in full or partial payment of subsequent rental charges. Each statement, notice or refund sent pursuant to Paragraph I.A.,

I.B., or I.C. of this order shall be mailed to the customer at the last known billing address of the customer and each such statement, notice or refund sent pursuant to Paragraph I.A., I.B., I.C. of this order shall have the notation "Address Correction Requested" appropriately placed on the envelope. In the event that any statement, notice or refund sent pursuant to this order reflecting a credit in the amount of fifteen dollars (\$15.00) or more is returned to respondent by reason of the fact that the customer to whom it was mailed is not located at the address to which it was sent, respondent shall then attempt to obtain from a credit bureau the most current address available for the customer by means of an infile report or other report on information then existing in the credit bureau's file. If a new address is obtained, respondent shall remail the check, statement, notice, refund letter or credit certificate to the customer at such address, except that in the case of credit balances created after the date of service of this order, respondent may, at its option, deduct the cost of obtaining such information from the credit bureau from the amount owing to the customer.

With respect to all customers whose credit balances were created during the three (3) year period immediately preceding the date of service of this order and who have not been located by the preceding method, respondent shall have no further obligation under this order except as stated below. For all customers whose credit balances are created after service of this order and who have not been located by the preceding method, respondent shall retain on the account the amount of the credit balance for one year from the date on which the statement, notice or refund was mailed, and respondent shall be relieved of any further obligation to send any additional statement, notice or refund with respect to the credit balance in question.

Provided, however, that, in the event any customer should subsequently request a refund of any such credit balance, respondent shall treat such request in the manner provided in Paragraph III.B.

In the event that any statement, notice or refund sent pursuant to this order reflecting a credit balance in the amount of less than fifteen dollars (\$15.00) is returned to respondent by reason of the fact that the customer to whom it was mailed is not located at the address to which it was sent, respondent shall have no further obligation to send any additional statement, notice or refund with respect to the credit balance in question; *provided, however,* that, in the event said customer should subsequently request a refund of any such credit balance, respondent shall treat such request in the manner provided in Paragraph III.B.

B. When a customer requests by mail, a refund of a credit

balance in any amount which had been reflected at any time on such customer's account within the six (6) year period preceding such request, respondent shall, within thirty (30) days from receipt of such request, either refund the entire amount requested, if owed, or furnish the customer with the reason(s) for refusing to refund the amount requested and supporting documentation, when requested and available, of the reason(s).

IV.

It is further ordered, That a credit balance shall be deemed to be created (1) in the case of a central billing account, at the end of the billing period in which the credit balance is first recorded on a customer's account; *provided, however,* that whenever the recorded amount of an existing credit balance is changed, the new credit balance, if any, resulting from such change shall be deemed to be created at the end of the billing period in which the change occurred, and respondent's obligations under this order with respect to the credit balance existing prior to such change shall be terminated and shall be replaced by its obligations under this order with respect to the new credit balance created by said change, and (2) in the case of a direct billing, at the time of receipt of the excess payment.

V.

It is further ordered, That, notwithstanding the foregoing, the provisions of this order shall not be applicable to credit balances on accounts administered by third parties.

VI.

It is further ordered, That respondent shall maintain the following data: name and address of each customer who was sent a refund of a credit balance without request; the date the credit balance was created and the date it was refunded; and the amount of the credit balance. Respondent shall also maintain the following data: the names and addresses of all customers who requested a refund of a credit balance but whose request was refused; the date the request was made; the date a refusal was sent to the customer; the amount of the requested refund; a copy of any written explanation for the refusal sent to the customer; and, if no written explanation for the refusal was made, a statement of the reasons for the refusal.

VII.

It is further ordered, That respondent shall retain the records

required to be maintained by Paragraph VI. of this order for a period of three (3) years and, upon request, shall produce said records for the purpose of examination and copying by representatives of the Federal Trade Commission.

VIII.

It is further ordered, That in the event the Commission promulgates a trade regulation rule affecting or governing the credit practices of companies engaged in the car rental business, the requirements of which trade regulation rule are less onerous with respect to record preservation, notices, and procedures for and timing of refunds than those contained herein, respondent may elect to comply with such provisions in lieu of the corresponding provisions of this order.

IX.

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 with the obligations arising out of this order.

X.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions engaged in the receipt of payments for rental of automobiles.

XI.

It is further ordered, That respondent shall, within one hundred twenty (120) days after service 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.

IN THE MATTER OF
NORRIS INDUSTRIES, INC.

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

Docket C-2946. Complaint, Dec. 27, 1978 — Decision, Dec. 27, 1978

This consent order, among other things, requires a Long Beach, Calif. manufacturer and distributor of dishwashers and other major home appliances to cease misrepresenting, or making unsubstantiated claims regarding the qualities, performance or efficacy of its products.

Appearances

For the Commission: *Robert Barton and Laurence Kahn.*

For the respondent: *R. James Shaffer, Long Beach, Calif.*

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 Norris Industries, Inc., [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 Norris Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its executive office and principal place of business located at One Golden Shore, Long Beach, California.

PAR. 2. Respondent now, and for some time last past has been, engaged in the distribution, sale and advertising of portable and undercounter dishwashers and other consumer products to the public.

PAR. 3. Respondent causes the said products to be transported from its places of business in various States of the United States to various dealers and distributors for sale to purchasers 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 or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent at all times mentioned herein has been, and now is, in substantial competition in commerce with individuals,