

IN THE MATTER OF
HERN OLDSMOBILE-GMC TRUCK, INC.

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

Docket C-3277. Complaint, Jan. 8, 1990—Decision, Jan. 8, 1990

This consent order prohibits, among other things, the Ohio Oldsmobile dealer from entering into or enforcing any agreement restricting the advertising of prices, terms or conditions of sale or lease of any motor vehicle.

Appearances

For the Commission: *Brenda W. Doubrava and Mark Kindt.*

For the respondent: *Thomas J. Collin, Thompson, Hine & Flory,*
Cleveland, OH.

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 Cleveland Oldsmobile Connection; Dowd Oldsmobile, Inc.; Earl Oldsmobile, Inc.; Fred Stecker Oldsmobile, Inc.; Ganley Oldsmobile, Inc.; Gene Norris Oldsmobile-GMC, Inc.; Hern Oldsmobile-GMC Truck, Inc.; Reliable Oldsmobile, Inc.; and Zalud Oldsmobile, Inc., sometimes referred to as "respondents," have 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. Each of the parties described below is hereby named as a respondent herein:

A. Cleveland Oldsmobile Connection is an unincorporated association composed entirely of Oldsmobile dealers and existing for their mutual benefit with its office and principal place of business located at 424 Broadway Avenue, Bedford, Ohio.

B. Dowd Oldsmobile, Inc. ("Dowd") is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Ohio, with its office and principal place of business located at 2958 Mayfield Road, Cleveland Heights, Ohio.

C. Earl Oldsmobile, Inc. ("Earl") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 11300 Brookpark Road, Brooklyn, Ohio.

D. Fred Stecker Oldsmobile, Inc. ("Stecker") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 25200 Euclid Avenue, Euclid, Ohio.

E. Ganley Oldsmobile, Inc. ("Ganley") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 13123 Detroit Avenue, Lakewood, Ohio.

F. Gene Norris Oldsmobile-GMC, Inc. ("Norris") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 18170 Bagley Road, Middleburg Heights, Ohio.

G. Hern Oldsmobile-GMC Truck, Inc. ("Hern") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 424 Broadway Avenue, Bedford, Ohio.

H. Reliable Oldsmobile, Inc. ("Reliable") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 6200 Brecksville Road, Independence, Ohio.

I. Zalud Oldsmobile, Inc. ("Zalud") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 3558 Lee Road, Shaker Heights, Ohio.

PAR. 2. Respondents, other than respondent Cleveland Oldsmobile Connection, are and have been dealers engaged in the business of selling Oldsmobiles at retail from their places of business in the metropolitan Cleveland area, comprising Cuyahoga County, Geauga County, Lake County and Medina County in the State of Ohio. In the course and conduct of their business, and at all times relevant to this complaint, respondent dealers have been in competition with each other in the sale of Oldsmobiles, except to the extent that competition has been restrained by the acts and practices alleged in this complaint.

PAR. 3. Respondent Cleveland Oldsmobile Connection is organized

and exists, in part, to engage in joint advertising and promotion on behalf of its members. Through these activities, among others, respondent Cleveland Oldsmobile Connection provides valuable benefits to its members. Respondent Cleveland Oldsmobile Connection is, and has been at all times relevant to this complaint, a corporation organized for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. In the conduct of their business, and at all times relevant hereto, respondents have engaged in activities that are in or affect "commerce," as commerce is defined in the Federal Trade Commission Act.

PAR. 5. Respondent dealers are members of respondent Cleveland Oldsmobile Connection, formerly called North Coast Nine. Each respondent dealer has been a member of respondent Cleveland Oldsmobile Connection from at least as early as 1980. For most of the period 1980-1985, respondent dealers were the only members of respondent Cleveland Oldsmobile Connection. Through their membership, respondent dealers control and have controlled the activities of respondent Cleveland Oldsmobile Connection.

PAR. 6. Respondent Cleveland Oldsmobile Connection has organized and implemented a conspiracy among its members named as respondents herein to refrain from advertising the prices of new, current model year Oldsmobiles. From as early as 1980, and continuing until at least May 1985, respondent dealers were members of respondent Cleveland Oldsmobile Connection and placed few such advertisements. Lloyd Barker Oldsmobile-Chrysler-Jeep-Eagle, Inc., an Oldsmobile dealer no longer doing business and not named as a respondent herein, became a member of Cleveland Oldsmobile Connection in 1984. Lloyd Barker Oldsmobile-Chrysler-Jeep-Eagle, Inc., discontinued advertising prices of new, current model year Oldsmobiles as soon as it joined respondent Cleveland Oldsmobile Connection. During the same period, dealers selling automobiles other than Oldsmobiles in the metropolitan Cleveland area frequently advertised the prices of new, current model year automobiles. On various occasions, representatives of the Oldsmobile Division of General Motors Corporation encouraged all or most respondent dealers to include the prices of new, current model year Oldsmobiles in their advertisements.

