

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9189. Complaint,* Dec. 20, 1984--Decision, July 20, 1994*

This consent order prohibits, among other things, the association of motor vehicle dealers and a former officer, James Daniel Hayes, from entering into, continuing or carrying out any agreement to establish, fix or maintain any hours of operation of any dealer in the Detroit area. In addition, the consent order requires the respondent association to amend its bylaws to comply with the provisions of the order, and to place, in the city's two daily newspapers for four consecutive weeks, at least four advertisements a week stating that certain area dealers are required by the Commission order to maintain extended hours (at least 62 hours a week) for a one-year period and listing the dealers subject to the requirement.

Appearances

For the Commission: *Ernest A. Nagata and Mary Lou Steptoe.*

For the respondents: *Martin E. Crandall, Stringari, Fritz, Krager, Ahearn & Crandall, Detroit, MI. Howard E. O'Leary, Dykema, Gossett, Spencer, Goodnow & Trigg, Washington, D.C. Lawrence F. Ranieszski, Colombo & Colombo, Bloomfield Hill, MI. Christopher J. MacAvoy, Collier, Shannon & Scott, Washington, D.C. Fred L. Woodworth, Dykema, Gossett, Spencer, Goodnow & Trigg, Detroit, MI. Glenn A. Mitchell, Stein, Mitchell & Mezines, Washington, D.C. John F. Youngblood, Abbott, Nicholson, Quilter, Esshaki & Youngblood, Detroit, MI.*

DECISION AND ORDER

The Federal Trade Commission having issued its two count complaint charging the respondents named in the complaint issued in this matter on December 20, 1984, with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

* Complaint previously published at 108 FTC 193 (1986).

Respondents Detroit Auto Dealers Association, Inc. ("DADA") and James Daniel Hayes, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order for Count I of the complaint, an admission by the identified respondents of all the jurisdictional facts set forth in the 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 Count I of such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn Count I of the of the complaint from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent DADA is an incorporated trade association for motor vehicle dealers with its principal place of business located at 1800 W. Big Beaver Rd., Troy, MI.
2. Respondent James Daniel Hayes was, at relevant times, an officer of DADA, and as such formulated, directed and controlled the acts and practices of DADA. James Daniel Hayes' mailing address is 2845 Palmerston Rd., Troy, MI.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as it relates to Count I of the complaint and of the identified respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That for the purposes of this order, the following definitions shall apply:

1. "*Person*" means any natural person, corporation, partnership, association, joint venture, trust, or other organization or entity, but not governmental entities.

2. “*Dealer*” means any person who receives on consignment or purchases motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such person.

3. “*Dealer association*” means any trade, civic, service, or social association whose membership is composed primarily of dealers.

4. “*Detroit area*” means the Detroit, Michigan metropolitan area, comprising Macomb County, Wayne County and Oakland County in the State of Michigan.

5. “*Hours of operation*” means the times during which a dealer is open for business to sell or lease motor vehicles.

6. “*Weekday hours*” means the hours of 9:00 a.m. to 6:00 p.m. Monday through Friday.

7. “*Non-weekday hours*” means hours other than 9:00 a.m. to 6:00 p.m. Monday through Friday.

8. “*Respondent*” means any dealership, individual, or association respondent.

I.

It is further ordered, That DADA and James Daniel Hayes shall cease and desist from, directly or indirectly or through any corporate or other device, entering into, continuing, or carrying out any agreement, contract, combination, or conspiracy, in or affecting commerce (as “commerce” is defined in the Federal Trade Commission Act), with any other respondent or other dealer or dealer association in the Detroit area to establish, fix, maintain, adopt, or adhere to any hours of operation.

II.

