

Complaint

102 F.T.C.

IN THE MATTER OF

FORD MOTOR COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9113. Complaint, July 19, 1978—Decision, Nov. 16, 1983*

This consent order dismisses Count I of the complaint charging Ford Motor Co., a Dearborn, Mich. motor vehicle manufacturer, with alleged violations of Section 2(d) of the Clayton Act, and requires the manufacturer, among other things, to cease paying anything of value to daily rental companies or daily rental systems for advertising furnished by such firms or systems, unless advertising payments are made available to competing independent daily rental companies in accordance with terms set forth in the order. Within 90 days from the effective date of the order, and annually thereafter, Ford is required to inform those daily rental companies having no joint advertising agreement with respondent or any other automobile manufacturer, of advertising programs available to daily rental companies that agree to feature Ford products in their advertising and fleets. The order further requires that Ford make a good faith effort to negotiate advertising agreements with such companies. Provisions of the order are to remain in effect for a period of ten years and apply only to agreements relating to daily rental advertising within the United States.

Appearances

For the Commission: *Robert W. Rosen and Paul Kane.*

For the respondent: *Richard E. Carlton*, New York City and *Charles E. Dorkey, III*, Washington, D.C., of *Sullivan & Cromwell*, and *William A. Zolbert* and *John R. Phillips*, in-house counsel, Dearborn, Mich.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, Ford Motor Company [hereinafter referred to as Ford], has violated and is now violating the provisions of Section 2(d) of the Clayton Act, as amended (15 U.S.C. 13), and of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint charging as follows:

PARAGRAPH 1. Ford is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at The American Way, Dearborn, Michigan.

PAR. 2. Ford is the second largest manufacturer of automobiles in the United States. In 1977, Ford sold approximately 3.9 million automobiles and trucks in the United States. During 1977, Ford's net sales exceeded \$37,841,000,000. Ford's net income during 1976 exceeded \$1,672,000,000.

PAR. 3. In the course and conduct of its business, Ford has been and is now engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, and Ford's methods of competition are now and have been in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

The acts and practices herein described in connection with Ford's offers and grants of advertising allowances and other expenses [hereinafter collectively referred to as programs] are and have been in commerce, as "commerce" is defined in the Clayton Act, as amended, and are now and have been in or affecting commerce as the term "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. Ford sells its automobiles and trucks [hereinafter referred to as vehicles] to dealers which, in turn, sell the vehicles to rental and leasing companies [hereinafter referred to as Ford customers]. As more particularly described herein, Ford deals directly with Ford customers in administering its programs in connection with the sale of its vehicles.

PAR. 5. In the course and conduct of its business, Ford has paid or contracted for the payment of something of value to or for the benefit of some of its Ford customers, as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such Ford customers in connection with the distribution of vehicles sold by Ford. Ford has not made or offered to make such payments for services or facilities available on proportionally equal terms to all of its other Ford customers competing with such favored Ford customers.

For instance, Ford has engaged in programs with certain Ford customers, including but not limited to, Hertz Corporation, whereby payments have been made for advertisements linking vehicles sold by Ford with the vehicles offered for rent or lease by Ford customers to the value and benefit of said customers. Typical, are advertisements placed by Hertz corporation which include phrases such as: "Hertz rents Fords and other fine cars." Payments for these programs have been made by Ford to Ford customers, or their agents. Ford has not offered to pay, has not paid, or otherwise made payments available on proportionally equal terms to all of its Ford customers competing with the favored Ford customers.

COUNT I

Alleging violation of Section 2(d) of the Clayton Act, as amended.

PAR. 6. The allegations of Paragraphs One through Five are incorporated by reference herein as if fully set forth verbatim.

PAR. 7. The acts and practices of respondent, as alleged above, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. 13).

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 8. The allegations of Paragraph One through Five are incorporated by reference herein as if fully set forth verbatim.

PAR. 9. The aforesaid acts and practices of respondent Ford violate the policy of Section 2(d) of the Clayton Act, as amended; are all to the prejudice of the public; have the tendency and effect of preventing and hindering competition and may tend to create a monopoly in the vehicle rental or leasing businesses; and constitute unfair methods of competition in commerce and unfair acts or practices in or affecting commerce, within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 2(d) of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Ford Motor Company 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 The American Way, in the City of Dearborn, State of Michigan.
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 apply:

(a) A *daily rental company* is an entity, other than one affiliated with a franchised new car dealer of any manufacturer or distributor of automobiles, engaged primarily in the business of renting current model-year automobiles to the public on the basis of a flat rate for hourly, daily, weekly or monthly use or on the basis of a combination of a flat rate and a mileage rate.

