

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8907. Final Order, Jan. 10, 1975—Modifying Order, Aug. 16, 1984

This order reopens the proceeding and modifies the Commission's 1975 Cease and Desist Order which barred a motor vehicle manufacturer and its advertising agency [85 F.T.C. 27] from making superior handling claims for any automobile, unless the claims were substantiated by scientific tests. In response to petitions from both respondents, the Modifying Order redefines the term "handling" as it relates to the control of a moving automobile; adds a paragraph defining the phrase "vehicle handling characteristics;" clarifies the definition of the scientific tests required for substantiating comparative claims; and permits respondents to make superiority claims regarding one or more specifically identified vehicle handling characteristics without having to raise substantiation requirements for other handling characteristics.

ORDER REOPENING PROCEEDING AND MODIFYING
CEASE AND DESIST ORDER

On April 19, 1984 General Motors Corporation [hereinafter G.M.C.], a respondent in the above captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the above-captioned proceeding and modify the order entered therein (85 F.T.C. 32). On May 7, 1984 Campbell-Ewald Company, an advertising agency for G.M.C. and also a respondent in the above matter, filed a petition to reopen and modify the order entered against Campbell-Ewald (85 F.T.C. 35).

The order, which was entered in 1975, prohibits the respondents from representing that any automobile is superior in handling to any other automobile or all other automobiles unless respondents have a reasonable basis for such representations. Handling is defined in terms of the response of the vehicle:

- (a) under conditions where rapid steering inputs in evasive or emergency maneuvers are necessary;
- (b) under cornering conditions at speeds in excess of 30 miles per hour in which levels of lateral acceleration in excess of .2g are attained; and
- (c) in gusty crosswinds, on rough roads and under severe steering-braking conditions.

Respondents now seek to modify the order by, inter alia, substitut-

ing a new definition for handling, adding a new paragraph defining vehicle handling characteristics, and adding a further clarification to the definition of scientific test. The modified order would permit respondents to advertise specific aspects concerning the comparative handling of motor vehicles, without having to prove overall handling superiority.

The Commission has concluded that, to avoid any unintended restriction on the dissemination to the public of information material to purchasing decisions, the petitions are in the public interest and should be granted. The proposed modified order will continue to require that respondents have a reasonable basis for vehicle handling claims.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued January 10, 1975, in Docket No. 8907 is hereby modified to read as follows:

DECISION AND ORDER AS TO GENERAL MOTORS CORPORATION

I.

It is ordered, That respondent General Motors Corporation, 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 advertising, offering for sale, sale or distribution of any automobile, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner including the use of any endorsement, testimonial, or statement made by any individual, group, or organization, that any automobile is superior to any other automobile or all other automobiles in handling, or that any automobile exhibits one or more vehicle handling characteristics superior to the vehicle handling characteristics of any other automobile or all other automobiles, unless at the time such representation is first disseminated:

(a) respondent has a reasonable basis for such representation, which shall consist of a competent scientific test or tests that substantiate such representation; and

(b) respondent's agents, employees or representatives who are responsible for engineering approval of any advertisement containing such representation rely on such test or tests in approving such advertisement and provide to respondent's agents, employees or representatives who are responsible for approval of such advertisement a

written statement that such reasonable basis exists which substantiates the representation.

2. Failing to maintain and produce accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) which consist of the documentation constituting the reasonable basis required by Paragraph I.1 of this Order and which demonstrate that respondent's representatives relied on such reasonable basis as required in Paragraph I.1(b); and

(b) which shall be maintained for a period of three (3) years from the date on which any advertisement containing any such representation was last disseminated.

II.

It is further ordered, That for the purposes of Paragraph I of this Order, the following definitions shall apply:

1. *Handling*

The term *handling* is defined as the interaction of the driver, automobile, road, and environment as it relates to the control of a moving automobile.

