

IN THE MATTER OF
BUDGET RENT A CAR CORPORATION

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

Docket C-3316. Complaint, Dec. 27, 1990—Decision, Dec. 27, 1990

This consent order prohibits, among other things, Budget Rent A Car Corporation ("Budget") from failing to inspect and, if appropriate, repair its rental vehicles covered by manufacturers' safety recall notices within a reasonable period of time after receiving such notices. In addition, the consent order provides the respondent the option, if it chooses not to inspect and repair, to disclose to prospective renters of affected vehicles, prior to the signing of the rental agreement, that the vehicles are subject to safety recall notices and have not been inspected or repaired, and to describe to prospective renters the defect in question.

Appearances

For the Commission: *Steven H. Toporoff* and *Lydia B. Parnes*.

For the respondent: *John Baer, Keck, Mahin & Cate*, Chicago, IL.

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 Budget Rent A Car 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 Budget Rent A Car 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 200 North Michigan Avenue, Chicago, Illinois.

PAR. 2. Respondent is now, and for sometime in the past, has been engaged in the business of offering automobiles to the general public for rent.

PAR. 3. In the course and conduct of its business, respondent rents automobiles to the general public 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 above 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, 15 U.S.C. 44.

PAR. 4. In the course and conduct of its business, respondent receives written notification, sometimes called a recall notice, from automobile manufacturers sent pursuant to the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1391 *et seq.*, and the rules and regulations promulgated thereunder, 49 CFR Part 577, that some of respondent's automobiles may contain safety-related defects.

PAR. 5. Respondent has rented to the general public automobiles that were subject to recall notices without inspecting within a reasonable period of time and, if appropriate, repairing such automobiles even though, with respect to such recalls, substantial numbers of consumers had undertaken inspections and appropriate repairs.

PAR. 6. In the circumstances described in paragraph five, respondent has failed to disclose to some renters that their automobiles were subject to recall notices, but were not inspected to determine whether they contained the safety-related defect(s). These facts, if known by some prospective renters or purchasers, would likely affect their consideration of whether to rent or purchase automobiles from respondent. Therefore, respondent has failed to disclose material facts to renters of its automobiles.

PAR. 7. Respondent's acts and practices in failing to disclose to renters that it did not inspect vehicles that were subject to recall notices within a reasonable period of time, herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(a).

Commissioner Strenio voted in the negative. Commissioner Starek did not participate.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent, Budget Rent A Car

Corporation, and the respondent having been furnished thereafter with a copy of a 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 of the jurisdictional facts set forth in the aforesaid 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 it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that the 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) Budget Rent A Car Corporation ("Budget") 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 200 North Michigan Avenue, Chicago, Illinois.

(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 the purpose of this order, the following definitions shall apply:

1. "*Affected Vehicles*" means respondent's rental fleet vehicles that are covered by recall notices received by respondent.
2. "*Rental fleet vehicles*" means those vehicles that respondent's corporate owned locations rent to the public.
3. "*Manufacturer*" means any person or entity engaged in the manufacturing or assembling of motor vehicles.

4. "*Recall notice*" means written notification from manufacturers to owners under the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1391 *et seq.*, and the rules and regulations promulgated thereunder, 49 CFR Part 577, that their vehicles may contain safety-related defects.

5. "*Reasonable period of time*" means a period of time not to exceed 120 days from the date the affected vehicle's notice of safety recall was received by respondent.

I.

It is ordered, That respondent Budget Rent A Car Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporate owned locations' advertising, offering for rental, or rental of any rental fleet vehicle in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing within a reasonable period of time after receipt of a recall notice, to inspect or to have inspected each such affected vehicle and to repair or to have repaired each such affected vehicle found to contain the safety defect(s); *provided, however,* that failure to comply with respect to any specific affected vehicle shall not be deemed to be a violation of this order if respondent can demonstrate that such failure to comply was due to circumstances beyond its control, including, but not limited to, the unavailability of replacement parts to complete that affected vehicle's safety recall procedures, and if respondent can show that, upon learning of such failure to comply, it complied at the earliest practicable date.

II.

It is further ordered, That respondent may elect, in lieu of the obligations set forth in Part I of this order, to disclose to each prospective renter of an affected vehicle, prior to the signing of a rental agreement, that the affected vehicle is subject to a safety recall notice and has not been inspected or repaired; *provided, however,* that if made, the disclosure shall be set forth in a separate document attached to the rental agreement and: (1) shall state that the specific car is the subject of a safety recall; (2) shall describe the safety recall in question; (3) shall describe the nature of the defect; and it shall be initialed by the consumer.

