

Complaint

94 F.T.C.

IN THE MATTER OF

MACK TRUCKS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2978. Complaint, Aug. 1, 1979 — Decision, Aug. 1, 1979*

This consent order, among other things, requires an Allentown, Pa. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model year of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company is effectively required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture must be permanently affixed to each vehicle and specified information concerning the label disclosed in Owners' Manuals. Additionally, the company is required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

*Appearances*For the Commission: *Paul Sailer.*For the respondent: *Daniel K. Mayers, Wilmer, Cutler & Pickering,*
Wash., D.C.

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 Mack Trucks, Inc., 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.

DEFINITIONS

(a) "The Beginning of a Model Year"

For purposes of this complaint, the beginning of a model year (for example, "the beginning of the 1973 model year") for a particular model vehicle is defined as the moment in time when a vehicle of that

model class is identified, or may according to company policy, be identified as being of that model year:

1. by numeral or code in a vehicle identification number, and/or
2. on an original Certificate of Origin, and/or
3. on some other document identifying a particular vehicle.

(b) "The — Model Year"

For purposes of this complaint, a particular model year (for example, "the 1973 model year") when referring to a period of time, is defined as that period of time which starts at the beginning of that model year and continues to (but does not include) the beginning of the subsequent model year.

PAR. 2. Respondent Mack Trucks, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at 2100 Mack Boulevard, Allentown, Pennsylvania.

PAR. 3. Respondent Mack Trucks, Inc. is now and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of certain motor vehicles, including but not limited to trucks which exceed 26,000 pounds in gross vehicle weight.

PAR. 4. In the course and conduct of its aforesaid business, respondent Mack Trucks, Inc. causes the said motor vehicles, after manufacture, to be transported from its place of business located in various States of the United States to purchasers, and to wholesalers and dealers, and branches for sale to prospective purchasers, which purchasers, wholesalers, branches, retailers and prospective purchasers are located in various States of the United States other than the states in which such vehicles were manufactured. Respondent, Mack Trucks, Inc., maintains, and at all times mentioned herein, has maintained a substantial course of trade in said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of respondent's business has been and is substantial.

PAR. 5. In the course and conduct of its business respondent designates and at all times mentioned herein, had designated on Certificates of Origin and other documents which relate to and identify particular heavy duty trucks and other vehicles manufactured by respondent that such vehicles are of a particular model year.

After manufacture such vehicles are sent and have been sent to franchised dealers and to respondent-owned sales branches, which offer such vehicles for sale to the public as vehicles of the particular model year designated on the Certificates of Origin and other documents.

PAR. 6. At the end of a model year, respondent's franchised dealers returned and have returned to it Certificates of Origin and other documents for unsold vehicles. Respondent then "redesignates" and has "redesignated" such unsold vehicles by issuing new Certificates of Origin on which the said vehicles are identified as being of the forthcoming model year. These Certificates are and have been returned to the aforesaid dealers for use in the offering for sale and sale of such vehicles.

PAR. 7. Through the use of such newly issued Certificates of Origin, respondent directly and by implication represents and has represented, and provides and has provided the means and opportunity for respondent's franchised dealers directly and by implication to represent, offer for sale, and sell such vehicles as having been manufactured during the latest model year. In truth and in fact, such vehicles were not manufactured during the latest model year.

PAR. 8. By redesignating the model years of unsold vehicles on Certificates of Origin and other similar documents identifying such vehicles and by furnishing such redesignated Certificates of Origin and documents to its dealers for use in misrepresenting the model years of respondent's vehicles as aforesaid, respondent is engaged and has been engaged in unfair, false, misleading and deceptive acts or practices.

PAR. 9. Respondent has sold heavy duty trucks to retail purchasers through respondent-owned sales branches, and in connection with such sales, respondent has designated the model year of such vehicles on Certificates of Origin and other documents identifying such vehicles as the current model year.

In so doing respondent has represented directly or by implication, that said vehicles were manufactured during the model year represented on the Certificates of Origin. In truth and in fact, in many instances such vehicles were manufactured during a previous model year.

PAR. 10. Such representations constitute and have constituted unfair, false, misleading and deceptive acts or practices.

