

IN THE MATTER OF
THE STOP & SHOP COMPANIES, INC., 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-3649. Consent Order, April 2, 1996--Modifying Order, June 20, 1997

This order reopens a 1996 consent order -- that required the respondents to divest specific supermarkets -- and this order modifies the consent order by terminating the requirement that Stop & Shop divest, among other stores, two Purity Supreme supermarkets in Massachusetts, in part, because increased competition from other entrants has made it extremely unlikely that the stores can be divested.

ORDER REOPENING AND MODIFYING ORDER

On January 6, 1997, respondent The Stop & Shop Companies, Inc. ("Stop & Shop")¹ filed a Petition To Reopen and Modify Consent Order (Purity Supreme) ("Petition"). In its Petition, Stop & Shop requests that the Commission reopen the order in Docket No. C-3649 ("order") to set aside paragraphs II.A.3.a and II.A.6.a, which require Stop & Shop to divest Purity Supreme Store number 41 located at 630 American Legion Highway, Roslindale, Massachusetts ("the Roslindale store") and Purity Supreme store number 20 located at 525 Harvard Street, Brookline, Massachusetts ("the Brookline store"). The Petition addresses the remaining 2 of 17 supermarket divestitures required by the order. The Commission previously approved Stop & Shop's applications for divestiture of the other 15 supermarkets.

For the reasons discussed below, the Commission has determined that Stop & Shop has demonstrated that it is in the public interest to reopen and modify the order to set aside these divestiture obligations.

I. THE COMPLAINT AND ORDER

This matter arose out of the 1995 acquisition by Stop & Shop of all of the supermarkets and related assets owned and operated by Purity Supreme, Inc. ("Purity"). The complaint in this matter charged that Stop & Shop's acquisition of Purity violated Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Specifically, the complaint alleged

¹ On July 21, 1996, Koninklijke Ahold N.V., a Netherlands corporation, acquired substantially all of the outstanding voting shares of Stop & Shop.

that the effects of the acquisition may be substantially to lessen competition "in the retail sale of food and grocery products in supermarkets, and narrower markets contained therein"² in, among other markets, "Brookline [and] the Roslindale neighborhood in Boston . . ."³ At the time of Stop & Shop's acquisition of Purity, Stop & Shop and Purity directly competed in Brookline and Roslindale. The concern thus arose that Stop & Shop would likely be able unilaterally to raise prices in the Brookline and Roslindale markets.

The Commission accepted a consent agreement with Stop & Shop on October 18, 1995, and the resulting consent order became final on April 2, 1996.⁴ Under the terms of the order, Stop & Shop is required to divest, among other stores, "absolutely and in good faith," the Roslindale and Brookline, Massachusetts supermarkets.⁵ The purpose of these divestitures, as of the others, is to ensure the continuation of the Roslindale and Brookline stores as ongoing, viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.⁶

II. THE PETITION

In its Petition,⁷ Stop & Shop requests that the Commission modify the order to eliminate the remaining required divestitures under the order, the Roslindale and Brookline stores.⁸ Stop & Shop bases its Petition on changed conditions of fact and public interest considerations.⁹

² Complaint ¶ 9.

³ *Id.* ¶ 12.c.

⁴ Stop & Shop also entered into a separate consent agreement with the Massachusetts Attorney General. Generally, this agreement mirrors the terms of the Commission's consent agreement. See *Commonwealth of Massachusetts v. SSC Associates, L.P. and Stop & Shop Companies, Inc.*, No. 95-12377NG (D. Mass. Oct. 18, 1995) (Consent Decree).

⁵ Order ¶ II.A.

⁶ *Id.* ¶ II.B.

⁷ In support of its Petition, Stop & Shop provided the affidavits of Brian Hotarek, Vice President in charge of Real Estate and Development for the Stop & Shop Companies, Inc. ("Hotarek Affidavit"), and William C. Hamlin, Vice President, Chief Financial Officer and Secretary of C&S Wholesale Grocers, Inc. ("Hamlin Affidavit").

⁸ Order ¶¶ II.A.3.a. and II.A.6.a.

⁹ Stop & Shop does not assert that any change of law requires reopening the order.

Stop & Shop claims that there is no serious interest by potential acquirers in either store to be divested because of the increased competition surrounding each store and because of the decreased sales volume of the two stores. Stop & Shop claims that new entry has made it difficult for the Roslindale and Brookline stores to compete effectively in their respective markets.¹⁰ The record shows that a new Sav-A-Lot supermarket was opened immediately adjacent to the Roslindale store on January 20, 1996. Likewise, a new Star Markets superstore was opened less than one mile north of the Brookline store approximately 5 months before the order was issued by the Commission. In addition, a Trader Joe's store has opened less than one mile south of the Brookline store. There has been a significant decline in sales at both stores to be divested, which is likely to continue.¹¹

Stop & Shop asserts that operating the Roslindale and Brookline stores has caused significant losses to Stop & Shop and that it needs to end the losses being sustained by the Roslindale and Brookline stores to maintain Stop & Shop's competitive vigor in the relevant markets. Removing the divestiture requirement would enable Stop & Shop to close the stores, halting any further losses.¹²

III. STANDARD FOR REOPENING AND MODIFYING FINAL ORDERS

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter").¹³

¹⁰ Petition at 7-10.

¹¹ Petition at 12-14.

¹² Petition at 17. See also Hotarek Affidavit, ¶¶ 16 and 18.

¹³ See also *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. Hart Letter at 5; 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), 1979-83 Transfer Binder, FTC complaints and orders (CCH) ¶22,007 at 22,585 ("Damon Letter"), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 FTC 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

IV. REOPENING AND MODIFYING THE ORDER IS IN THE PUBLIC INTEREST

Based on the record in this matter, Stop & Shop has not demonstrated changes of fact that justify eliminating the remaining divestiture requirement. However, public interest considerations warrant ending the requirement to divest the Roslindale and Brookline supermarkets. Stop & Shop has demonstrated an affirmative need for the change, and the reasons to modify the order outweigh the reasons to retain the divestiture requirement as written.

A. Stop & Shop Has Not Demonstrated Changes of Fact

Reopening is not required for changes in circumstances that were reasonably foreseeable at the time the consent order was entered. *See* Pay Less Drug Stores Northwest, Inc., Docket No. C-3309, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship, and eliminate the dangers that the order sought to remedy). With respect to the Roslindale market, the record shows that Sav-A-Lot's entry¹⁴ took place shortly before the order was issued by the Commission. Consequently, Sav-A-Lot's entry, as a factual matter, does not constitute the requisite significant change in circumstances that requires reopening of the order. Likewise, with respect to the Brookline market, Star's entry took place approximately five months before the order in this matter was issued by the Commission. Thus, as a factual matter, Star's entry does not constitute a changed fact that would warrant modification of the order with respect to the Brookline store.

