

Complaint

120 F.T.C.

IN THE MATTER OF

JERRY'S FORD SALES, INC., ET AL.

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

Docket C-3612. Complaint, Aug. 29, 1995--Decision, Aug. 29, 1995

This consent order requires, among other things, three corporations in Virginia and their President and CEO, in any advertisement to promote any extension of consumer credit, to cease and desist from misrepresenting the terms of financing the purchase of a vehicle, including whether there may be a balloon payment and the amount of any balloon payment. The consent order also requires the respondents, in any advertisement to promote any extension of consumer credit, to cease and desist from failing to state all terms required by Sections 226.24(b) and 226.24(c) of Regulation Z. In addition, the consent order also requires the respondents, in any advertisement to aid, promote or assist any consumer lease, to cease and desist from failing to state all terms required by Section 213.5(c) of Regulation M.

Appearances

For the Commission: *Carole L. Reynolds.*

For the respondents: *Basil Mezines and George Tobin, Stein, Mitchell & Mezines, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Jerry's Ford Sales, Inc., and John's Ford, Inc. dba Jerry's Leesburg Ford, corporations, hereinafter sometimes referred to collectively as respondent Jerry's Ford, Jerry's Chevrolet Geo Oldsmobile, Inc., a corporation, hereinafter sometimes referred to as respondent Jerry's Chevy, and Jerry C. Cohen, individually and as an officer of the aforementioned corporations, hereinafter sometimes referred to as respondent Cohen, have violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, 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. Jerry's Ford Sales, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 6510 Little River Turnpike, Annandale, Virginia.

PAR. 2. John's Ford, Inc. dba Jerry's Leesburg Ford is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business located at 847 East Market Street, Leesburg, Virginia.

PAR. 3. Jerry's Chevrolet Geo Oldsmobile, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business located at 325 East Market Street, Leesburg, Virginia.

PAR. 4. Jerry C. Cohen is an individual and an officer and director of the corporate respondents Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, and Jerry's Chevrolet Geo Oldsmobile, Inc. He formulates, directs and controls the acts and practices of the aforementioned corporate respondents, including the acts and practices hereinafter set forth. His business address is 6510 Little River Turnpike, Annandale, Virginia.

PAR. 5. In the ordinary course and conduct of their business, and at least since January 1, 1993, respondents Jerry's Ford, Jerry's Chevy and Cohen 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, 1993, respondents Jerry's Ford, Jerry's Chevy and Cohen 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. 6. The acts and practices of respondents Jerry's Ford, Jerry's Chevy and Cohen alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

COUNT ONE

PAR. 7. Respondents Jerry's Ford and Cohen, in the course and conduct of their business, in numerous instances including but not limited to Exhibit A have disseminated or caused to be disseminated advertisements that state an initial, low monthly payment. In fine print, the aforementioned respondents' advertisements, *inter alia*, state an initial number of payments and another amount variously described as "optional final payment," "optional final price," or "COP." The aforementioned respondents' advertisements misrepresent that the remaining obligation is optional and fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial balloon payment at the conclusion of the initial payments, which is a mandatory obligation.

PAR. 8. Respondents Jerry's Ford's and Cohen's aforesaid practice constitutes an unfair and deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT TWO

PAR. 9. Respondents Jerry's Ford and Cohen, in the course and conduct of their business, in numerous instances including but not limited to Exhibit A have disseminated or caused to be disseminated advertisements that state an initial number and amount of payments required to repay the indebtedness and another amount variously described as "optional final payment," "optional final price," or "COP." Respondents Jerry's Ford's and Cohen's advertisements fail to accurately state the terms of repayment, by failing to disclose that the additional amount is a final payment and by inaccurately stating that the amount is optional when, in fact, it is mandatory, based on the financing to be signed at purchase.

PAR. 10. Respondents Jerry's Ford's and Cohen's 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 THREE

PAR. 11. Respondents Jerry's Ford and Cohen, in the course and conduct of their business, in numerous instances have disseminated or caused to be disseminated advertisements that state a rate of

finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR," and have failed to calculate that rate in accordance with Regulation Z.

