

Complaint

116 F.T.C.

IN THE MATTER OF

COLLINS BUICK, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TRUTH IN LENDING ACT, THE CONSUMER LEASING ACT,
REGULATION Z AND THE FEDERAL TRADE COMMISSION ACT

Docket C-3426. Complaint, May 10, 1993--Decision, May 10, 1993

This consent order prohibits, among other things, a Kentucky auto dealership and its principal operating officer from misrepresenting -- in advertising any extension of consumer credit or any consumer lease -- the financing or other terms of the advertised transaction, and from violating certain provisions of the Truth in Lending Act or the Consumer Leasing Act.

Appearances

For the Commission: *David Medine, Carole L. Reynolds and Beverly R. Childs.*

For the respondents: *Randall Gardner, Barowitz & Goldsmith, Louisville, KY.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Collins Buick, Inc., a corporation, and William Kevin Collins, individually and as an officer of the corporation, hereinafter sometimes referred to as respondents, have violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1661, as amended, and its implementing Regulation Z, 12 CFR 226, the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Collins Buick, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Kentucky, with its principal place of business located at 4120 Bardstown Road, Louisville, Kentucky.

PAR. 2. William Kevin Collins is an individual and an officer and director of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is 4120 Bardstown Road, Louisville, Kentucky.

PAR. 3. In the ordinary course and conduct of their business, and at least since January 1, 1991, respondents have been engaged in the dissemination of advertisements that promote, directly or indirectly, credit sales and other extensions of other than open end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit," are defined in the TILA and Regulation Z. In the ordinary course and conduct of their business, and at least since January 1, 1991, respondents have been engaged in the dissemination of advertisements that promote, directly or indirectly, consumer leases, as the terms "advertisement," and "consumer lease," are defined in the CLA and Regulation M.

PAR. 4. The acts and practices of respondents alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

COUNT I

PAR. 5. Respondents, in the course and conduct of their business, in numerous instances including but not limited to Exhibits A and B, have disseminated or caused to be disseminated advertisements that state an initial, low monthly payment and an initial number of payments. Respondents' advertisements fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial balloon payment, or a second series of installment payments, at the conclusion of the initial payments.

PAR. 6. Respondents' aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT II

PAR. 7. Respondents, in the course and conduct of their business, on numerous occasions have disseminated, or caused to be disseminated, advertisements that state an initial number and amount of payments required to repay the indebtedness, but fail to state the terms of repayment, by failing to disclose the amount of the final, balloon payment, or the number and amount of the second series of installment payments, required at the end of the initial payments, based on the financing to be signed at purchase.

PAR. 8. Respondents' aforesaid practice violates Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).

COUNT III

PAR. 9. Respondents, in the course and conduct of their business, on numerous occasions have disseminated, or caused to be disseminated, advertisements that state the amount or percentage of any down payment, the number of payments or period of repayment, or the amount of any payment, but fail to state all of the terms required by Regulation Z, as follows: the amount or percentage of the down payment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR."

PAR. 10. Respondents' aforesaid practice violates Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).

COUNT IV

PAR. 11. Respondents, in the course and conduct of their business, on numerous occasions have disseminated, or caused to be

disseminated, advertisements that state the amount of any payment, the number of required payments, or that any or no down payment or other payment is required at consummation of the lease, but fail to state all of the terms required by Regulation M, as applicable and as follows: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the number, amount, due dates or periods of scheduled payments and the total of such payments under the lease; and a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price).

PAR. 12. Respondents' aforesaid practice violates Section 184 of the CLA, 15 U.S.C. 1667c, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c).

EXHIBIT A

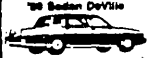
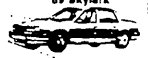
Collins BUICK
**"LOWERS YOUR COST
 OF OWNING A NEW BUICK"**

 **\$125**
 Park Avenue
 LeSabre
Down
 **\$125**
 Century
 Riviera
a Month
 Skylark
 Regal

See us for Special Lease Arrangements on Buick Cars Only 12% APR after 12 months. Customer has option to pay off or refinance.

**All New Buicks In Stock
 \$125 Down & \$125 A Month**

ALL LATE-MODEL ('86-'91) USED CARS

 **\$99**
 '88 Sedan DeVille
 '90 Wildcat
 '88 Park Avenue
 '89 Skylark
DOWN
 '88 Coupe DeVille
 '90 Celebrity Euro Wagon
\$99
A MONTH

Collins BUICK
 DAILY (Formerly GOOD BUICK) SAT. & SUNDAY
 4720 Bardonia Rd. 499-7600

\$125 Down \$125 a Month
\$99 Down \$99 a Month

EXHIBIT B

MORE THAN YOU EXPECT! MORE THAN YOU EXPECT! MORE THAN YOU EXPECT!

CAR Show

Kentucky Fairgrounds
April 4-7

1991 PARK AVE.
NOW WAS \$26,000.00
\$21,900
19 To Choose From

BEST OF SHOW

Free \$14900 Per Month
Any Used Car In Stock
Over 200 Cars To Choose From
1986-1991 Models
Hurry For Best Selection

JAMAICA VACATION
Enjoy a week on the beach in beautiful Jamaica. Airfare from Atlanta & accommodations included with any new car purchase.