Trader Joe's entry in Brookline also does not constitute a changed fact that eliminates the need for the divestiture of the Brookline store. Trader Joe's potential entry into the relevant market was not an unforeseen event; the record indicates that Trader Joe's was actively looking for sites for stores in the relevant Boston metropolitan area market, which includes Roslindale and Brookline, considerably before the order was issued by the Commission. More important, however, the Commission does not consider the Trader Joe's store to be a "supermarket" as that term is defined in the order and its entry

¹⁴ Although Sav-A-Lot offers many items sold through supermarkets, Stop & Shop has not demonstrated that the Sav-A-Lot carries all relevant product categories identified in paragraph I.E of the order. Nor has it demonstrated that the Sav-A-Lot carries the variety of brands and sizes within a category that would be found in Stop & Shop's comparable supermarkets. Nonetheless, it is evident that the Sav-A-Lot is attracting business away from Stop & Shop's supermarkets.

into the Brookline market thus does not remedy the competitive harm resulting from Stop & Shop's acquisition of the Purity supermarket in Brookline. *See* order ¶ I.E.

B. Public Interest Considerations

Stop & Shop has demonstrated an affirmative need to modify the order. The record in this case shows that Stop & Shop has made good faith efforts to locate purchasers for both the Roslindale and Brookline stores, but has been unable to divest the two stores. Stop & Shop engaged the services of a well-known investment banking firm to prepare offering packages to potential acquirers. Subsequently, Stop & Shop contacted numerous potential buyers regarding these supermarkets including, among others, parties who ultimately acquired other stores Stop & Shop was required to divest under the order. Stop & Shop offered the Roslindale and Brookline stores as part of larger packages, but the potential acquirers desired only the other assets. Stop & Shop also offered to divest the stores' equipment and fixtures for \$1 and to subsidize the rent, but again no acquirers expressed interest. In sum, none of the parties contacted was interested in acquiring either the Roslindale or the Brookline store.

When the order was entered, the Commission believed that the Roslindale and Brookline stores were divestable, and there is no indication that Stop & Shop has not properly maintained and operated these stores since entry of the order. The declining sales and losses experienced by the Roslindale and Brookline supermarkets thus do not appear to be caused by any failure of Stop & Shop to maintain them. Rather, the declining sales and losses appear to be primarily related to the recent entry by Star and Sav-A-Lot. Although the entries occurred prior to the order becoming final, neither Commission staff nor Stop & Shop anticipated the extent of competitive impact these two entrants have had on the Roslindale and the Brookline store, respectively.

The increased competition in Roslindale and Brookline has adversely affected the Roslindale and Brookline supermarkets' viability and marketability, and it appears that the two stores will continue to sustain significant losses. Consequently, continuation of the requirement to divest and the requirement to maintain the viability and marketability of the stores, which are steadily losing sales, imposes unanticipated costs on Stop & Shop that it asserts impede its ability to compete in the relevant markets. *See* Promodes, S.A., et al.,

Order Granting Request to Reopen and Modify Order Issued May 17, 1990 (January 28, 1994). This constitutes the affirmative need showing under the public interest test.

The remedial purpose of the order was to restore and increase competition in, among other markets, the Boston metropolitan area through the sale of a specified number of supermarkets, including the Roslindale and Brookline stores. Stop & Shop was able to divest all of the specified stores except the stores located in Roslindale and Brookline. These two stores could not be divested in more than fifteen months¹⁵ of serious efforts by Stop & Shop and the investment banker it retained to assist it in its divestiture efforts. Given Stop & Shop's efforts to divest, and the limited time remaining on the Brookline store's lease, it is extremely unlikely that the stores can be divested consistent with the terms of the order.

Stop & Shop asserts that it is suffering continuing losses due to the operation of the Roslindale and Brookline stores, which are competitively harming Stop & Shop. Because it is extremely unlikely that the stores can be divested, whether by Stop & Shop or by a trustee appointed by the Commission, the remedial purpose of the order will not be achieved. Accordingly, on balance, the need to achieve the marginal benefit of divesting two non-competitive supermarkets is outweighed by the continuing costs that the divestiture obligation is imposing on Stop & Shop.

Therefore, *It is ordered*, That this matter be, and it hereby is, reopened and that the Commission's order be, and it hereby is, modified to set aside paragraph II.A.3.a and paragraph II.A.6.a, as of the effective date of this order.

Commissioner Azcuenaga dissenting, and Commissioner Starek concurring in the result only.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

The Commission today permits Stop and Shop to avoid its obligation under the order to divest two stores in the Boston, Massachusetts, area, because Stop and Shop has failed to divest the stores and the continuing effort to do so is costly. Although I did not agree that these two stores should be required to be divested,¹ the

¹⁵ Stop & Shop began its divestiture efforts immediately after signing the consent agreement in October 1995.

¹ See Separate Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, in *The Stop and Shop Companies, Inc.*, Docket C-3649 (April 8, 1996).

respondent's obligation under a final order of the Commission should not be so readily excused. The Commission's action opens the door for all respondents to postpone divestiture, claim that the effort is costly, and avoid the obligation under the order.

The order in this matter provides for the appointment of an independent trustee to accomplish divestiture if Stop and Shop fails to do so in a timely manner, but no trustee has been appointed. In *Promodes, S.A.*,² cited as precedent for modifying this order, the obligation to divest was set aside only after a trustee had been appointed and had failed to locate an acquirer for the stores required to be divested. The inability of the trustee to find an acquirer was cited in *Promodes* as "evidence that divestiture of the two stores [was] extremely unlikely." I concurred in *Promodes*,³ on the ground that "[i]f the trustee cannot identify potential buyers, continued imposition of the divestiture requirement no longer serves the public interest." Comparable evidence of the public interest is not available here, because no independent trustee has been appointed. We have instead allegations of burden resulting from costs that surely were anticipated at the time the order was signed. See *Louisiana-Pacific Corporation*, 112 FTC 547 (1989).

I dissent.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I concur in the decision to reopen and modify the order, relieving the respondents of the obligation to divest certain supermarkets in Chattanooga, Tennessee. The Commission-appointed trustee, during a 21-month period, has not accomplished the required divestitures. In classic understatement, the Commission concludes that the trustee's lack of success is "evidence that divestiture of the two stores is extremely unlikely."

A Commission-appointed trustee serves as a neutral arbiter to establish whether the divestiture required by the order can be accomplished (assuming the trustee's good faith and diligence and the absence of evidence that the respondent has frustrated the trustee's efforts). If the trustee cannot identify potential buyers, continued imposition of the divestiture requirement no longer serves the public

² *Promodes, S.A.*, Order Granting Request To Reopen and Modify Order Issued May 17, 1990 (Jan. 28, 1994), reprinted in 5 Trade Reg. Rep. (CCH) ¶ 23,540.

³ A copy of my concurring statement in *Promodes* is attached.

1721

Concurring Statement

interest. In these circumstances, the requirement imposes costs, and the respondent need not make a particularized showing of those costs.

The Commission has in the past recognized that an obligation to divest particular assets may be modified in the public interest when the respondent "has been unable to find an acquirer [for those assets] at any price." *RSR Corporation*, 98 FTC 872 (1981); compare *Louisiana-Pacific Corporation*, 112 FTC 547, 561 (1989) (asserted financial disadvantage distinguished from impossibility). The trustee having failed to effect divestiture, the requirement now should be lifted.

**Re: Altmeyer Home Stores, Inc. Petition to Quash or Limit
Civil Investigative Demands. File No. 962-3063.**

February 12, 1997

Dear Mr. Farnan:

This is to advise you of the Federal Trade Commission's ruling on the Petition to Quash Civil Investigative Demands ("Petition") that you filed on behalf of your client, Altmeyer Home Stores, Inc. ("Altmeyer" or "Petitioner"), in the above-referenced matter.

The ruling set forth below has been made by Commissioner Roscoe B. Starek, III, pursuant to authority delegated under Commission Rule of Practice 2.7(d)(4), 16 CFR 2.7(d)(4). Pursuant to Rule 2.7(f), 16 CFR 2.7(f), within three days after service of this decision, Petitioner may file with the Secretary of the Commission a request for full Commission review. The timely filing of such request shall not stay the return date in this ruling unless the Commission otherwise specifies.

Commissioner Starek has carefully reviewed the petition and the accompanying materials. He has also considered the oral presentation on the Petition conducted on January 21, 1997. The Petition is granted in part and denied in part for the reasons discussed below.

I. BACKGROUND

The Civil Investigative Demands ("CIDs") in this matter arise in the context of a Commission investigation to determine whether Altmeyer may have engaged in acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended, and the Fair Credit Reporting Act ("FCRA") provisions regarding the use of credit reports for employment purposes.¹ On March 22, 1995, staff of the FTC's Chicago Regional Office sent a letter to Altmeyer requesting that the company voluntarily provide certain information and documents regarding its policies and procedures for the FCRA in connection with Altmeyer's use of consumer reports for employment purposes. By letter dated May 2, 1995, you, as counsel for Altmeyer, agreed to permit FTC staff to

¹ The relevant provision of the FCRA is Section 615(a), 15 U.S.C. 1681m(a), which requires users of consumer credit reports, who deny employment applications based in whole or in part on those reports, to provide consumers with the name and address of the consumer reporting agency from which they obtained the report.

inspect the requested information and documentation at your Pittsburgh law office between May 8, and May 25, 1995. Letter from Thomas J. Farnan to John Hallerud, FTC Chicago Regional Office (May 2, 1995). According to FTC staff, you then indicated in a conversation with John Hallerud, the FTC attorney responsible for the investigation at the time, that Altmeyer lacked the necessary policies and procedures for complying with the FCRA. Based on the information from this purported conversation, FTC staff decided to forgo inspecting Altmeyer's documents. Instead, FTC staff offered Altmeyer the opportunity to enter into a consent agreement resolving the investigation without further expense to the company. You have strongly denied that you ever made such a statement to FTC staff, and maintain that Altmeyer is and was in compliance with the law. Letter from Thomas Farnan to Commissioner Roscoe B. Starek, III (Jan. 23, 1997). *See also* Letter from Thomas Farnan to C. Steven Baker, FTC Chicago Regional Office (November 6, 1996).

Later FTC staff renewed its request for access to Altmeyer's documents and information regarding compliance with the FCRA and, once again, you (acting on behalf of the company) agreed to cooperate voluntarily with the request. Instead of providing FTC staff with access to the requested materials from the entire period under investigation (January 1994 to the present), however, Altmeyer submitted only materials from the months of October 1995, March 1996, and September 1996. FTC staff considered this response unsatisfactory because it provided information about Altmeyer's practices and procedures that occurred after the company learned that a Commission investigation was underway. At this point, you withdrew Altmeyer's offer to produce the requested materials voluntarily.

When the prospects for further cooperation between Altmeyer and FTC staff in the investigation appeared remote, the Commission issued two CIDs on December 2, 1996. The CIDs were authorized by the Commission's resolution of June 27, 1990, directing the use of compulsory process in FTC investigations to determine whether unnamed consumer reporting agencies or others are engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act and in violation of the FCRA. One of the CIDs required the

production of 16 categories of documents. The other CID required the oral testimony of Altmeyer's Vice President, Judy Altmeyer.²

On December 18, 1996, the Secretary of the Commission received the Petition from Altmeyer objecting to the CIDs. Pursuant to the Commission's Rules of Practice, a petition to quash or limit a CID must be filed within 20 days after service of the CID (or, if a return date is less than 20 days after service, before the return date). 16 CFR 2.7(d)(1). Because the return date for the CID requesting the production of documents was December 16, the instant Petition (received by the Commission on December 18) was not timely as to this CID. Petitioner neither requested additional time to file a response to that CID nor advanced any explanation for the late filing. The Petition, however, was timely with respect to the CID requesting oral testimony. Despite Petitioner's failure to comply fully with the Commission's procedural requirements for submitting a timely petition to quash, the Commission has determined that it will not dismiss the petition on this basis and will consider each of Petitioner's objections.

II. SPECIFIC OBJECTIONS

A. *Petitioner alleges that before it must produce the requested documents and testimony, the Commission is required to present evidence that Altmeyer violated the law.*

At the oral presentation, you stated that FTC's demand for access to information relating to Altmeyer's practices for complying with the FCRA amounted to a "fishing expedition." Oral Presentation Transcript at 5 (Jan. 21, 1997). You asserted that it is improper for the Commission to order production of the information covered by the CIDs without first advising Altmeyer of the evidence already in the Commission's possession that Altmeyer has engaged in unlawful activity. You also asserted a right to conduct discovery depositions relating to the bases for the Commission's investigation of Altmeyer. Oral Presentation Transcript at 6. Your argument is incorrect and does not take into account the broad scope of the Commission's investigatory powers and the procedural safeguards that are applicable to this agency's pre-complaint investigations.

² The CID requesting production of documents indicated a return date of December 16, 1996, and the CID for oral testimony specified a return date of December 27, 1996.

The Commission has broad investigatory powers to secure relevant information in order to determine whether a law violation has occurred. *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950) (analogizing FTC's compulsory process powers to those of a grand jury). As the Supreme Court stated, the FTC "does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *Morton Salt*, 338 U.S. at 642-43. *Accord*, *FTC v. Carter*, 636 F.2d 781, 786 (D.C. Cir. 1980); *FTC v. Texaco, Inc.*, 555 F.2d 862, 873, n.23 (D.C. Cir.)(*en banc*), *cert. denied*, 431 U.S. 974 (1977). The Commission's power to compel the production of documents and testimony from the target of an investigation through a subpoena is not conditioned on the possession of a specific quantum of evidence or a showing of probable cause to believe that the law has been violated. *United States v. Powell*, 379 U.S. 48, 57 (1964) (rejecting a probable cause requirement); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 216 (1946) (same).³ Indeed, it is well established that the Commission may compel the production of information provided that it is sought for a legitimate purpose and is "reasonably relevant" or not "plainly irrelevant" to that purpose, and that the inquiry is not too indefinite or unduly burdensome. *Morton Salt*, 338 U.S. at 652-53, *FTC v. Anderson*, 631 F.2d 741, 744-45 (D.C. Cir. 1979). Finally, with respect to the issue of relevance, courts have ruled that these standards are far less rigid in the context of an agency investigation than in an adjudicative matter, *FTC v. Green*, 252 F. Supp. 153 (S.D.N.Y. 1966), and have generally deferred to an agency's appraisal of relevance which "must be accepted so long as it is not obviously wrong." *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1255 (1993).⁴

³ You have stated that you are unaware of any legal decision in which a court has required a corporation to open its private files to a government agency without articulating a reason to believe that the law is being violated. Oral Presentation Transcript at 14. As support for this view, you cited (*id.* at 15) to *Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1327 (Fed. Cir. 1990), a patent infringement case involving two private parties engaged in a discovery dispute. In that case, the appellate court ruled that one of the private parties to the lawsuit could not obtain discovery of certain information held by a non-party based on only "a bare allegation of wrongdoing." That private discovery decision case is not relevant to the FTC matter at hand, which involves the exercise of the agency's power to gather evidence in an investigation by subpoena.

⁴ The relevance of a CID is measured against the scope and purpose of an agency's investigation, which in this instance are set forth in the Commission's Resolution authorizing issuance of compulsory process, attached to the CIDs. *FTC v. Texaco*, 555 F.2d at 874. Moreover, it is respondent's burden to show that the information sought by the investigative demand is irrelevant. *FTC v. Invention Submission Corp.*, 965 F.2d at 1090.

It is clear that the target of a Commission investigation such as Petitioner does not have the rights accorded to a litigant in an adjudicative proceeding. In carrying out its investigative functions, the Commission may proceed on a non-public, *ex parte* basis against targets without according adjudicative procedures such as discovery of any evidence that may have been gathered or the right to confront witnesses called by the agency. *Hannah v. Larche*, 363 U.S. 420, 440-41, 446 (1960); *Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1387-88 (5th Cir. 1971); see *SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 742 (1984). Due process rights do not apply in this context because the agency's investigation does not involve an allegation of wrongdoing or an adjudication of legal rights. *SEC v. Jerry T. O'Brien*, 467 U.S. at 742. Such procedural rights will attach only if and when the Commission determines to issue a complaint against Altmeyer. See *Hannah v. Larche*, 363 U.S. at 446.

The CIDs at issue in this matter seek production of relevant information to help the Commission to determine whether Altmeyer may have engaged in conduct that violates the FTC Act and the FCRA. Accordingly, at the pre-complaint phase of the investigation, Altmeyer is not entitled to the procedural rights that would apply to an adjudication. No formal charges against Altmeyer need be formulated in order to secure information relevant to the Commission's investigation. Further, the Commission is under no obligation to divulge to Altmeyer any evidence of wrongdoing that it might have in its possession as a prerequisite to demanding the information from Altmeyer covered by the CID. Accordingly, Petitioner's objection to the CIDs on this basis is denied.

B. Petitioner argues that the CIDs violate the Fourth Amendment.

Petitioner also seeks to quash the CIDs on the ground that they violate the Fourth Amendment prohibition against unreasonable search and seizure. Petitioner argues that the Federal Government is held to a higher standard when it seeks to enter the premises of a private citizen and gain access to private documents. Petition at 2. Petitioner further contends that, in defining the Federal Government's right to enter the private property of a citizen to conduct an investigation, courts have required that the government have "some kind of probable cause or even reasonable suspicion that a violation is taking place." *Id.* See also Oral Hearing Transcript at 8-10.

In raising this objection, Petitioner has overlooked the critical distinction between an actual search and an agency subpoena, as well as the difference between rights of privacy for a corporation and an individual. The Fourth Amendment standards applicable to a search are more stringent than those governing an agency subpoena. *Donovan v. Lone Star, Inc.*, 464 U.S. 408, 413-15 (1984); *FTC v. Carter*, 636 F.2d at 787. As the Supreme Court explained in *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. at 195, agency subpoenas "present no question of actual search and seizure, but raise only the question whether orders of the court for production of specified records have been validly made ***." *Accord, FTC v. Carter*, 636 F.2d at 787-88. It is thus clear that when the Commission investigates by subpoena, the Fourth Amendment simply is not implicated.

The CID requiring Altmeyer to produce specified documents does not require the company to submit to anything resembling a search within the meaning of the Fourth Amendment. Furthermore, Instruction 10 of the CID requesting production of documents permits Altmeyer to avoid the presence of FTC staff on its premises simply by sending the responsive materials to the Commission.⁵ In fact, the instructions to this CID state that Altmeyer may comply with the demand by producing documents and information by mail if it prefers that Commission staff not enter its business premises. Altmeyer declined to pursue either of these options with Commission staff, choosing instead to file this Petition.

The instant case also does not implicate the privacy concerns that might arise if the agency were seeking to compel the production of private personal financial records from an individual who was not the target of the investigation. *In re McVane*, 44 F.3d 1127, 1136 (2d Cir. 1995). Here, the Commission is seeking corporate records and the testimony of a corporate officer in order to determine whether Altmeyer has complied and is complying with federal statutes that the agency is charged by Congress with enforcing. Thus, any assertion of personal privacy interests is misplaced. *See id.* at 1137. It has long been established that so long as a federal agency's demand for information issued to a corporation (or its agents) is not unreasonable, it will be enforced. *Morton Salt*, 338 U.S. at 652. The CID requiring Judy Altmeyer to present oral testimony seeks information regarding

⁵ Section 20(c)(3)(B) of the FTC Act requires the recipients of a CID only to make documents "available for inspection and copying or reproduction." 15 U.S.C. 57b-1(c)(3)(B).

matters within the scope of her official position as an owner of Altmeyer. This information is clearly relevant to the FTC's inquiry to determine whether Altmeyer is in compliance with the law and does not implicate a Fourth Amendment privacy concern. Similarly, no Fourth Amendment concerns is implicated by the CID requesting production of corporate document. Petitioner's challenge to the CIDs based on Fourth Amendment protection is thus denied.

C. Petitioner asserts that the CIDs are unduly burdensome and overbroad.

Petitioner also argues that Altmeyer has already made the documents covered by the CIDs available to the Commission voluntarily. The Petition states that requiring the company to produce the same materials again, for a second time, is "patently harassing, oppressive and vexatious."⁶ Petition at 2. In raising this objection, Petitioner appears to assert that FTC staff's decision not to follow up on Altmeyer's initial offer to inspect the documents on a voluntary basis precludes the Commission from seeking them on a compulsory basis later. In addition, Petitioner argues that the CID requesting production of materials seeks access to documents and categories of documents that exceed the scope of the FTC staff's investigation of Altmeyer. *See* Petition at 3. You also raised these arguments on behalf of your client at the oral presentation.