It is further ordered, That DADA and James Daniel Hayes shall cease and desist from, directly or indirectly or through any corporate or other device, performing any of the following acts or practices or encouraging, inducing, or requiring any person to perform any of the following acts or practices, or entering into, continuing, or carrying out any agreement, contract, combination, or conspiracy with any other person in the Detroit area to do or perform any of the following acts or practices:

A. Exchanging information or communicating with any other respondent or other dealer or dealer association in the Detroit area concerning hours of operation, except to the extent necessary (i) to comply with any order of the Federal Trade Commission, (ii) after two (2) years from the date this order becomes final, to incorporate individual dealers' hours of operation in lawful joint advertisements, and (iii) in connection with special sales events or promotions sponsored or coordinated by DADA, including but not limited to the North American International Auto Show; or

B. Requesting, recommending, coercing, influencing, inducing, encouraging, or persuading, or attempting to request, recommend, coerce, influence, induce, encourage, or persuade, any other respondent or other dealer or dealer association in the Detroit area to maintain, adopt or adhere to any hours of operation.

III.

It is further ordered, That respondent DADA shall:

A. Beginning thirty (30) days after this order becomes final, and for a period of not less than four (4) weeks thereafter, place and cause to be disseminated each week at least four (4) advertisements, including one in the Thursday editions of the Detroit News and the Detroit Free Press, one in the Saturday edition of the combined Detroit News and Free Press, and one in any other edition of the Detroit News, the Detroit Free Press, or the combined Detroit News and Free Press. Each advertisement shall (1) list all dealership respondents which within ten (10) days prior to the placement of the advertisement are subject to a final Commission order to maintain minimum weekly hours of operation, (2) list all non-respondent dealerships in the Detroit area that are owned or operated by an individual respondent who within ten (10) days prior to the placement of the advertisement is subject to a final commission order to maintain minimum weekly hours of operation, and (3) disclose that all such orders have a minimum hours requirement of 62 hours per week, or 58 hours per week where applicable. For the purpose of complying with Part III.A.(2), above, DADA shall use its best efforts to identify all non-respondent dealerships in the Detroit area that are owned or operated by an individual respondent. The advertisements shall be devoted exclusively to the content set forth in paragraph B.

hereto. The advertisements shall be clear and prominent containing a banner headline in 24 point or larger bold type so that it can be readily noticed, with the principal portion of the text in 12 point or larger type, and the list of respondent and nonrespondent dealerships in 9 point or larger type. The advertisement shall be a minimum of one-eighth (1/8) of a page and shall be placed in the same location at which advertisements for the sale of new automobiles ordinarily appear; and

B. The advertisements referred to in paragraph A. of this section shall state as follows:

AUTO DEALERS OPEN
FOR EXTENDED HOURS

Prior to [date of order] most Detroit area automobile dealers have not been open for business on Saturday or on Tuesday, Wednesday, or Friday evening. As a result of a consent order of the Federal Trade Commission, the following Detroit area automobile dealers must offer expanded shopping hours of a minimum of 62 hours per week for one year and are free to choose their own hours thereafter.

[list dealerships]*

- * Dealers noted with an asterisk must offer a minimum of 62 shopping hours per week during Daylight Savings Time and a minimum of 58 hours at other times.

IV.

It is further ordered, That DADA shall, for a period of five (5) years from the date this order becomes final, cause to be made minutes of all business meetings of its membership, its board of directors, and its committees. Such minutes shall (i) identify all persons attending such meeting, (ii) include a certification, signed by the presiding officer and the secretary under penalty of perjury, that states whether hours of operation were discussed at the meeting, and (iii) summarize what was discussed at the meeting. If hours of operation were discussed at any business meeting subject to this order, then the minutes of such meeting shall identify the participants in the discussion of hours of operation and state in detail the

substance of the discussions). DADA shall retain such minutes (including, but not limited to, the required certifications) for a period of five (5) years from the date the minutes were created. Such minutes shall be provided to the Commission upon request.

V.

