

IN THE MATTER OF

NISSAN MOTOR CORPORATION IN U.S.A.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3502. Complaint, June 29, 1994--Decision, June 29, 1994*

This consent order requires, among other things, a California-based corporation to disclose clearly and prominently in each advertisement either any significant restrictions that apply to obtaining a promotional benefit in connection with a test-drive offer, or that there are significant restrictions that apply to obtaining the benefit, and prohibits the respondent from misrepresenting the existence, nature or any conditions, restrictions or limitations on any promotional benefit it offers consumers in the future.

Appearances

For the Commission: *Phillip L. Broyles, Michael Milgrom and Melissa R. Sternlicht.*

For the respondent: *William C. MacLeod, Collier, Shannon, Rill & Scott, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nissan Motor Corporation in U.S.A., a corporation ("respondent"), 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 California corporation, with its office or principal place of business located at 18501 South Figueroa Street, Carson, California.

PAR. 2. Respondent has advertised, distributed, offered for sale and sold (through dealers) new automobiles including the Nissan Stanza, a four door sedan.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for the Nissan Stanza Challenge Program, including but not necessarily limited to the attached Exhibit A. These advertisements contain the following statements:

(A) Man: Okay, so I'm thinking about a new car. I'm reading the papers, I'm looking around. I finally decide on a Camry. Or maybe an Accord. That's nice, too. Okay, so either one. But then I hear about this thing that Nissan's doing. The Nissan Stanza Challenge, they call it. What is that? I don't know, but I like a challenge, so I go to a Nissan Dealer to check it out. Now get this. They tell me that if I buy the Camry or the Accord, they're gonna give me a hundred dollars. Did you understand what I said just then? Nissan will give you a hundred dollars to buy a Toyota or a Honda! So what's the catch, I ask myself, because there has to be a catch. There's no catch! Just test-drive a Nissan Stanza first. No sweat, easiest hundred I ever made, right? Wrong. See, Nissan knows once you drive a Stanza, with its powerful engine, roomy interior, great handling --you're not gonna want a Camry. Or an Accord. That's the catch.

Anncr: See the 1990 Stanza at your nearest Nissan Dealer now, where satisfaction is standard equipment.

Legal Anncr: Offer open to licensed drivers 18 years of age or older. Proof of purchase of 1990 Camry or Accord required. See your participating Nissan Dealer for details.

(Exhibit A, transcript of radio advertisement.)

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that consumers who test drove a Nissan Stanza and subsequently purchased a Honda Accord or Toyota Camry during the period of the Nissan Stanza Challenge could readily obtain the \$100 payment specified in the advertisement.

PAR. 6. In truth and in fact, many consumers who test drove a Nissan Stanza and subsequently purchased a Honda Accord or Toyota Camry during the period of the Nissan Stanza Challenge could not readily obtain the \$100 payment specified in the advertisement. In order to receive the \$100, the consumer could not purchase the Honda Accord or Toyota Camry on the same day as the test drive, but had to purchase, take delivery, and submit documentary proof of the purchase within seven days after test driving the Nissan Stanza. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. In its advertising of the Nissan Stanza Challenge Program, respondent represented, directly or by implication, that respondent would pay \$100 to consumers who test drove a Nissan Stanza but purchased a Honda Accord or a Toyota Camry. These advertisements failed to disclose that in order to receive the \$100, the consumer could not purchase the Honda Accord or Toyota Camry on the same day as the test drive, and that the consumer had to purchase, take delivery, and submit documentary proof of the purchase within seven days after test driving the Nissan Stanza. These restrictions would be material to consumers in deciding whether to test drive a Stanza or otherwise take part in the Program. The failure to disclose that there were significant restrictions, in light of the representation made, was, and is, a deceptive act or practice.

PAR. 8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Chairman Steiger and Commissioner Yao dissenting.

EXHIBIT A

Chiat/Day/Mojo Copy

- Man: Okay, so I'm thinking about a new car. I'm reading the papers, I'm looking around. I finally decide on a Camry. Or maybe an Accord. That's nice, too. Okay, so either one. But then I hear about this thing that Nissan's doing. The Nissan Stanza Challenge, they call it. What is that? I don't know, but I like a challenge, so I go to a Nissan Dealer to check it out. Now get this. They tell me that if I buy the Camry or the Accord, they're gonna give me a hundred dollars. Did you understand what I said just then? Nissan will give you a hundred dollars to buy a Toyota or a Honda! So what's the catch, I ask myself, because there has to be a catch. There's no catch! Just test-drive a Nissan Stanza first. No sweat, easiest hundred I ever made, right? Wrong. See, Nissan knows once you drive a Stanza, with its powerful engine, roomy interior, great handling -- you're not gonna want a Camry. Or an Accord. That's the catch.
- Anncr: See the 1990 Stanza at your nearest Nissan Dealer now, where satisfaction is standard equipment.
- Legal Anncr: Offer open to licensed drivers 18 years of age or older. Proof of purchase of 1990 Camry or Accord required. See your participating Nissan Dealer for details.

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, 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 had violated the said Act, and that a 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. Respondent Nissan Motor Corporation in U.S.A. is a corporation organized, existing and doing business under and by virtue of the laws of the state of California with its offices and principal place of business at 18501 South Figueroa Street, Carson, California.

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

DEFINITIONS

1. "*Promotional benefit*" as used herein shall mean any prize award or consideration, including, but not limited to, money, favorable credit terms and optional equipment packages having a *bona fide* retail value over \$25.

2. "*Clearly and prominently*" as used herein shall mean as follows:

(a) In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer, to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.

I.

It is ordered, That respondent Nissan Motor Corporation in U.S.A., 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 motor vehicle in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that persons who test drive a Nissan motor vehicle can readily obtain a promotional benefit when significant restrictions prevent consumers from readily obtaining that promotional benefit without disclosing clearly and prominently in each advertisement in which the representation is

made either the significant restrictions or that there are significant restrictions that apply to obtaining the promotional benefit.

II.

It is further ordered, That respondent Nissan Motor Corporation in U.S.A., 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 motor vehicle in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, nature or extent of any condition, restriction or limitation on any promotional benefit offered to consumers.

III.

It is further ordered, That, for three (3) years from the date that the advertisements are last disseminated, respondent shall maintain and, upon request, make available to the Commission for inspection and copying:

(A) Copies of all advertisements subject to paragraphs I or II of this order;

(B) Copies of all communications to affiliated dealers and all information and other materials supplied by respondent to the dealer in connection with any representation subject to paragraphs I or II of this order; and

(C) All correspondence received from consumers, whether received by respondent or by an agent of respondent, related to any promotional benefit program advertised in a manner subject to paragraphs I or II of this order.

IV.

It is further ordered, That respondent shall, within sixty (60) days of service of this order, distribute a copy of this order to each of its operating divisions and to each officer and other person responsible for the preparation or review of advertising material including outside

advertising agencies, and to a representative of each of its affiliated dealers and shall secure from each such person a signed statement acknowledging receipt of a copy of this order.

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 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 sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this order.

JOINT DISSENTING STATEMENT OF
CHAIRMAN JANET D. STEIGER AND COMMISSIONER DENNIS A. YAO

We dissent from issuance of the consent order with Nissan Motor Corp. Because the order does not sufficiently remedy one of the alleged law violations, it may give implicit approval to the use of seemingly attractive promotional offers that many consumers simply cannot utilize because of limitations such as severe time restrictions or extremely difficult documentation requirements.

Through advertisements for the Nissan Stanza "Challenge Program," Nissan ran a promotional program inviting consumers to come to a Nissan dealership, test drive the Nissan Stanza and receive \$100 if, after driving the Stanza, they bought either a Toyota Camry or a Honda Accord. The advertising expressly stated that there was "no catch" to this offer. What consumers were not told was that, in order to obtain the \$100, it was necessary to purchase and take delivery of the Camry or Accord and submit detailed proof of purchase (including documents not usually retained by consumers after purchase) to Nissan, all within seven days (but not on the same day as the test drive). The complaint alleges that the failure to

disclose that the program had such significant restrictions was deceptive, and that Nissan's explicit advertising claim that the offer had "no catch" falsely represented that consumers could readily obtain the \$100 payment.

In our view, the consent order may do little to remedy the failure to disclose allegation. Part I of the order prohibits Nissan from representing, directly or by implication, that persons who test drive a Nissan can "readily obtain" a promotional benefit -- when significant restrictions prevent consumers from readily obtaining that benefit -- unless Nissan also discloses either those restrictions or that significant restrictions apply. Since paragraph 5 of the complaint uses the same term, "readily obtain," to characterize the express "no catch" claim in Nissan's ad, and paragraph 4 of the complaint only references the advertisement with an express "no catch" claim, the order could be interpreted to require disclosure only when language similar to "no catch" or "no catches" is used.

To suggest otherwise -- namely that the order requires disclosure any time Nissan offers a promotion and uses very general language such as "Come on in and get a [benefit]" -- would read out of the order the "readily obtain" limiting language. Consequently, although we understand that some would read the order differently, the order might be interpreted as standing for the proposition that advertisements need not contain any disclosure of the nature or even existence of limiting conditions, no matter how onerous, unusual, or unexpected, unless the advertiser uses language similar to a "no catches" claim.

Moreover, even when an affirmative expression such as "no catches" is used in making an offer, the order would allow an advertiser to disclose only that significant restrictions apply to the offer, not what those restrictions are or where the consumer can obtain additional information about them. Although reasonable minds can differ on whether a disclosure that "significant restrictions" apply would adequately inform consumers when ready availability is implied in an advertisement, such a disclosure for an express "no catches" claim is manifestly contradictory. This order would seem to allow advertisers to claim to consumers that there are no catches in connection with the offer, so long as the ad elsewhere discloses that there are significant restrictions. The use of such contradictory statements in the same advertisement conflicts with

Commission precedent. *See* Commission Statement on Deception, 103 FTC 110, 180-81.

Finally, the order does not contain a point of sale disclosure requirement. Consequently, even if consumers understand the disclosure of "significant restrictions" as overriding the express "no catches" claim, there is no sure way of learning about the restrictions.

We do not suggest advertisers must disclose every limitation on their offers in advertising. Consumers generally expect that offers have reasonable time limits and other conditions. This order may suggest, however, that even severe restrictions -- *i.e.*, those that make the offer impractical or impossible for many consumers to redeem -- need not be disclosed in an adequate fashion. Such an approach is not without cost to consumers -- especially in cases, such as this one, where consumers usually shop for the product by visiting sales locations and, consequently, where such offers could induce them to make a special visit.

SEPARATE STATEMENT OF COMMISSIONERS MARY L. AZCUENAGA,
DEBORAH K. OWEN, AND ROSCOE B. STAREK, III

We write to respond to the concerns expressed in our colleagues' joint dissenting statement about how the consent order in this matter might be interpreted and what it would seem to allow in connection with other promotional advertisements. Like other consent orders, this order was negotiated in response to particular facts and circumstances. Although the order identifies conduct the Commission will not allow, no legal inference properly can be drawn that conduct not mentioned in the complaint and order has been approved. The legal standards by which promotional advertisements are measured are well established in sources having precedential value. As always, advertisers would be well-advised to consult these sources to determine the legal standards to which they must conform.

Complaint

117 F.T.C.

IN THE MATTER OF

MANZELLA PRODUCTIONS, INC., ET AL.

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

Docket C-3503. Complaint, June 30, 1994--Decision, June 30, 1994

This consent order prohibits, among other things, a New York wholesaler of gloves, and its owner, from misrepresenting the extent to which any gloves or other items of wearing apparel are made in the United States or any other country, and from violating any provision of the Wool Products Labeling Act, and requires them to pay \$7,500 in disgorgement in lieu of consumer redress.

Appearances

For the Commission: *Brinley H. Williams.*

For the respondents: *Gary L. Mucci, Saperston & Day, P.C.,*
Buffalo, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Manzella Productions, Inc., a corporation, and Anthony L. Manzella, Jr., individually and as an officer of said corporation (hereinafter sometimes referred to as respondents), have violated the provisions of the Wool Products Labeling Act and 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 Manzella Productions, Inc., is a New York corporation which manufactures and sells gloves. Its principal office or place of business is located at 5684 Main Street, Post Office Box 1243, Buffalo, New York.

Respondent Anthony L. Manzella, Jr., is an officer and director of said corporation. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices herein set forth. His address is the same as that of the corporation.