Petitioner has not met the heavy burden to sustain either of these allegation, which the Commission construes as objections to the reasonableness of the CIDs. As the court stated in *FTC v. Texaco Inc.*, "... the question is whether the demand is unduly burdensome or unreasonably broad." 555 F.2d at 882 (emphasis in original). The court said:

Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on the subpoenaed party. Further, the burden is not easily met where . . . the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose ***. Thus, courts have refused to modify investigative subpoenas unless compliance threatens to disrupt or seriously hinder normal operations of a business.

Id. (footnotes omitted).

⁶ Because the holiday season is over, Petitioner's argument regarding the burden of complying with the CIDs during Christmas has become moot.

Petitioner simply asserts, without either factual or legal support, that Altmeyer will be harmed by having to undertake the task of producing documents for the Commission a second time and presenting Judy Altmeyer for testimony. You stated at the oral presentation that it had been burdensome and costly for the company to gather the records the first time because "there are hundreds and thousands of them," and that it would be similarly burdensome to do so again. Oral Presentation Transcript at 11-12. You also stated that requiring Judy Altmeyer to appear to give testimony would be burdensome because "you are asking a woman to take a day off" (*Id.* at 12) and that "[a]ny endeavor that takes Judy Altmeyer or anyone else at Altmeyers out of their normal management duties is oppressive." *Id.* at 9.

Neither of these objections, however, even comes close to the standard articulated in *Texaco* -- that the burden of compliance must "threaten[] to disrupt or seriously hinder normal operations." More significantly, there is no indication that at any time you told FTC staff that complying with the CID timetables would cause great hardship to Altmeyer or Ms. Altmeyer. You never asked FTC staff for an extension of time to respond to the CIDs in order to lessen the alleged burden of production.

It should be noted that Altmeyer's initial agreement to make the requested corporate documents available to FTC staff voluntarily, and its production of a portion of these materials, do not make clear why complying with the CIDs at this time would be unduly burdensome for the company. In fact, the previous willingness of the company to produce these documents voluntarily suggests that collecting and providing them to staff at the present time is not unduly time-consuming.⁷

Petitioner has also failed to demonstrate that the CID seeking access to documents is unreasonably broad in light of the Commission's need for such materials. The Petition did not indicate which specific aspect of the CID is alleged to be overbroad. At the oral presentation, you objected only to Specification 1's requirement to produce articles of incorporation, bylaws, minutes, and annual reports for Altmeyer as examples of excessively broad requests. Oral

⁷ In rendering a decision on Petitioner's assertion of undue burden, the Commission need not resolve the factual dispute between Petitioner and the FTC staff regarding the circumstances surrounding the staff decision not to review Altmeyer's documents when voluntarily offered for inspection in May 1995. Oral Presentation Transcript at 6, 19-25. This dispute raises the issue of Altmeyer's substantive compliance with the law, which is not ripe for determination at this stage of the investigation.

Presentation Transcript at 10. On its face, this CID calls only for minimal information on Altmeyer's corporate organization and management (Specifications 1-6). The remaining specifications (7-16) call for information specifically directed to Altmeyer's policies and procedures for complying with the FCRA. For example, it is certainly necessary for the Commission to seek information on related entities (Specification 3) to determine what entities might possess information relevant to the investigation and who is legally responsible for any violations that may be uncovered. Similarly, information on corporate management and compliance with the FCRA (Specifications 6 and 12) is essential for obtaining relevant testimony and information on compliance and for assessing personal responsibility for any violations that might be uncovered. Each of the specifications is narrowly tailored to obtain information germane to the Commission's investigative purpose as set forth in the Resolution.

Further, the CID seeking document production is itself self-limiting in significant respects and provides Altmeyer with various options for minimizing its scope. For instance, Instruction 6 of the CID permits substitution of written statements in lieu of documents for certain specifications. In addition, Instruction 11 specifically permits Altmeyer to submit a negotiated sample of applicant files if the required response to Specification 16 involves more than 500 files. Instruction 11 also provides that, if Altmeyer believes the scope of the demand can be narrowed consistent with the FTC's need for information, the company is encouraged to discuss possible modifications with FTC staff. Finally, Instruction 12 provides that documents that have previously been provided to the Commission need not be produced again.

However, in recognition of the fact that Altmeyer has incurred some expense in providing documents to the Commission, Specification 1 of the CID requiring production of documents is modified to delete the requirement to produce corporate "by-laws." Specification 1 is also modified to require the production of corporate "minutes" only insofar as the minutes discuss the FCRA, "Altmeyer['s]" (as this term is defined in the CID) compliance with that statute, or any change in corporate policy or policies relating to the FCRA.

D. Petitioner asserts that a cease and desist order is unnecessary.

Petitioner also argues that because Altmeyer has supplied documents to the Commission that allegedly demonstrate its current compliance with the FCRA, there is no need for a cease and desist order, and presumably there is no basis for the CIDs to be upheld. Petition at 3. It is premature for Altmeyer to raise the defense of subsequent compliance with the law at this stage, when the Commission has yet to consider whether a law violation has occurred. Once the Commission has gathered the necessary information, the agency can turn to the task of assessing whether the company violated or has ceased violating the FCRA and what the appropriate remedy for such practices might be.

In addition, in raising this argument, Petitioner overlooks the fact even if Altmeyer did bring itself into compliance with the FCRA upon learning of the Commission's investigation, neither is that a defense to liability for violating the FCRA nor does it relieve the company of its responsibility to comply with a validly issued subpoena. "Voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the cases, *i.e.*, does not make the case moot," unless the defendant meets the heavy burden of demonstrating that "there is no reasonable expectation that the wrong will be repeated." *SCM Corp. v. FTC*, 565 F.2d 807, 812 (2d Cir. 1977) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)). Accordingly, Petitioner's argument that a cease and desist order is unnecessary because Altmeyer is in compliance with the FCRA does not provide a basis for quashing the CIDs.

III. CONCLUSION

For the foregoing reasons, the Petition is granted in part and denied in part. Pursuant to Rule 2.7(e), Petitioner is directed to comply with the CID for documentary evidence (except as modified *supra* at 8) on or before February 26, 1997 and with the CID for oral testimony on or before March 12, 1997.

Pursuant to Rule 2.7(f), 16 CFR 2.7(f), within three days after service of this decision, Petitioner may file with the Secretary of the Commission a request for full Commission review. The timely filing of such request shall not stay the return date in this ruling unless the Commission otherwise specifies.

**Re: Altmeyer Home Stores, Inc. Petition for Review by
Full Commission Pursuant to Rule 2.7(f).
File No. 962-3063.**

February 21, 1997

Dear Mr. Farnan:

The Commission has considered (a) the Petition to Quash the Civil Investigative Demands ("CID") that you filed on behalf of Altmeyer Home Stores, Inc. ("Petition"); (b) the transcript of the oral presentation on the Petition, held on January 21, 1997; (c) the February 12, 1997 letter ruling by Commissioner Roscoe B. Starek, III, granting in part and denying in part the Petition; (d) your request, filed on February 14, 1997, for full Commission review of that letter ruling; and (e) the CIDs at issue.

The Commission has determined that your request for full Commission review does not raise any new issues regarding the Petition, and that the Petition was properly denied in part and granted in part for the reasons stated in the February 12, 1997 ruling. Accordingly, the full Commission concurs with, and hereby adopts, the February 12 letter ruling in this matter.

The February 12 letter ruling specified a February 26, 1997 return date for the CID for documentary evidence and a return date of March 12, 1997 for the CID for oral testimony. Your request for full Commission review did not stay those return dates. Altmeyer Home Stores, Inc. is thus directed to comply with the CIDs by those dates.

TABLE OF COMMODITIES

DECISIONS AND ORDERS

	Page
Agricultural chemical products	1257
Air cleaning products	23, 40
Air filters	23, 40
Animal vaccines	1279
Automobile club memberships	1187
Automobile dealerships	1427
Automobile leases	241, 262, 275, 288, 312
Automobile loans	1098, 1172
Automobiles	241, 262, 275, 288, 312
 Baby foods	 1365
Biological products	904
Brakes	1394
Business opportunities	75, 935, 1108
 Cable television programming services	 171
Catalogs	1706
Cellulose-bile products	1477, 1519, 1525, 1535
Cereals	1323
Chemical products	1257
Chewing gum	149
Cholesterol reduction products	1477, 1519, 1525, 1535
Computer-aided design software engines	1694
Computers	75
Contact lens	1
Corn herbicides	842
Credit	832
Credit sales	1098, 1172, 1187
 Dietary supplements	 96, 149
Diet programs	1596
Diet supplements	1454
Drug stores	778, 795
 Electronic parts catalogs	 1706
Eyeglasses	1213

Fat reduction products	149, 1477, 1519, 1525, 1535
Flea control products	842
Food spreads	131
Food storage products	749
Food thawing trays	762
Gene therapy	842
Herbicides	842, 1257
Hospitals	1337
Infomercials	676
Insecticides	1257
Insoles	1558, 1577
Insurance	1187
Interpreters	465
Investments	935
Jewelry products	1244
Leases	241, 262, 275, 288, 312
Legal services	982, 1047
Living trusts	982, 1047
Loans	832, 1098, 1172
Margarines	131
Meal supplements	1378
Medical services	62
Mortgages	832
Nutritional supplements	96, 1378
Pain relief devices	676, 698
Physicians	62
Pipelines	952
Pistons	1431
Pizzas	1038
Skin care products	332
Skin patches	1465
Smoking cessation products	395

	Page
Software engines	1694
Space launch vehicles	812
Spark plugs	1231
Sun protection products	1301
Supplements	96, 149, 1378, 1454
Tanning products	332
Television programming services	171
Unmanned air vehicles	812
Vaccines	1279
Weight loss devices	1465, 1558, 1577
Weight loss products	1535, 1596

INDEX*

DECISIONS AND ORDERS

	Page
Acquiring Corporate Stock or Assets:	
Acquiring corporate stock or assets	1, 171, 778, 795, 812, 842, 904, 952, 1279, 1323, 1337, 1431, 1694
Federal Trade Commission Act	1, 171, 778, 795, 812, 842, 904, 952, 1279, 1323, 1337, 1431, 1694
Arrangements, connections, dealings, etc.	1, 171, 778, 795, 812, 842, 904, 952, 1279, 1323, 1337, 1431, 1694
Advertising Falsely or Misleadingly:	
Advertising falsely or misleadingly	23, 40, 75, 96, 131, 149, 241, 262, 275, 288, 312, 332, 395, 676, 698, 749, 762, 935, 982, 1038, 1047, 1098, 1108, 1172, 1213, 1231, 1244, 1301, 1365, 1378, 1394, 1454, 1477, 1519, 1525, 1535, 1558, 1577, 1596
Knowingly by advertising agent	676, 1477, 1519, 1525, 1535
Business status, advantages or connections	
Identity	1558
Independence of other affiliation	1558
Comparative data or merits	676, 698, 749, 982, 1047, 1231, 1378, 1394
Competitors' products	676, 698, 749, 992, 1047, 1231, 1378, 1394
Composition of goods	1244
Content	131, 1038, 1378
Demand, business or other opportunities	75
Earnings and profits	75, 935, 1108
Endorsements, approval and testimonials	75, 96, 149, 332, 395, 676, 698, 935, 1108, 1231, 1365, 1378, 1558, 1577
Financing	241, 262, 275, 288, 312, 1098, 1172
Formal regulatory and statutory requirements	241, 262, 275 288, 312, 1098, 1172
Truth in Lending Act	241, 262, 275, 288, 312, 1098, 1172

* Covering practices and matters involved in Commission orders. References to matters involved in vacating or dismissing orders are indicated by *italics*.

	Page
Government approval, action, connection or standards	1394
Use	1394
Legality or legitimacy	935
Opportunities	75, 935, 1108
Prices	241, 262, 275, 288, 312, 982, 1047, 1098, 1172
Additional charges unmentioned	241, 262, 275, 288, 312, 982, 1047, 1172
Terms and conditions	241, 262, 275, 288, 312, 1098, 1172
Truth in Lending Act	241, 262, 275, 288, 312, 1098, 1172
Qualities or properties of product or service	23, 40, 96, 131, 149, 332, 676, 698, 749, 1038, 1213, 1231, 1301, 1378, 1454, 1465, 1477, 1519, 1525, 1535, 1558, 1577, 1596
Auxiliary, improving, or supplementary	96, 149, 1213, 1231, 1465
Cooling, refrigerating	749
Durability or permanence	1301
Economizing or saving	23, 1231
Medicinal, therapeutic, healthful, etc.	23, 40, 96, 131, 149, 676, 698
Nutritive	96, 149, 1038, 1378
Preserving	749
Preventive or protective	23, 40, 332, 1301
Reducing, non-fattening, low-calorie, etc.	96, 131, 149, 1454, 1465, 1477, 1519, 1525, 1535, 1558, 1577, 1596
Quality of product or service	395, 762, 1038, 1108, 1213, 1394
Results	395, 676, 698, 762, 935, 982, 1047, 1108, 1231, 1301, 1465, 1558, 1577, 1596
Safety	332, 762, 1213, 1394, 1596
Product	332, 762, 1213, 1394, 1596
Scientific or other relevant facts	23, 40, 96, 131, 149, 332, 395, 676, 698, 749, 762, 1038, 1231, 1244, 1301, 1365, 1378, 1394, 1465, 1558, 1577, 1596
Scientific tests	395, 1213, 1231, 1301, 1394
Source or origin	1244
In general	1244
Specifications or standards conformance	982, 1047
Surveys	1365
Tests and investigations	1365