PAR. 11. The issuance by respondent of Certificates of Origin and other documents containing said false, misleading and deceptive representations concerning the model years of vehicles as described in Paragraphs One through Ten, has had, and now has, the capacity and tendency to mislead first and subsequent retail purchasers of such vehicles into the erroneous and mistaken belief that said representations made concerning the model years of particular vehicles were and are true, and into the purchase of substantial quantities of said vehicles manufactured by respondent, by reason of said erroneous and mistaken belief.

PAR. 12. 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 in the sale of motor vehicles of the same general kind and nature of those sold by the respondent.

PAR. 13. The aforesaid 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 in or affecting commerce and unfair or deceptive acts or 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; and

The respondent 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 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mack Trucks, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 2100 Mack Boulevard, Allentown, Pennsylvania.

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, Mack Trucks, Inc., a corporation, its successors, and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of trucks, truck-tractors, vans, chassis and incomplete vehicles, intended for on-highway use, (hereinafter in this order referred to as "vehicles"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any Certificate of Origin or other document to redesignate the model year of any such vehicle; and shall forthwith represent accurately on any Certificate of Origin or other document the model year, if any, of such vehicle; and shall not use a manufacturer's Certificate of Origin or other document to misrepresent the model year of any such vehicle.

It is further ordered, That respondent shall not represent orally or in any document identifying any vehicle, or in any advertisement or promotional material, or in any number or code incorporated into a vehicle identification number, that any vehicle is of a particular model year, or designate or cause to be designated any vehicle as being of a particular model year, unless for each such vehicle:

1. Such designation of representation is made in accordance with written designation standards which clearly identify the vehicles to which they apply and the starting dates when such standards takes effect, and

2. The aforementioned designation standards are uniformly applied throughout a model year to all vehicles of the same model assigned a model year designation, whether such vehicles are distributed for sale to the first retail purchaser through factory-owned branches or through dealers; and

3. The aforementioned designation standards are such that the model year assigned particular vehicles is determined by:

- a. The characteristics of the vehicle designated, or
- b. The date of manufacture (regardless of the extent, if any, of changes in physical characteristics from vehicles of a preceding model year), *provided, however,* that:

- (1) Vehicles whose assembly began before the model year change-over date but were completed after such date, may be designated as being of the earlier model year, and

- (2) Where a particular model is manufactured in two or more plants,

all vehicles of that model manufactured after a particular date in one plant and after a later date (or dates) in another plant (or plants) may be designated as being of the same model year provided that the date of manufacture of the last vehicle designated as of a particular model year in any plant, occur no later than thirty (30) days after the date of manufacture of the first vehicle designated as of the succeeding model year in any other plant;

4. All vehicles designated as being of a particular model year shall be so designated on or before the date of manufacture; and

5. All vehicles once designated as being of a particular model year shall remain so designated except that the model year designation may be corrected when a vehicle at the time of manufacture is assigned an incorrect designation which is inconsistent with the previously established standards;

provided, however, that nothing in this order shall require that the first and last days of a model year coincide with the first and last days of the corresponding calendar year.

For purposes of this order, the date of manufacture shall be the date upon which the last act of manufacturing or assemblage to be performed by respondent is completed by respondent. Further steps of manufacture by a later stage manufacturer (for example, the installation of a truck body) however initiated or contracted shall not affect the date of manufacture of vehicles manufactured by respondent, for purposes of this order.

It is further ordered:

1. that respondent indicate a numerical model year on Certificates or Statements of Origin for new vehicles shipped to its dealers, branches or customers, in any state which, by statute or regulation, titles or registers such vehicles and which by statute, regulation, or action of a state official acting pursuant to authority provided by statute or regulation:

a. prescribes forms evidencing title or registration, or application forms for title or registration, which contain a space for model year designation, or

b. requires a model year designation on:

- (i) Certificates or Statements of Origin for such vehicles, or
- (ii) Certificates of Title, Certificates of Ownership, bills of sale, or other documents evidencing title or registration of such vehicles, or
- (iii) Applications for title or registration of such vehicles.

2. that if respondent, for vehicles sent to any other state, does not

designate a model year on Certificates of Origin for vehicles of a particular model, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

3. Nothing in this order shall require respondent to designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles which:

- a. are not titled or registered, and
- b. are incorporated in motor homes or recreational vehicles which are titled and registered, and for which separate Certificates or Statements of Origin are prepared by independent motor home or recreational vehicle manufacturers.