PAR. 12. Respondents Jerry's Ford's and Cohen's aforesaid practice constitutes a violation of Sections 144 and 107 of the TILA, 15 U.S.C. 1664 and 1606, respectively, and Sections 226.24(b) and 226.22 of Regulation Z, 12 CFR 226.24(b) and 226.22, respectively, and also constitutes an unfair and deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT FOUR

PAR. 13. Respondents Jerry's Chevy and Cohen, in the course and conduct of their business, in numerous instances including but not limited to Exhibit B have disseminated or caused to be disseminated advertisements that state an initial, low monthly payment and an initial number of payments. Respondents Jerry's Chevy's and Cohen's advertisements fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial final balloon payment.

PAR. 14. Respondents Jerry's Chevy's and Cohen's aforesaid practice constitutes an unfair and deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT FIVE

PAR. 15. Respondents Jerry's Chevy and Cohen, in the course and conduct of their business, in numerous instances including but not limited to Exhibit B 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 accurately state the terms of repayment, by failing to disclose the amount of the final balloon payment required at the end of the initial payments, based on the financing to be signed at purchase.

PAR. 16. Respondents Jerry's Chevy's and Cohen's 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).

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COUNT SIX

PAR. 17. Respondents Jerry's Ford, Jerry's Chevy and Cohen, in the course and conduct of their business, in numerous instances have disseminated or caused to be disseminated advertisements that state the amount or percentage of any downpayment, 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 downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR."

PAR. 18. Respondents Jerry's Ford's, Jerry's Chevy's and Cohen's 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 SEVEN

PAR. 19. Respondents Jerry's Ford, Jerry's Chevy and Cohen, in the course and conduct of their business, in numerous instances 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 downpayment 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. 20. Respondents Jerry's Ford's, Jerry's Chevy's and Cohen's 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).

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EXHIBIT A



NO MONEY DOWN

MERCURY
LINCOLN

IN THE CAR OR TRUCK OF YOUR CHOICE ON APPROVED CREDIT

3 TAURUS GL 4 DR.
Base MSRP \$14,999
2004 Package, 3.0L V6
FACT. PRICE \$14,999
FACT. DISC. -325
CUST. CASH -2,166
JERRY'S DISC. -2,166
PRICE \$13,999
\$248.87* PER MONTH

'93 TAURUS GL WAGON
Base MSRP \$14,999
2004 Package, 3.0L V6
FACT. PRICE \$14,999
FACT. DISC. -325
CUST. CASH -2,166
JERRY'S DISC. -2,166
PRICE \$14,999

3 TEMPO GL 4 DR.
Base MSRP \$9,999
2004 Package, 3.0L V6
FACT. PRICE \$9,999
FACT. DISC. -325
CUST. CASH -2,166
JERRY'S DISC. -2,166
PRICE \$9,999

993 T-BIRD
155 A PACK.
3 IN STOCK
14,399

RANGER SALE
'93 RANGER LONGBED
Base MSRP \$13,330
2004 Package, 3.0L V6
FACT. PRICE \$13,330
FACT. DISC. -1,190
JERRY'S DISC. -1,190
SPECIAL DISC. -1,190
CUST. CASH -1,190
PRICE \$9,550

1993 EXPLORER 4x4
2 DOOR
913A PACKAGE
PAYMENT AS LOW AS
\$316.87**

1993 RANGER XLT
864E PACKAGE
PAYMENT AS LOW AS
\$184.57***

1993 F150
STYLESIDE,
O/D TRANS.
#1 SELLING TRUCK IN AMERICA
PAYMENT AS LOW AS
\$191.61****

1993 CROWN VICTORIA
TT3A Package, Dual Air Bag, Anti-Lock Brakes, Keyless Entry, More!
Base MSRP \$25,851
SR. #3000
FACT. PRICE \$25,851
FACT. DISC. -400
CUST. CASH -1,800
JERRY'S DISC. -1,800
PRICE \$19,450

1993 COUGAR XR7 260 A PK.
TR, Cruise, Lin Group, Anti-Lock Brakes Sys., Power Windows
Base MSRP \$17,441
FACT. PRICE \$17,441
FACT. DISC. -513
CUST. CASH -1,833
JERRY'S DISC. -1,833
PRICE \$14,995

1993 AEROSTAR XL WAGON
401A, Rear Window, AM/FM Cass., Clock, Luggage Rack, A/C, Cruise, TR
Base MSRP \$18,046
SR. #3109
FACT. PRICE \$18,046
FACT. DISC. -950
CUST. CASH -1,790
EXTRA DISCOUNT -950
JERRY'S DISC. -1,831
PRICE \$13,865

1993 F150 498PK. 4X4
Limited Slip Axle, Shifting Window, Step Dumper, More!
Base MSRP \$19,797
SR. #3474
FACT. PRICE \$19,797
FACT. DISC. -300
JERRY'S DISC. -1,837
PRICE \$13,800

EXTRA EXTRA COLLEGE GRADUATE PROGRAM \$400 YOUNG BUYERS PROGRAM \$300

DEMO SALE TODAY!

SLOW CREDIT? NO CREDIT? BANKRUPTCY? NEW IN AREA? 1st TIME BUYER? CREDIT HOT LINE (703) 256-6211

Jerry's FORD

6510 LITTLE RIVER TURNPIKE (DUKE ST. EXTENDED), ANNANDALE, VA. (703) 256-5000

JERRY'S ANNANDALE • JERRY'S LEESBURG

847 EAST MARKET ST., LEESBURG, VA. (703) 777-2102 • METRO (703) 478-1886

*Monthly Payment Based on \$10,000 financed at 10% APR for 36 months. **Monthly Payment Based on \$10,000 financed at 10% APR for 36 months. ***Monthly Payment Based on \$10,000 financed at 10% APR for 36 months. ****Monthly Payment Based on \$10,000 financed at 10% APR for 36 months.

WASHINGTON POST
3-10-99

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EXHIBIT B

THE HEARTBEAT OF AMERICA		NO MONEY DOWN LEEBSBURG		Oldsmobile DEMAND THE BEST	
ON THE CAR OR TRUCK OF YOUR CHOICE ON APPROVED CREDIT					
No Credit Limit • No Down Payment • Auto Credit Specialist					
NEW Now \$11,997		'93 CAVALIER 2 DR COUPE Detachable Air Cond., Tilt Wheel, AM/FM Stereo, Cassette, Sport mirrors, Floor Mats, Limited Glare Body side moulding, Vanity mirror.			
'93 CHEVY CHEYENNE 4x4 PICKUP [2] in stock, 6100 GWM, Air, Optional axle, Auto OD transmission, AM/FM stereo, ON/OFF road tires, Bedliner, Rear bumper, Sliding rear window. FACTORY LIST \$17,851 SALE PRICE \$15,977		NEW			
'93 OLDSMOBILE 88 ROYAL SEDAN Company Official, 158 Option Package. NEW LIST \$21,962 Now \$18,677 SAVE \$3400					
'92 PRIZM 4 DR. Air Cond., Auto, AM/FM stereo - [3] in stock. FACTORY LIST \$12,383. *\$8977					
'92 CORSIKA II 4 DR. SEDANS. [3] in stock, Auto, P/Door locks, Tilt wheel, Air/FM stereo, Air Cond., Auto bag, 4-wheel ABS brakes, V6 engine and more. FACTORY LIST \$14,299 NOW *\$9,997					
'92 ASTRO EXTENDED VAN • Air Cond., Auto, 8 Passenger, Syn. Bank Rate Finance Available, Loan Approved Credit. *\$12,877					
'93 Geo Metro Hatch Back NEW [2] in stock, Air Cond., AM/FM Stereo, A/C, 50 MPG HWY \$7,487					
'93 Z28's AND CAMAROS IN STOCK FOR IMMEDIATE DELIVERY!		'92 LUMINA EURO 4 DR Air, Auto P/S, Power Windows, Power Locks, AM/FM Stereo, and more \$12,467* \$1000 Cash Rebate on 1993 Lumina in stock			
		2.9% APR FINANCING AVAILABLE ON SELECTED MODELS FREE CELLULAR PHONE with purchase of any car or truck		SUBURBANS AND BLAZERS IN STOCK FOR DELIVERY!! *\$199/48 Mo.	
Jerry's Chevrolet Leesburg 325 E. Market St., Leesburg 703-7483300		Jerry's Oldsmobile Leesburg-Metro 589-1902 In Town, Rt. 7 East, next to McDonalds 581 6/1/93		ADDITIONAL REBATES College Grad. "500" 1st Time Buyer "500" GM Employees SAVE	

EXHIBIT B

The London Time-Machine 17th to 1000 BC T. 11

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 Jerry's Ford Sales, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 6510 Little River Turnpike, Annandale, Virginia.

2. Respondent John's Ford, Inc. dba Jerry's Leesburg Ford is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 847 East Market Street, Leesburg, Virginia.

3. Respondent Jerry's Chevrolet Geo Oldsmobile, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 325 East Market Street, Leesburg, Virginia.

4. Respondent Jerry C. Cohen is an individual and an officer and director of the aforementioned corporate respondents. He formulates, directs and controls the acts and practices of the aforementioned corporate respondents, including the acts and practices hereinafter set forth. His business address is 6510 Little River Turnpike, Annandale, Virginia.

5. 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 Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, Jerry's Chevrolet Geo Oldsmobile Inc., corporations, their successors and assigns and their officers, and Jerry C. Cohen, individually and as an officer of the corporate respondents, 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 and the amount of any balloon payment.

B. Stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term, and failing to calculate the rate in accordance with 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.

(Sections 144 and 107 of the TILA, 15 U.S.C. 1664 and 1606, and Sections 226.24(b) and 226.22 of Regulation Z, 12 CFR 226.24(b) and 226.22, as more fully set out in Sections 226.24(b) and 226.22 of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 CFR 226.24(b) and 226.22, respectively).

C. 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 downpayment;
- (2) The terms of repayment, including the amount of any balloon payment, 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)).

D. Stating the amount or percentage of any downpayment, 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 downpayment;
- (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)).

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)).

F. Failing to comply in any other respect with Regulation Z and the TILA. (Regulation Z, 12 CFR 226, as amended, and the TILA, 15 U.S.C. 1601-1667, as amended).

II.

It is further ordered, That respondents Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, Jerry's Chevrolet Geo Oldsmobile, Inc., corporations, their successors and assigns and their officers, and Jerry C. Cohen, individually and as an officer of the corporate respondents, 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 downpayment 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)).

C. Failing to comply in any other respect with Regulation M and the CLA.

(Regulation M, 12 CFR 213, and the CLA, 15 U.S.C. 1667-1667e, as amended).

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.

VII.

It is further ordered, That this order will terminate on August 29, 2015, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

SUPERMARKET DEVELOPMENT CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3224. Consent Order, Mar. 17, 1988--Modifying Order, Sept. 5, 1995

This order reopens a 1988 consent order (110 FTC 369) that settled allegations that the acquisition of the El Paso Division of Safeway Stores, Inc., by Supermarket Development Corporation and Furr's, Inc. would reduce supermarket competition in 12 towns in New Mexico and western Texas, and required, for ten years, prior Commission approval before acquiring supermarket assets. This order modifies the consent order by substituting for the prior-approval requirement a provision requiring Furr's Supermarket to notify the Commission at least 30 days before acquiring certain supermarkets in those areas.

ORDER REOPENING AND MODIFYING ORDER

On April 3, 1995, Furr's Supermarkets, Inc. ("FSI"), a successor to respondent Supermarket Development Corporation ("SDC") and its subsidiary Furr's, Inc. ("Furr's"), filed an Application to Modify Consent Order ("Application") in Docket No. C-3224, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. The Application requested that the Commission reopen and modify paragraph IV, the prior approval provision of the order in Docket No. C-3224, to permit FSI to acquire fee simple interests in real estate on which FSI currently operates a retail grocery store as a lessee. In its Application, FSI asserts that the public interest supports its request for reopening and modification. The Application was placed on the public record for thirty days, and no comments were received. Subsequently, on July 14 and 21, 1995, FSI filed amendments to its Application, requesting that the Commission set aside the prior approval requirement in its entirety, or in the alternative, substitute a prior notice requirement, citing the Statement of Federal Trade Commission Concerning Prior Approval and Prior Notice Provisions, issued on June 22, 1995, and published at 60 Fed. Reg. 39,745-47 (August 3, 1995) ("Prior Approval Policy Statement").