Boycotting Seller-Suppliers:

Boycotting seller-suppliers 62

Claiming or Using Endorsements or Testimonials Falsely or Misleadingly:

Claiming or using endorsements or testimonials falsely
or misleadingly 75, 96, 149, 332, 395, 676, 698, 935,
1108, 1231, 1378, 1558, 1577

American Medical Association 332

Doctors and medical profession 1365, 1378

Users, in general 75, 96, 149, 395, 676, 698, 935,
1108, 1231, 1378, 1558, 1577

Coercing and Intimidating:

Competitors 465, 1427

Distributors 1257

Members 465, 1427

Combining or Conspiring:

Combining or conspiring 62, 465, 1257, 1427

To boycott seller-suppliers 62

To control allocations and solicitation of customers 1427

To control employment practices 465

To control marketing practices and conditions 62, 465, 1257, 1427

To eliminate competition in conspirators' goods 62, 465,
1257, 1427

To enforce or bring about resale price maintenance 1257

To enhance, maintain or unify prices 62, 465, 1257

To exchange future price information 62

To fix prices 62, 465, 1257

To restrain or monopolize trade 62, 465, 1257

To terminate or threaten to terminate contracts,
dealings, franchises, etc. 465

Controlling, Unfairly, Seller-Suppliers:

Controlling, unfairly, seller-suppliers 62

Corrective Actions and/or Requirements:

Corrective actions and/or requirements . 1, 23, 40, 62, 75, 96, 131,
149, 171, 241, 262, 275, 288, 312, 332, 395, 465, 676, 698,
749, 762, 778, 795, 812, 832, 842, 904, 935, 952, 982, 1038,
1047, 1098, 1108, 1172, 1187, 1213, 1231, 1244, 1257, 1279,
1301, 1323, 1337, 1365, 1378, 1394, 1427, 1431, 1454, 1465,
1477, 1519, 1525, 1535, 1558, 1577, 1596, 1694, 1706

Page

Corrective advertising . . .	75, 96, 131, 149, 241, 262, 275, 288 312, 332, 395, 676, 698, 749, 762, 935, 982, 1038, 1047, 1098, 1108, 1172, 1213, 1244, 1394, 1454, 1558, 1577, 1596
Disclosures . . .	75, 96, 131, 149, 241, 262, 275, 288, 312, 332, 395, 676, 698, 749, 762, 832, 935, 982, 1047, 1098, 1172, 1187, 1231, 1244, 1257, 1454, 1558, 1577, 1596
Displays, in-house	1244
Formal regulatory and/or statutory requirements	241, 262 275, 288, 312, 832, 1098, 1172, 1187, 1577
Fair Credit Reporting Act	1187
Mail or Telephone Order Merchandise Rule	1577
Truth in Lending Act	241, 262, 275, 288, 312, 832, 1098, 1172, 1187
Furnishing information to media/consumers	1301
Grant license(s)	842, 904, 1706
Maintain records . . .	1, 23, 40, 62, 75, 131, 171, 241, 262, 275 288, 312, 332, 395, 465, 676, 698, 749, 762, 778, 795, 812, 832, 842, 904, 935, 952, 982, 1047, 1098, 1108, 1172, 1187, 1213, 1244, 1257, 1301, 1365, 1378, 1394, 1431, 1454, 1465, 1477, 1519, 1525, 1535, 1558, 1577, 1596, 1694, 1706
Advertising substantiation	23, 40, 75, 96, 332, 395 676, 698, 749, 762, 1108, 1213, 1231, 1301, 1365, 1378, 1394, 1454, 1465, 1477, 1519, 1525, 1535, 1558, 1577, 1596
Correspondence . . .	23, 40, 62, 75, 96, 131, 149, 241, 262, 275, 288, 312, 332, 395, 465, 676, 698, 749, 762, 812, 832, 935, 982, 1038, 1047, 1098, 1108, 1172, 1187, 1213, 1231, 1244, 1257, 1301, 1337, 1365, 1378, 1394, 1454, 1465, 1477, 1519, 1525, 1535, 1558, 1577, 1596,
Records, in general . . .	1, 23, 40, 62, 75, 96, 131, 149, 171, 241, 262, 275, 288, 312, 332, 395, 465, 676, 698, 749, 762, 778, 795, 812, 842, 904, 935, 952, 982, 1038, 1047, 1098, 1108, 1172, 1187, 1213, 1231, 1244, 1257, 1279, 1301, 1323, 1337, 1365, 1378, 1394, 1431, 1454, 1465, 1477, 1519, 1525, 1535, 1558, 1577, 1596, 1694

Page

Maintain means of communication	1, 23, 40, 62, 75, 96, 131, 149, 171, 241, 262, 275, 288, 312, 332, 395, 465, 676, 698, 749, 762, 778, 795, 812, 832, 842, 904, 935, 952, 982, 1038, 1047, 1098, 1108, 1172, 1187, 1213, 1231, 1244, 1257, 1279, 1301, 1323, 1337, 1365, 1378, 1394, 1431, 1454, 1465, 1477, 1519, 1525, 1535, 1558, 1577, 1596, 1694, 1706
Making supply of product(s) available to competitors	842, 904
Recall of merchandise, advertising material, etc.	1394
Refunds, rebates and/or credits	982, 1187
Release of general, specific, or contractual constrictions, requirements, or restraints	62, 171, 465
Renegotiation and/or amendment of contracts	465, 812
Restitution	75, 1187, 1213, 1454, 1465, 1477, 1525, 1535, 1558, 1577
Cutting Off Access to Customers or Market:	
Organizing and controlling seller-suppliers	62
Threatening and boycotting competitors	62
Cutting Off Supplies or Service:	
Organizing and controlling supply sources	62
Failing To Comply with Affirmative Statutory Requirements:	
Failing to comply with affirmative statutory requirements . . .	832, 1098, 1172, 1187
Fair Credit Reporting Act	1187
Truth in Lending Act	832, 1098, 1172, 1187
Interlocutory Orders:	
393, 840	
Misrepresenting Oneself and Goods:	
-Business status, advantages or connections:	
Identity	1558
-Goods:	
Comparative data or merits	676, 698, 749, 982, 1047, 1231, 1378, 1394
Composition	1244
Federal Trade Commission Act	1244
Content	131, 1038, 1378
Demand for or business opportunities	75, 935, 1108
Earnings and profits	75, 935, 1108
Endorsements	75, 96, 149, 332, 395, 676, 698, 935, 1108, 1231, 1365, 1378, 1558, 1577