PAR. 7. The conspiracy and the acts and practices alleged herein have unreasonably restrained competition among dealers in the sale of

Oldsmobiles in the metropolitan Cleveland area and injured consumers by, among other things:

A. Depriving consumers of truthful information concerning the prices of new, current model year Oldsmobiles offered for sale; and

B. Restricting price competition in the sale of new, current model year Oldsmobiles.

PAR. 8. The conspiracy and the acts and practices described above constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as alleged herein, are continuing and are likely to continue or recur in the absence of the relief herein requested.

Commissioner Owen not participating.

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 Cleveland Regional Office 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, 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 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 issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hern Oldsmobile-GMC Truck, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 424 Broadway Avenue, Bedford, Ohio.

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

I.

It is ordered, That, for purposes of this order, the following definitions apply:

A. "*Hern Oldsmobile*" means Hern Oldsmobile-GMC Truck, Inc., as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

B. "*Dealer*" means any person, corporation, partnership, association, joint venture, trust, or any other organization or entity, but not governmental entities, that receives on consignment or purchases motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such entity.

C. "*Other dealer*" means any dealer not affiliated by total or partial [ten (10) percent or more] common ownership with Hern Oldsmobile-GMC Truck, Inc.

D. "*Dealer association*" means any group, organization or entity, whether incorporated or unincorporated, composed of dealers and existing for their mutual benefit.

E. "*Metropolitan Cleveland area*" means the Cleveland, Ohio metropolitan area, comprising Cuyahoga County, Geauga County, Lake County and Medina County, in the State of Ohio.

II.

It is further ordered, That Hern Oldsmobile, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, cease and desist from:

A. Entering into, organizing, encouraging, carrying out, continuing or enforcing any agreement or understanding, either express or

implied, with any other dealer or with any dealer association which has the purpose or effect of:

1. Restricting, regulating or impeding the advertising or publishing by any dealer of any price, term or condition of sale or lease of any motor vehicle.

2. Coercing, influencing, encouraging or persuading any dealer or dealer association to maintain, adopt or adhere to any policy or practice that restricts, regulates or impedes the advertising or publishing by any dealer of any price, term or condition of sale or lease of any motor vehicle.

3. Coercing, influencing, encouraging or persuading any dealer or dealer association to change its advertised or published prices.

B. For a period of five (5) years after the date this order becomes final, communicating with any Oldsmobile dealer in the metropolitan Cleveland area any information concerning any intention or decision of Hern Oldsmobile relating to the advertising or publishing of prices of motor vehicles or the effectiveness, advisability, or desirability of advertising or publishing prices of motor vehicles, except to the extent that such action is necessary for the purpose of engaging in joint advertising.

III.

It is further ordered, That nothing contained in Paragraph II above shall be construed to prohibit Hern Oldsmobile from participating in the formulation, adoption, dissemination and enforcement by a dealer association of lawful guidelines concerning advertisements that the dealer association reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

IV.

It is further ordered, That respondent shall:

A. File with the Commission within sixty (60) days after this order becomes final and annually on the anniversary date of the original report for each of the three (3) years thereafter, a report, in writing, signed by the respondent, setting forth in detail the manner and form in which it has complied and is complying with this order; and

B. Notify the Commission at least thirty (30) days prior to any proposed change in 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 respondent that may affect compliance obligations arising out of this order.

Commissioner Owen not participating.

IN THE MATTER OF
RELIABLE OLDSMOBILE, INC.

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

Docket C-3278. Complaint, Jan. 8, 1990—Decision, Jan. 8, 1990

This consent order prohibits, among other things, the Ohio Oldsmobile dealer from entering into or enforcing any agreement restricting the advertising of prices, terms or conditions of sale or lease of any motor vehicle.

Appearances

For the Commission: *Brenda W. Doubrava and Mark Kindt.*

For the respondent: *Joseph W. Diemert, Jr., Joseph W. Diemert & Associates, Cleveland, OH.*

COMPLAINT

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