2. *Vehicle Handling Characteristics*

The term *vehicle handling characteristics* is defined as the separately identifiable vehicle attributes which influence the automobile's contribution to handling. Vehicle handling characteristics include numerous vehicle attributes, such as, but not limited to, steering sensitivity, roll compliance, lateral acceleration response time, steering effort, maximum lateral acceleration, and task performance maneuvering capability.

3. *Scientific Test*

The term *scientific test* is defined and construed in accordance with the Federal Trade Commission's Order as stated in *Firestone Tire & Rubber Co.*, Docket No. 8818. [81 F.T.C. at 463]

In our view a scientific test is one in which persons with skill and expertise in the field conduct the test and evaluate its results in a disinterested manner using testing procedures generally accepted in the profession which best insure accurate results. This is not to say that respondent always must conduct laboratory tests. The appropriate test depends on the nature of the claim made. Thus a road or user test may be an adequate scientific test to substantiate one performance claim, whereas a laboratory test may be the proper test to substantiate another claim. Respondent's obligation is to assure that any claim it makes is adequately substantiated by the results of whatever constitutes a scientific test in those circumstances.

Scientific tests for claims of superiority in handling or vehicle handling characteristics shall include reliable measures to control the variable influences of the driver, road, and environment so that the contribution of the automobile or of a specific vehicle attribute, can be identified.

III.

It is further ordered, That for the purposes of Paragraph I of this Order a statement about handling or any vehicle handling characteristic implies superiority if the statement is phrased in the comparative or superlative degree, or if any advertising containing such statement conveys a net impression of comparative superiority; *provided, however,* that any statement or statements in such advertising phrased in the comparative or superlative degree regarding any subject other than handling or vehicle handling characteristics will not, for that reason alone and without a statistically valid consumer survey, render any statement in such advertising which does relate to the handling or the vehicle handling characteristics of a vehicle and which is phrased in the positive degree to be deemed a representation that handling or vehicle handling characteristic of the vehicle are superior to any other vehicle or all other vehicles. A representation of superiority with respect to one or more specifically identified vehicle handling characteristics shall not give rise to any substantiation requirements with respect to any other vehicle handling characteristic.

IV.

It is further ordered, That respondent General Motors Corporation shall forthwith distribute a copy of this Modified Order to each of its officers, agents, representatives, or employees who are engaged in the creation or approval of advertisements.

V.

It is further ordered, That respondent General Motors Corporation notify the Commission at least thirty (30) days prior to any proposed change in said 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 this Modified Order.

VI.

It is further ordered, That respondent shall within sixty (60) days after service upon it of this Modified Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Modified Order.

DECISION AND ORDER AS TO CAMPBELL-EWALD COMPANY

I.

It is ordered, That respondent Campbell-Ewald Company, 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 advertising, offering for sale, sale or distribution of any automobile, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner including the use of any endorsement, testimonial, or statement made by any individual, group, or organization, that any automobile is superior to any other automobile or all other automobiles in handling, or that any automobile exhibits one or more vehicle handling characteristics superior to the vehicle handling characteristics of any other automobile or all other automobiles, unless at the time such representation is first disseminated:

(a) respondent or its client has a reasonable basis for such representation which shall consist of a competent scientific test or tests that substantiate such representation; or

(b) respondent has a reasonable basis for such representation which shall consist of an opinion in writing signed by a person qualified by education and experience to render such an opinion (who, if qualified by education and experience, may be a person retained or employed by respondent's client) that a competent scientific test or tests exist to substantiate such representation, *provided*, that any such opinion also discloses the nature of such test or tests and *provided further*, that respondent neither knows nor has reason to know that such test or tests do not in fact substantiate such representation or that any such opinion does not constitute a reasonable basis for such representation;

2. Failing to maintain and produce accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) which consist of the documentation constituting the reasonable basis required by Paragraph I.1 of this Order; and

(b) which shall be maintained for a period of three (3) years from the date on which any advertisement containing any such representation was last disseminated by respondent.

II.

It is further ordered, That for the purposes of Paragraph I of the Order, the following definitions shall apply:

1. *Handling*

The term *handling* is defined as the interaction of the driver, automobile, road, and environment as it relates to the control of a moving automobile.

