

IN THE MATTER OF

SCALI, MCCABE, SLOVES, INC.

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

Docket C-3368. Complaint, Jan. 28, 1992 -- Decision, Jan. 28, 1992

This consent order requires, among other things, the New York advertising agency of Volvo North America Corporation to pay \$150,000 to the U.S. Treasury as disgorgement, and prohibits respondent from misrepresenting the strength, structural integrity, or crashworthiness of any automobile or auto part, or the safety of a vehicle occupant in a collision.

Appearances

For the Commission: *Lisa B. Hellerman and Joel Winston.*

For the respondent: *Lewis R. Clayton, Paul, Weiss, Rifkind, Wharton & Garrison, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Scali, McCabe, Sloves, Inc. has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a New York corporation, with its principal office and place of business at 800 Third Avenue, New York, New York.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of Volvo North America Corporation, and prepared and disseminated advertisements to promote the sale of Volvo automobiles.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical and illustrative of respondent's advertisements, but not necessarily all-inclusive thereof, are the advertisements attached hereto as Exhibits A and B. These advertisements depict a so-called "monster truck" event, in which an oversized pickup truck drives over a row of automobiles. In the advertisements, the "monster truck" is shown crushing all of the cars with the exception of a Volvo 240 station wagon, which remains intact.

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four (hereinafter, "the monster truck advertisements"), and others in advertisements not specifically set forth herein, respondent has represented, directly or by implication, that the monster truck event included unaltered cars, which had been subjected to equal treatment, and that the results shown accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions.

PAR. 6. In truth and in fact, the monster truck event did not include unaltered cars subjected to equal treatment and the results shown did not accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions. Among other things, certain of the Volvos used in the demonstration were structurally reinforced, certain structural supports in the competing cars were severed, and the Volvos were subjected to less severe treatment than the competing cars by the monster truck. Therefore, the representations set forth in paragraph 5 were, and are, false and misleading.

PAR. 7. The dissemination of the aforesaid false and misleading representations by respondent as alleged in this complaint constitutes unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

Commissioner Yao 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 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 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 respondents 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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. Scali, McCabe, Sloves, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 800 Third Avenue, New York, NY.

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, "*Automobile*" shall mean any automobile or light truck, including but not limited to any pick-up

truck, sport utility vehicle, recreational vehicle, passenger van, or multi-purpose vehicle.

I.

It is ordered, That respondent Scali, McCabe, Sloves, 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 advertising, offering for sale, sale or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. In connection with any advertisement depicting a demonstration, experiment or test, making any representation, directly or by implication, that any demonstration, picture, experiment or test depicted in the advertisement proves, demonstrates or confirms any material quality, feature or merit of any product, or the superiority or comparability of the advertised product in a material respect relative to any other product, when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

1. The undisclosed use or substitution of a material mock-up or prop;
2. The undisclosed material alteration in a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material prop or device depicted in the advertisement;
3. The undisclosed use of a visual perspective or camera, film, audio or video technique that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material aspect of the demonstration; or
4. The undisclosed differential treatment, in a material respect, to which the advertised product and the product to which it is compared are subjected.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that the demonstration, experiment or test did not prove, demonstrate or confirm the representation.

B. Misrepresenting, directly or by implication, the strength, structural integrity, or crashworthiness of any automobile or automobile part, or the safety of a vehicle occupant in an automobile collision or accident.

II.

It is further ordered, That within five (5) days of the date of service of this order, respondent, its successors and assigns, shall pay \$150,000.00 to the United States Treasury as disgorgement. Such payment shall be by cashier's check or certified check made payable to the Treasurer of the United States. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, respondent shall also pay interest as computed under 28 U.S.C. 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

III.

It is further ordered, That within fifteen (15) days of service of this order, respondent shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives or employees who are engaged in managerial or creative functions in the preparation or placement of advertising or other materials covered by this order, and shall secure from each such person a signed statement acknowledging receipt of a copy of the order.

IV.

It is further ordered, That respondent, its successors and assigns, for three (3) years after the date of the last dissemination of the

representation, shall maintain and make available to the Federal Trade Commission for inspection and copying the following records:

A. Any and all videotapes, in complete and unedited form, and any and all still photographs taken during the production of any advertisement depicting a demonstration, experiment, or test.

B. Any and all affidavits or certifications submitted by an employee, agent or representative of respondent to a television network or to any other individual or entity, other than counsel for respondent, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in an advertisement.

In addition, respondent, its successors and assigns, for three (3) years after the date of service of this order, shall maintain and make available to the Federal Trade Commission for inspection and copying all signed statements obtained pursuant to section III, above.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation which may affect compliance obligations arising out of this order, including but not limited to any change in corporate name or address, dissolution, assignment or sale resulting in the emergence of a successor corporation, and the creation or dissolution of subsidiaries.

VI.

It is further ordered, That respondent shall, within sixty (60) days after service 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 Yao not participating.

Decision and Order

115 F.T.C.

EXHIBIT A

VOLVO

TITLE: "BEAR FOOT"

PRODUCT: CORE VALUES

LENGTH: 25/30 SECONDS

CODE NO.: OVSM1632/1623

(SFX-CROWD CHEERS) P.A.
ANNCR: We're getting ready

for a wild and exciting



day out here



as he brings it to the line.

(SFX-ENGINE REVVING, TIRES
SCREECHING)

There he goes!



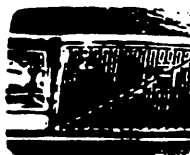
He's off and running.



(SFX-CRASH-GLASS BREAKING)



Whoa! We've got one car



still standing out there.



(SFX-CRASH-CROWD SCREAMS)



That car refuses to go down.



(SFX-CROWD BOOS, SCREAMS)

ANNCR (VO) Apparently, not
everyone appreciates the
strength

of a Volvo



(SILENT)

EXHIBIT A

ALSO AVAILABLE IN 45

10000

EXHIBIT B



EXHIBIT B

IN THE MATTER OF

THE MONEY STORE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TRUTH IN LENDING ACT, REGULATION Z, AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3369. Complaint, Feb. 6, 1992--Decision, Feb. 6, 1992*

This consent order requires, among other things, a New Jersey-based company and its subsidiaries to pay injured consumers redress totaling more than \$1 million, and prohibits them from violating certain provisions of the Truth in Lending Act.

Appearances

For the Commission: *Chris M. Couillou.*

For the respondents: *Joseph Lefkoff, Lefkoff, Duncan, Grimes & Dermer, P.C., Atlanta, GA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Money Store Inc., The Money Store, The Money Store/California Inc., The Money Store/Connecticut Inc., The Money Store/D.C. Inc., The Money Store/Delaware Inc., The Money Store/Empire State Inc., The Money Store Financial Co. Inc., The Money Store/Georgia Inc., The Money Store Home Equity Corp., The Money Store/Kentucky Inc., The Money Store/Maine Inc., The Money Store/Maryland Inc., The Money Store/Massachusetts Inc., The Money Store/New Hampshire Inc., The Money Store/North Carolina Inc., The Money Store/Rhode Island Inc., The Money Store/Vermont Inc., M Mortgage Inc., and The Money Store/Michigan Inc., corporations, ("respondents") have violated Sections 106, 107 and 128 of the Truth in Lending Act, as amended, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.17, 226.18(d) and (g), and 226.22 of Regulation Z, as amended, 12 CFR 226.17, 226.18(d),(g), and 226.22, and it appearing