III.

It is further ordered, That, for a period of two (2) years, respondent shall maintain at the place said documents are routinely kept and upon request make available to the Federal Trade Commission for inspection and copying:

1. Any recall notice received subsequent to the date of this order and records sufficient to show the date or dates it was received from the manufacturer;
2. Records disclosing the vehicle identification number, make and model of every affected vehicle; and
3. Documents evidencing the inspection and, if required, the repair of affected vehicles.

IV.

It is further ordered, That respondent shall:

1. Distribute a copy of this order to all officers and any employee having responsibilities for recall procedures; and
2. Distribute a copy of this order to all its existing and future U.S. licensees.

V.

It is further ordered, That respondent shall 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 obligations arising out of this order.

VI.

It is further ordered, That respondent shall, within one hundred twenty (120) days after the date of service upon it 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.

Commissioner Strenio voted in the negative. Commissioner Starek did not participate.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

Last year, the Commission and Budget Rent A Car Corporation signed a consent agreement. That agreement, which settled allegations that Budget had failed to disclose that some of its rental cars had unrepaired safety defects, required Budget to inspect and, if necessary, repair cars subject to federal safety recalls within 120 days or to disclose to consumers that such cars had not been inspected or repaired. After considering comments criticizing that agreement, the Commission has determined to modify the original consent agreement. Because the modified agreement with Budget is a significant improvement over the original agreement, I am concurring in the Commission's decision to approve it, although I would have preferred to require Budget to give consumers an important "early warning" disclosure that I believe they deserve.

Part II of the original agreement would have allowed Budget to elect to disclose that an uninspected vehicle "is subject to a recall notice," but failed to require Budget to specify what the defect is. Consumer response to safety recall campaigns varies because consumers are more concerned about some possible safety defects than others. The modified consent agreement between the Commission and Budget requires Budget to give each prospective renter a written description of the particular safety defect in question before renting a car that has not been inspected or repaired, which is a significant improvement over the original agreement.

But the timing of a disclosure may be just as important as its content. That is why I also favored adding to the agreement an additional requirement that Budget's reservation agents inform each consumer who calls to reserve a rental car if there is any possibility that he or she will get an uninspected or unrepaired car. Rental car customers who first learn of a possible safety problem after arriving at the rental counter may be taken by surprise and left with no realistic alternative to accepting what is offered to them. Hurried consumers may be very reluctant to turn down a car, even if it is subject to a safety recall, particularly if they are told that no other car or only a more expensive car is available. The Commission required a similar disclosure in a recent case involving another rental car firm,¹ and I believe it should do the same here.

¹ In *General Rent-A-Car Systems, Inc.*, C-3255 (consent order issued June 13, 1989), the Commission required a rental car firm to disclose make and model information to consumers when they made reservations.

IN THE MATTER OF

NME HOSPITALS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3317. Complaint, Dec. 31, 1990—Decision, Dec. 31, 1990*

This consent order requires, among other things, a corporation based in Santa Monica, Ca., that owns a medical center in Boca Raton, Fla., that operates an infertility clinic, to possess a reasonable basis for any future success rate claims for its *in vitro* fertilization procedures, and for claims of success in terms of either live births or pregnancies achieved through any of its infertility treatments.

Appearances

For the Commission: *Michael A. Katz* and *Michael C. McCarey*.

For the respondent: *Milton McKay*, Tampa, FL.

COMPLAINT

The Federal Trade Commission, having reason to believe that NME Hospitals, Inc., d/b/a West Boca Medical Center, a corporation ("respondent"), has violated certain provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. NME Hospitals, Inc., is a Delaware corporation with its principal office and place of business located at 2700 Colorado Avenue, Santa Monica, California. Respondent owns and operates West Boca Medical Center, a hospital, which is located at 21644 State Road 7, Boca Raton, Florida.

PAR. 2. Through West Boca Medical Center ("the Center"), respondent is now, and for some time last past has been, engaged in offering for sale and the sale of services in connection with the treatment of infertility in the human reproductive system. The Center dispenses its infertility services to the public under the trade name, "The Fertility Institute of Boca Raton", ("FIBR"). The address of FIBR is the same as the Center.

PAR. 3. Since at least 1987, the Center, acting under the authority