1990 REGAL LTD.
Demo
SAVE THOUSANDS

1990 SKYLARKS
Loaded
\$8995
8 To Choose From

Collins

Open Daily
9AM to 8PM
Saturday 9AM to 6PM
Sunday Noon to 6PM

2 Miles from the
Wallenon on
Bartstown Road
and 5 miles from
the Snyder Freeway

499-7600

JUST 60 SECONDS FROM BILL COLLINS FORD

COLLINS BUICK

MORE THAN YOU EXPECT! MORE THAN YOU EXPECT! MORE THAN YOU EXPECT!

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondents with violation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* and its implementing Regulation Z, 12 CFR 226, the Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* and its implementing Regulation M, 12 CFR 213 and the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts and Regulation, 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 Collins Buick, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office and place of business located at 4120 Bardstown Road, Louisville, Kentucky.

2. Respondent William Kevin Collins is an individual and officer and director of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is 4120 Bardstown Road, Louisville, Kentucky.

3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent Collins Buick, Inc., a corporation, its successors and assigns and its officers, and William Kevin Collins, individually and as an officer of the corporate respondent, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote directly or indirectly any extension of consumer credit, as "advertisement," and "consumer credit" are defined in the TILA and Regulation Z, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to whether there may be a balloon payment or second series of installment payments, and the amount of any balloon payment or the number and amount of any second series of installment payments.

B. Stating any number or amount of payment(s) required to repay the debt, without stating accurately, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

(1) The amount or percentage of the down payment;

(2) The terms of repayment, including the amount of any balloon payment, or the number and amount of any second series of installment payments, and

(3) The annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), as more fully set out in Section 226.24(c) of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 CFR 226.24(c)).

C. Stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without stating, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

(1) The amount or percentage of the down payment;

(2) The terms of repayment, and

(3) The annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c)).

D. Stating a rate of finance charge without stating the rate as an "annual percentage rate" using that term or the abbreviation "APR," as required by Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(b) of Regulation Z, 12 CFR 226.24(b)).

E. Failing to state only those terms that actually are or will be arranged or offered by the creditor, in any advertisement for credit that states specific credit terms, as required by Regulation Z.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(a) of Regulation Z, 12 CFR 226.24(a)).

II.

It is ordered, That respondent Collins Buick, Inc., a corporation, its successors and assigns and its officers, and William Kevin Collins, individually and as an officer of the corporate respondent, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote or assist directly or indirectly any consumer lease, as "advertisement," and "consumer lease" are defined in the CLA and Regulation M, do forthwith cease and desist from:

A. Stating the amount of any payment, the number of required payments, or that any or no down payment or other payment is required at consummation of the lease, unless all of the following items are disclosed, clearly and conspicuously, as applicable, as required by Regulation M:

- (1) That the transaction advertised is a lease;
- (2) The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;
- (3) The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;
- (4) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), and

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

(Section 184 of the CLA, 15 U.S.C. 1667c, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c)).

B. Stating that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease such property at those amounts or terms, as required by Regulation M.

(Section 184 of the CLA, 15 U.S.C. 1667c, and Section 213.5(a) of Regulation M, 12 CFR 213.5(a)).

III.

It is further ordered, That respondents, their successors and assigns shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns shall secure from each such person a signed statement acknowledging receipt of said order.

IV.

It is further ordered, That respondents, their successors and assigns shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate entity 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 the order.

V.

It is further ordered, That for five years after the date of service of this order respondents, their successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI.

It is further ordered, That respondents, their successors and assigns shall, within sixty days (60) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

PROMODES, S.A., ET AL.

Docket 9228. Show Cause Order, May 12, 1993

ORDER TO SHOW CAUSE

On May 17, 1990, the Federal Trade Commission issued an order against Promodes, S.A. and Red Food Stores, Inc. (collectively, “respondents”) in Docket No. 9228. Paragraph II of the order, among other things, requires respondents to divest six specific supermarkets in the Chattanooga, Tennessee Metropolitan Statistical Area, by March 1, 1991, to an acquirer or acquirers that receives the prior approval of the Commission. Paragraph II of the order also requires respondents to maintain the viability and marketability of the supermarkets pending divestiture. Paragraph III of the order provides for the appointment of a trustee to divest the supermarkets in the event respondents have not accomplished the divestitures mandated by paragraph II of the order in a timely manner.

Respondents did not divest the supermarkets by March 1, 1991, as required by paragraph II of the order. On January 6, 1992, the Commission appointed Neill A. Thompson, III, as trustee pursuant to paragraph III of the order. Since his appointment, Mr. Thompson has divested one supermarket pursuant to the order and has filed an application for Commission approval to divest another. By letter dated May 12, 1993, the Commission extended the trustee’s time to divest certain of the supermarkets covered by the order, but did not extend the time to divest the supermarkets described in paragraphs II(A)(1) (“the Lee Highway store”) and II(A)(2) (“the Fort Oglethorpe store”) of the order.

The trustee made all reasonable efforts to obtain offers for the Lee Highway and Fort Oglethorpe stores. Despite these efforts, he was unable to divest the supermarkets. It now appears to the Commission that it is extremely unlikely that the Lee Highway and