It is further ordered, That DADA shall:

A. Within sixty (60) days from the date this order becomes final, amend its bylaws, rules and regulations to eliminate any provision inconsistent with any provision of this order;

B. Within sixty (60) days from the date this order becomes final, amend its bylaws, rules and regulations to incorporate: (1) a provision that prohibits its members from discussing at any formal or informal membership, board of directors, or committee meeting the hours of operation of any dealer, except to the extent necessary to comply with any order of the Federal Trade Commission; and (2) a provision that requires expulsion from membership of any member who violates such prohibition;

C. Within ten (10) days after the amendment of any bylaws, rules or regulations pursuant to this order, furnish a copy of such amended bylaws, rules or regulations to all members, and within ten (10) days of any new member joining DADA, furnish to such new member a copy of the bylaws, rules and regulations of DADA; and

D. Within sixty (60) days after receiving information from any source concerning a potential violation of any bylaw, rule, or regulation required by Part V.B. of this order, investigate the potential violation, record the findings of the investigation, and expel for a period of one (1) year any member who is found to have violated any of the bylaws, rules or regulations required by Part V.B. of this order.

VI.

It is further ordered, That DADA shall, for a period of five (5) years from the date this order becomes final, provide to the Commission the name and address of any member expelled pursuant to the requirements of Part V.D. of this order within ten (10) days after such expulsion.

VII.

It is further ordered, That within ten (10) days after the date this order becomes final DADA shall provide a copy of the order to each of its officers, directors, members and employees. For a period of five (5) years from the date this order becomes final, DADA shall provide a copy to each new member and new employee, within ten (10) days after the date the employee is hired or the new member joins DADA.

VIII.

It is further ordered, That DADA and James Daniel Hayes shall, within ninety (90) days after this order becomes final and annually thereafter for a period of five (5) years, file with the Commission a verified written report setting forth in detail the manner and form in which they have complied with this order. The requirements of Parts VIII and IX shall not apply to James Daniel Hayes; provided, however, that James Daniel Hayes shall, within ninety (90) days after this order becomes final, file with the Commission a verified written report stating that he is no longer employed by DADA or any other dealer association in the Detroit area and does not own or operate a dealership in the Detroit area; provided, further, that if circumstances change whereby James Daniel Hayes shall become employed by DADA or any other dealer association in the Detroit area, or shall own or operate a dealership in the Detroit area, then he shall notify the Commission at the earliest practicable date of such a change and shall begin complying with the requirements of Parts VIII and IX of this order.

IX.

It is further ordered, That for a period of five (5) years from the date this order becomes final, DADA shall notify the Commission at least thirty (30) days prior to any proposed change in corporate status (such as dissolution, assignment, or sale) that results in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in DADA which may affect compliance obligations arising out of the order. James Daniel Hayes shall, for five (5) years from the date the order becomes final,

promptly notify the Commission of the discontinuance of his present business or employment and of any new affiliation or employment with any dealer or dealer association. Such notice shall include his new business address and a statement of the nature of the business or employment in which he is newly engaged, as well as a description of his duties and responsibilities in connection with the new business or employment.

Complaint

118 F.T.C.

IN THE MATTER OF

WYATT MARKETING CORPORATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3510. Complaint, July 27, 1994--Decision, July 27, 1994*

This consent order prohibits, among other things, a California-based company from distributing an infomercial, from making false claims regarding a book on the availability of government grants and loans, and from making or selling any commercial that misrepresents it as an independent program, rather than a paid advertisement. The respondent is required to have a disclosure statement for any commercial 15 minutes or longer, and to have substantiation for future claims regarding the availability of grants, loans or other benefits from any source, the terms or conditions of getting government loans or grants, and methods for starting or operating a business.

Appearances

For the Commission: *Michael J. Bloom* and *Donald G. D'Amato*.
For the respondent: *Glenn W. Peterman, McDonough, Holland & Allen*, Sacramento, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Wyatt Marketing Corporation, Inc., a corporation, and James R. Wyatt, individually and as an officer and director of said corporation, (hereinafter, collectively, "respondents"), have 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 Wyatt Marketing Corporation, Inc. (formerly doing business as James R. Wyatt & Associates, Inc. and Cornerstone Publishing) is a California corporation that has had its principal office or place of business at 4231 Pacific Street, Suite 4, Rocklin, California.

PAR. 2. Respondent James R. Wyatt, at all times pertinent herein, has been an officer and director of respondent Wyatt Marketing Corporation, Inc. Individually or in concert with others,