2. *Vehicle Handling Characteristics*

The term *vehicle handling characteristics* is defined as the separately identifiable vehicle attributes which influence the automobile's contribution to handling. Vehicle handling characteristics include numerous vehicle attributes, such as, but not limited to, steering sensitivity, roll compliance, lateral acceleration response time, steering effort, maximum lateral acceleration, and task performance maneuvering capability.

3. *Scientific Tests*

The term *scientific test* is defined and construed in accordance with the Federal Trade Commission's Order as stated in *Firestone Tire & Rubber Company*, Docket No. 8818. [81 F.T.C. at 463]

In our view a scientific test is one in which persons with skill and expertise in the field conduct the test and evaluate its results in a disinterested manner using testing procedures generally accepted in the profession which best insure accurate results. This is not to say that respondent always must conduct laboratory tests. The appropriate test depends on the nature of the claim made. Thus a road or user test must be an adequate scientific test to substantiate one performance claim, whereas a laboratory test may be the proper test to substantiate another claim. Respondent's obligation is to assure that any claim it makes is adequately substantiated by the results of whatever constitutes a scientific test in those circumstances.

Scientific tests for claims of superiority in handling or vehicle handling characteristics shall include reliable measures to control the variable influences of the driver, road, and environment so that the contribution of the automobile or of a specific vehicle attribute, can be identified.

III.

It is further ordered, That for the purposes of Paragraph I of this Order, a statement about handling or any vehicle handling characteristic implies superiority if the statement is phrased in the comparative or superlative degree, or if any advertising containing such statement conveys a net impression of comparative superiority; *provided, however,* that any statement or statements in such advertising phrased in the comparative or superlative degree regarding any subject other than handling or vehicle handling characteristics will not, for that reason alone and without a statistically valid consumer survey, render any statement in such advertising which does relate to the handling or the vehicle handling characteristics of a vehicle and which is phrased in the positive degree to be deemed a representation that handling or vehicle handling characteristics of the vehicle are superior to any other vehicle or all other vehicles. A representation of superiority with respect to one or more specifically identified vehicle handling characteristics shall not give rise to any substantiation requirements with respect to any other vehicle handling characteristic.

IV.

It is further ordered, That respondent Campbell-Ewald Company shall forthwith distribute a copy of this Modified Order to each of its officers, agents, representatives, or employees who are engaged in the creation or approval of advertisements.

V.

It is further ordered, That respondent Campbell-Ewald Company notify the Commission at least thirty (30) days prior to any proposed change in said 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 this Modified Order.

VI.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this Modified Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Modified Order.

IN THE MATTER OF

THE ESTES PARK ACCOMMODATIONS ASSOCIATION, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3143. Complaint, Aug. 21, 1984—Decision, Aug. 21, 1984

This consent order requires an association composed of operators of motels, hotels, cabins and campgrounds in the area of Estes Park, Colorado, to cease inhibiting competition by restricting, impeding or advising its members and others against the truthful advertising of the terms and conditions of their accommodations; and by declaring such activities unethical. The association is precluded from taking any action against a person charged with violating an ethical standard without first providing that person with reasonable notice of the allegations and a hearing, as well as written findings and conclusions concerning the allegations. Respondent must also remove from its membership application, policy statement or guidelines, any provision which is inconsistent with the prohibitions contained in the order.

Appearances

For the Commission: *Claude C. Wild, III.*

For the respondent: *R. Hallberg*, Estes Park, Col.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

PARAGRAPH 1. Respondent, The Estes Park Accommodations Association, Inc., is a corporation formed pursuant to the laws of the State of Colorado, with its mailing address at P.O. Box 178, Estes Park, Colorado.

PAR. 2. Respondent is an association formed to represent the interests of operators of motels, hotels, campgrounds, cabins, and other lodging facilities for travelers in the area of Estes Park, Colorado. Respondent has approximately 80 members, and these members control a substantial majority of the lodging facilities available to travelers in that area.

PAR. 3. Members of respondent are engaged in the business of pro