(b) A *daily rental system* is any group of daily rental companies affiliated by ownership, by licensor-licensee, franchisor-franchisee or agency relationship, or similar arrangement, or operating under a common trade name, trademark or logo or through a common or shared reservation system.

(c) An *independent daily rental company* is a daily rental company that operates during any model year not more than one thousand (1000) automobiles for use in daily rental service and that is not affiliated with a daily rental system. Calculation of fleet size shall be made by averaging the number of automobiles in the fleet in daily rental service at quarterly or other regular intervals during the relevant model year.

(d) An *independent daily rental system* is a daily rental system that operates during any model year not more than one thousand (1000) automobiles in daily rental service. Calculation of fleet size shall be made by averaging the number of automobiles in the fleet in daily rental service at quarterly or other regular intervals during the relevant model year.

(e) *Ford products* refers to automobiles manufactured, assembled, distributed or sold by Ford Motor Company.

(f) *Model year* is the period between October 1 and September 30 of the following year, and shall be determined for particular vehicles by reference to the vehicle identification number.

I

It is ordered, That Count I of the Complaint be, and the same hereby is, dismissed.

II

It is further ordered, That respondent, Ford Motor Company, a corporation, its officers, directors, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporate or other device in connection with the furnishing of advertising by or through daily rental companies or daily rental systems in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith:

Cease and desist from paying or contracting to pay anything of value to or for the benefit of any daily rental company or any daily rental system as compensation or consideration for any advertising furnished by or through such daily rental company or daily rental system, unless the payment, compensation or consideration is made available by Ford on terms as provided in Paragraph III hereof to all independent daily rental companies and independent daily rental systems competing with such daily rental company or daily rental system.

III

It is further ordered, That Ford shall be in full compliance with Paragraph II of this order if it offers or causes to be offered to all independent daily rental companies and independent daily rental systems an advertising program for the joint promotion of Ford products and the services of the independent daily rental company or the independent daily rental system, which contains the following provisions:

A. Ford shall reimburse any independent daily rental company or independent daily rental system agreeing to feature current model year Ford products in its advertising and fleet fifty (50) percent (unless that percentage is modified in accordance with the provisions of Paragraph III.G. of this order) of the cost of a yellow pages display advertisement featuring Ford products up to one quarter page (double

half column) in size, under the classification "Automobile Renting and Leasing," to appear in the hometown telephone directory or directories where the main rental offices of the independent daily rental company or independent daily rental system are located.

B. Any independent daily rental company or independent daily rental system accepting the offer described in Paragraph III.A. of this order shall be offered the option of participating in additional advertising featuring Ford products and the services of the independent daily rental company or independent daily rental system, for which Ford will reimburse the independent daily rental company or the independent daily rental system fifty (50) percent (unless that percentage is modified in accordance with the provisions of Paragraph III.G. of this order) of the cost of advertising featuring Ford products. The criteria for determining what advertisements and what advertising costs are reimbursable for independent daily rental companies and independent daily rental systems participating in joint advertising programs with Ford shall be the same as for all other daily rental companies and daily rental systems participating in joint advertising programs with Ford.

C. To be eligible for the advertising program set forth in Paragraphs III.A. or III.B. of this order an independent daily rental company or independent daily rental system must agree to feature Ford products in its fleet and to purchase at least twenty (20) Ford products of the model year during which the advertising featuring Ford products appears.

D. Ford may require that the independent daily rental company or independent daily rental system substantiate its purchases of Ford products and its fleet size. Ford may also require substantiation, similar to the substantiation required of other daily rental companies and daily rental systems, from the independent daily rental company or independent daily rental system of its expenditures for advertising featuring Ford products, through the submission of bills, invoices, copies of advertisements or other reasonable documentation and other procedures for verification of such expenditures.