Provided, however, that if respondent in accordance with this subsection does not designate a model year on Certificates or Statements of Origin for chassis or incomplete vehicles for motor homes or recreational vehicles, respondent:

- a. shall provide a space on such certificates preceded by the word "model year" or "year," and
- b. shall denote in such space either "N.A." or "Not Applicable" or "None" and shall not leave such space blank.

It is further ordered, That respondent will:

1. Clearly and conspicuously disclose the month and year of manufacture on a label permanently affixed to each vehicle at manufacture, or
2. Comply with the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974);

provided, however, that if the certification requirements of National Highway Traffic Safety Administration regulation 49 C.F.R. 567 (1974) are repealed, or otherwise become ineffective by action of law, respondent will subsequently disclose clearly and conspicuously the month and year of manufacture on a label permanently affixed to each vehicle it manufactures.

It is further ordered, That for all vehicles manufactured by respondent after the effective date of this order:

1. Respondent shall maintain and make available for inspection and copying by Commission staff, records that indicate the dates of manufacture, model years, and corresponding vehicle identification numbers for a period of four (4) years after manufacture of such vehicles, and

2. That respondent shall maintain and make available for inspection and copying by Commission staff, model year designation standards for a period of four (4) years after such standards are issued.

It is further ordered, That until January 1, 1980, respondent shall file with the Commission each model year, a copy of each new model year designation standard for all vehicles manufactured by respondent, within seven (7) calendar days after each such standard becomes final;

provided, however, that failure to provide such information shall not be a violation of this order unless respondent fails to file such information within ten (10) days after receiving a written request to do so from the Commission staff.

It is further ordered, That until January 1, 1980, at the beginning of each model year, respondent shall file with the Commission such records as will indicate the serial numbers of all vehicles manufactured by respondent which have been identified on Certificates of Origin in any number or code in vehicle identification numbers or in any other documents as being of the preceding model year.

It is further ordered, That respondent clearly and conspicuously disclose the following information in the Owner's Manual for all vehicles it manufactures (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles):

1. The fact that NHTSA regulations require that a certification label be affixed, and prescribe where such label may be located, and
2. The location (or possible locations) of the certification label, and
3. The fact that this label indicates (or is required by NHTSA regulations to indicate) the date of manufacture of the vehicle, and
4. The location of a vehicle identification number, and
5. If a model year is coded in the vehicle identification number, the manner in which the model year is coded in the vehicle identification number.

It is further ordered, That respondent:

1. Clearly and conspicuously disclose in the Owner's Manual for all chassis and incomplete vehicles sold to intermediate or final stage

manufacturers of motor homes or recreational vehicles (or if an Owner's Manual is not provided, in other documents provided to purchasers which describe how to maintain or care for vehicles) that:

- a. Complete vehicles are manufactured in two (or more) stages by two (or more) separate manufacturers, and
- b. The manufacture of the complete vehicle is completed at a later date than the manufacture of the chassis or incomplete vehicle, and
- c. (If applicable) that consequently the model year of the complete vehicle may be later than the model year of the incomplete vehicle or chassis;

2. Send to each manufacturer of motor homes and recreational vehicles who purchases chassis or incomplete vehicles from respondent, a written request that the manufacturer and his dealers disclose to prospective purchasers of complete vehicles, prior to purchase, the information contained in Sections 1(a), (b), and (c) of this paragraph.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions, offices, agents, representatives, or employees involved in preparation of Certificates of Origin or assignment of model year to any vehicle or vehicles subject to this order, and to dealers, and branches who sell such vehicles.

It is further ordered, That the respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent 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 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.

IN THE MATTER OF
CHRYSLER CORPORATION

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

Docket C-2979. Complaint, Aug. 1, 1979 — Decision, Aug. 1, 1979

This consent order, among other things, requires a Highland Park, Mich. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model year of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company is effectively required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture must be permanently affixed to each vehicle and specified information concerning the label disclosed in Owners' Manuals. Additionally, the company is required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

Appearances

For the Commission: *Paul Sailer.*

For the respondent: *Matten B. Maher*, Highland Park, Mich.

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 Chrysler 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.

DEFINITIONS

(a) "The Beginning of a Model Year"

For purposes of this complaint, the beginning of a model year (for example, "the beginning of the 1973 model year") for a particular model vehicle is defined as the moment in time when a vehicle of that model class is identified, or may according to company policy, be identified as being of that model year: