

IN THE MATTER OF

ARIZONA AUTOMOBILE DEALERS ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3497. Complaint, May 31, 1994--Decision, May 31, 1994*

This consent order prohibits, among other things, an Arizona association consisting of approximately 199 dealers from restricting, regulating, or interfering with truthful, non-deceptive comparative or price advertising or advertising concerning financing by its members in the future. In addition, the order requires the respondent to remove from its "Standards for Advertising Motor Vehicles" any provision, policy statement or guideline that is inconsistent with the terms of the settlement, to distribute copies to each member, and to publish the revised standards in the AADA member magazine.

Appearances

For the Commission: *Ralph E. Stone, Jeffrey Klurfeld and Mary Lou Steptoe.*

For the respondent: *Richard Norling, Norling, Perry, Pierson & Kolsrud, Phoenix, AZ.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Arizona Automobile Dealers Association, a corporation, hereinafter sometimes referred to as "AADA" or "respondent," has 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. Respondent AADA, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business at 4701 North 24th Street, Suite B-3, Phoenix, Arizona.

PAR. 2. AADA is a trade association of new automobile and truck dealers. AADA's members are generally engaged in the business of the sale of new automobiles and trucks at retail. AADA has approximately 199 members, constituting approximately 99% of the new automobile and truck dealers in the State of Arizona. Except to the extent that competition has been restrained as alleged herein, AADA's members have been and are now in competition among themselves and with other new automobile and truck dealers.

PAR. 3. AADA engages in substantial activities that further its members, pecuniary interests. By virtue of its purposes and activities, AADA is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. AADA's acts and practices, including the acts and practices alleged herein, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. AADA has been and is acting as a combination of its members, or in agreement with some of its members, to restrain trade in the advertising for sale and sale of new automobiles and trucks in the State of Arizona by restricting truthful, non-deceptive advertising.

PAR. 6. In furtherance of this combination or agreement, AADA has enacted, published, and enforced certain sections of its "Standards for Advertising Motor Vehicles" that:

A. Prohibit its members "to advertise any price equaling or underselling claim, including claims that the advertiser's prices always or generally are equal to or lower than competitors, or are the lowest; that the advertiser will match or beat any price; that the advertiser will provide compensation if it cannot offer an equal or lower price; and any other claim of similar import" (Section 4);

B. Prohibit its members "to advertise statements such as 'write your own deal,' 'name your price,' 'name your own monthly payments,' and other statements of similar import" (Section 5);

C. Prohibit its members "to advertise claims such as 'everyone financed,' 'no credit rejected,' 'we finance anyone,' 'lowest payment in town,' and other similar affirmative statements" (Section 6); and

D. Prohibit its members "to advertise by making disparaging comparison with competitors' services, quality, price, products, or business methods" (Section 11) .

PAR. 7. The purposes or effects of the combination or agreement and AADA's acts or practices as described above have been and are to restrain competition unreasonably and to injure consumers in one or more of the following ways, among others:

A. By depriving consumers of truthful information concerning the prices of new automobiles and trucks;

B. By depriving consumers of truthful information concerning the financing available for new automobiles and trucks;

C. By depriving consumers of truthful information concerning the advantages of a member's products or services compared to those of a competitor's products or services; and

D. By depriving consumers of the benefits of competition among dealers in the sale of new automobiles and trucks.

PAR. 8. The acts and practices herein alleged were and are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief requested.

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 San Francisco 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, 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 has 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, 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 Arizona Automobile Dealers Association is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business located at 4701 North 24th Street, Suite B-3, Phoenix, Arizona.

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 terms “*respondent*” or “AADA” mean the Arizona Automobile Dealers Association, its directors, committees, officers, delegates, representatives, agents, employees, successors, and assigns.

II.

It is further ordered, That AADA, directly or indirectly, or through any person or any corporate or other device, in or in connection with its activities as a trade association, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, advising against, or discouraging: (1) truthful, non-deceptive discount or price advertising or (2) any person

or organization from otherwise engaging in truthful, non-deceptive discount or price advertising;

B. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, advising against, or discouraging truthful, non-deceptive advertising concerning the terms or availability of consumer credit;

C. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, advising against, or discouraging: (1) truthful, non-deceptive disparaging or comparative advertising or (2) any person or organization from otherwise engaging in truthful, non-deceptive disparaging or comparative advertising; and

D. Inducing, suggesting, urging, encouraging, or assisting any non-governmental person or organization to take any action that if taken by respondent would violate this order;

Provided that nothing contained in this order shall prohibit AADA from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that AADA reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

It is further ordered, That AADA shall:

A. Within thirty (30) days after the date of this order becomes final, remove from its "Standards for Advertising Motor Vehicles," and from any other existing policy statement or guideline, any provision, interpretation or policy statement that is inconsistent with the provisions of Part II of this order, including, but not limited to Sections 4, 5, 6, and 11;

B. Within thirty (30) days after the date this order becomes final, publish in Topics or in any successor publication, (a) this order, (b) the accompanying complaint, (c) any revision of the "Standards for Advertising Motor Vehicles" or any other existing policy statement or guideline of AADA made pursuant to Part III.A. of this order; and (d) a complete revised version of the "Standards for Advertising Motor Vehicles";

C. Within thirty (30) days after the date this order becomes final, distribute by first-class mail a copy of this order and the complaint to each of its members;

D. For a period of five (5) years after the date this order becomes final, provide each new member who joins AADA with a copy of the order and complaint within thirty (30) days of membership in AADA;

E. Within sixty (60) days after the date this order becomes final, and annually thereafter for a period of five (5) years on the anniversary of the date this order became final, file with the Secretary of the Commission a verified written report setting forth in detail the manner and form in which AADA has complied with and is complying with this order; and

F. For a period of five (5) years after this order becomes final, maintain and make available to Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which AADA has complied, and is complying with this order.

IV.

It is further ordered, That AADA notify the Commission at least thirty (30) days prior to any change in AADA, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

IN THE MATTER OF

COMMUNITY ASSOCIATIONS INSTITUTE

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3498. Complaint, June 6, 1994--Decision, June 6, 1994*

This consent order prohibits, among other things, a Virginia-based association, whose members are managers of residential community associations, from interfering in any way with the truthful advertising and solicitation efforts of its members, and requires the respondent to remove from its codes of ethics any provisions inconsistent with the order's prohibition, and to make the changes known by publishing the revised code and the Commission's order in two of the respondent's publications.

Appearances

For the Commission: *Michael D. McNeely, Randall Marks and Jonathan D. Draluck.*

For the respondent: *Julie Carpenter and Anthony Epstein, Jenner & Block, Washington, D.C.*

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 respondent Community Associations Institute, a corporation, has 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 as follows:

PARAGRAPH 1. Respondent Community Associations Institute ("CAI") is a corporation organized, existing, and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 1630 Duke Street, Alexandria, Virginia. CAI is a voluntary professional association of professional residential community association managers, residential community home owners associations, real estate developers,