E. Ford may provide for termination or nonrenewal of joint advertising programs for cause. Such cause may include, for example, false or deceptive advertising or claims for payments, advertising which, or in media which, reflect negatively on Ford, its products or its goodwill or failure to maintain reasonable standards of automobile maintenance, safety or cleanliness. Without limitation of Ford's other rights under this order, Ford may decline to enter into a joint advertising program where it reasonably appears such affiliation would negatively reflect on Ford, its products or its goodwill. Any decision by Ford to decline to enter into, decline to renew, or terminate a joint advertis-

ing program under the provisions of this subparagraph shall be made on the basis of standards which are consistent for all daily rental companies and daily rental systems. Where Ford exercises its right hereunder to decline to enter into, to terminate or not to renew a joint advertising program on the basis that such an affiliation would negatively reflect on Ford, its products or its goodwill, it shall maintain a written record of the specific basis for such exercise and the relevant dates relating thereto. Such records shall be retained for two years following exercise of such right or until expiration of this order, whichever is sooner, and shall be made available to the Commission upon request following reasonable notice.

F. Ford shall, within ninety (90) days after service of a final order and annually thereafter commence reasonable action, in good faith, to inform all independent daily rental companies and independent daily rental systems of the availability of the advertising program contemplated by this order.

G. In the event Ford or any of its divisions agrees to reimburse more or less than fifty (50) percent of the type of advertising expenditures described in Paragraphs III.A. and III.B. above for any daily rental company or any daily rental system, then Ford or, in the case of a particular division of Ford, that division shall offer to reimburse to all independent daily rental companies and independent daily rental systems the highest percentage of reimbursement offered to any daily rental company or daily rental system by Ford or that particular division of Ford.

IV

It is further ordered, That:

A. Ford shall within ninety (90) days after service of a final order and annually thereafter advise all daily rental systems and daily rental companies not affiliated with a daily rental system, which do not have a joint advertising agreement with Ford and which are not independent daily rental companies or independent daily rental systems, of the existence of advertising programs for daily rental companies and daily rental systems agreeing to feature Ford products in their advertising and fleets.

B. Ford shall in good faith seek to negotiate an agreement with: (1) any daily rental company or daily rental system that is advised pursuant to Paragraph IV A. hereof of the existence of Ford advertising programs and that does not have a joint advertising agreement with any other manufacturer or distributor of automobiles; and (2) any daily rental system, or any daily rental company that is not affiliated

with a daily rental system, other than an independent daily rental system or independent daily rental company, that already has a joint advertising agreement with Ford which is due to expire on or before the last day of that model year. Failure to reach agreement after good faith efforts to do so shall not constitute a violation of this Order.

V

It is further ordered, That nothing herein contained shall prevent Ford from carrying out the provisions of any advertising agreement with any daily rental company or daily rental system that shall have been entered into prior to January 1, 1982.

VI

It is further ordered, That the provisions of this order shall remain in effect for a period of ten (10) years after service of a final order, and shall apply only to agreements relating to daily rental advertising within the United States.

VII

It is further ordered, That nothing herein shall preclude Ford from offering or participating in an advertising program on terms intended in good faith to meet a bona fide offer received by a daily rental company or daily rental system from another manufacturer or distributor of automobiles, *provided* that Ford shall have the burden of proving that it was acting in good faith to meet such a bona fide offer, and the provisions of paragraphs II, III and IV of this order shall not apply to such offer or program.

VIII

It is further ordered, That in the event the proceeding against General Motors Corporation, respondent in Docket No. 9114, results in a final adjudicated order in accordance with Section 5(g)-(k) of the Federal Trade Commission Act, 15 U.S.C. 45, or in a consent order, prescribing less restrictive standards or less demanding obligations than any corresponding provision of this order, then Ford shall be bound only by the less restrictive standards and less demanding obligations set forth in such order. In the event the aforesaid proceeding against General Motors Corporation is dismissed, then Ford shall no longer be bound by the provisions of this order. In the event the Commissioner issues a final Trade Regulation Rule prescribing less restrictive stan

dards or less demanding obligations on any manufacturer, assembler or distributor of automobiles than any corresponding provision of this order, then Ford shall only be bound by the standards set forth in such Rule.

IX

It is further ordered, That respondent shall within one hundred and twenty (120) days after service of a final 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 and shall file such other reports as may, from time to time, be required to assure compliance with the terms and conditions of this order.

X

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 emergency 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.

1741

Complaint