Page

Formal regulatory and statutory requirements . . .	241, 262, 275 288, 312, 832, 1098, 1172, 1187
Truth in Lending Act	241, 262, 275, 288, 312, 832, 1098, 1172, 1187
Government standards or specifications	1394
Law or legal requirements	75, 935
Opportunities in product or service	75, 935, 1108
Qualities or properties	23, 40, 96, 131, 149, 332, 676, 698, 749, 1038, 1213, 1231, 1301, 1378, 1465, 1558, 1577, 1596
Quality	395, 762, 1038, 1213, 1394
Results	395, 676, 698, 762, 935, 982, 1047, 1108, 1231, 1301, 1465, 1558, 1577, 1596
Scientific or other relevant facts	23, 40, 96, 131, 149, 332, 395, 676, 698, 749, 762, 982, 1038, 1047, 1213, 1231, 1244, 1301, 1365, 1378, 1394, 1465, 1558, 1577, 1596
Source or origin	1244
Maker or seller	1244
Surveys	1365
Terms and conditions	832, 1098, 1172, 1187
Insurance coverage	1187
Tests, purported	1365
-Prices:	
Additional costs unmentioned	832, 982, 1047, 1098, 1172, 1187
Coverage or extras	1187
Prices	241, 262, 275, 288, 312, 832, 982, 1047, 1098, 1172, 1187
Terms and conditions	241, 262, 275, 288, 312, 832, 1098, 1172, 1187
Truth in Lending Act	241, 262, 275, 288, 312, 832, 1098, 1172, 1187
Modified Orders:	57, 672, 1721
Neglecting, Unfairly or Deceptively, To Make Material Disclosure:	
Care labeling of textile wearing apparel	
Composition	1244
Federal Trade Commission Act	1244
Content	131, 982, 1047

Page

Formal regulatory and statutory requirements	241, 262, 275 288, 312, 832, 1098, 1172, 1187
Fair Credit Reporting Act	1187
Truth in Lending Act	241, 262, 275, 288, 312, 832, 1098, 1172, 1187
Limitations of product	749, 762, 982, 1047
Prices . 241, 262, 275, 288, 312, 832, 982, 1047, 1098, 1172, 1187	
Additional prices unmentioned	241, 262, 275, 288, 312, 832, 982, 1047, 1098, 1172, 1187
Qualities or properties	749, 762, 1596
Safety	1596
Scientific or other relevant facts	749, 762, 935, 982, 1047, 1244, 1596
Source or origin	1244
Terms and conditions	241, 262, 275, 288, 312, 832, 1098, 1172, 1187
Insurance coverage	1187
Truth in Lending Act	241, 262, 275, 288, 312, 832, 1098, 1172, 1187
Offering Unfair, Improper and Deceptive Inducements to Purchase or Deal:	
Earnings and profits	75, 935, 1108
Offers deceptively made and evaded	1187, 1244
Opportunities in product or service	75, 935, 1108
Terms and conditions	1187
Insurance coverage	1187
Opinions, Statements By Commissioners:	62, 171, 332, 465, 842, 1257, 1301, 1323, 1721
Unfair Methods or Practices, etc., Involved in this Volume:	
Acquiring Corporate Stock or Assets	
Advertising Falsely or Misleadingly	
Boycotting Seller-Suppliers	
Claiming or Using Endorsements or Testimonials Falsely or Misleadingly	
Coercing and Intimidating	
Combining or Conspiring	
Controlling, Unfairly, Seller-Suppliers	
Corrective Actions and/or Requirements	
Cutting Off Access to Customers or Market	
Cutting Off Supplies or Service	

Failing To Comply with Affirmative Statutory Requirements

Misrepresenting Oneself and Goods

-Business Status, Advantages or Connections

-Goods

-Prices

Neglecting, Unfairly or Deceptively, To Make Material Disclosure

Offering Unfair, Improper and Deceptive Inducements To Purchase
or Deal

Using Deceptive Techniques in Advertising

Using Deceptive Techniques in Advertising:

Using deceptive techniques in advertising 1394

Labeling depictions 1394

Grand Boulevard, Detroit, Michigan. Respondent manufactures vehicles and offers such vehicles for sale or lease to consumers.

2. Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

3. Respondent has disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 CFR 226.2, as amended.

4. 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, 15 U.S.C. 44.

LEASE ADVERTISING

5. Respondent has disseminated or has caused to be disseminated consumer lease advertisements ("lease advertisements") for General Motors vehicles, including but not necessarily limited to the attached General Motors Exhibits A through D. General Motors Exhibits A, B, and C are television lease advertisements (attached in video and storyboard format). General Motors Exhibit D is a print lease advertisement. These advertisements contain the following statements:

A. [Audio:] "All this, just \$299 a month. The S-Blazer 2 year lease." [Video:] "2 Years. \$299 a Month. \$1,260 Down." [The advertisement contains the following lease disclosure at the bottom of the screen in light-colored fine print superimposed on gray, moving water background, and accompanied by background sound and images: "SEE YOUR PARTICIPATING DEALER FOR QUALIFICATION DETAILS. Example based on \$22,847 MSRP incl. destination charge, 1st month & lease payment \$298.63, \$1260 down payment plus \$325 refundable security deposit for a total of \$1883.63 due at lease signing (incl. capitalized cost reduction). Tax, license, title fees and insurance extra. Mileage charge of 10 [cents] mile over 30,000. GMAC must approve lease. SEE YOUR PARTICIPATING DEALER FOR QUALIFICATION DETAILS. Total of monthly payments is \$7,167.12. Payments may be higher in AL, AR, CA, NY, TX, and VA. Option to purchase at lease end for \$16,022.82 is fixed at lease signing and varies by model, equip., level, usage and length of lease. Lessee pays for excessive wear and use." The fine print is displayed on two screens in blocks of at least five lines, each appearing for approximately 5 seconds.] (General Motors Exhibit A).

B. [Audio:] "... by leasing an Oldsmobile Achieva with air, anti-lock brakes and more for just \$209 a month."

[Video:] "\$209 per month/\$1075 Down."

[The advertisement contains the following lease disclosure at the bottom of the screen in white print superimposed over a light-colored moving background, and accompanied by background sound and images: "FIRST MONTH'S LEASE PAYMENT OF \$208.72, REFUNDABLE SECURITY DEPOSIT OF \$225 AND A \$1,075 CAPITALIZED COST REDUCTION FOR A TOTAL OF \$1,508.72 DUE AT LEASE SIGNING. TAX, LICENSE, TITLE, FEES, AND INSURANCE ARE EXTRA. GMAC MUST APPROVE LEASE. EXAMPLE BASED ON ACHIEVA S SEDAN: \$15,164 M.S.R.P., INCLUDING DESTINATION CHARGE. MONTHLY PAYMENTS BASED ON CAPITALIZED COST OF \$13,225.88 INCLUDING CAPITALIZED COST REDUCTION. TOTAL OF 48 MONTHLY PAYMENTS IS \$10,018.56. AMOUNT OF CAPITALIZED COST REDUCTION MAY BE SLIGHTLY HIGHER IN AL, AR, CA, NY, TX, AND VA. OPTION TO PURCHASE AT LEASE END FOR \$6,030.64. MILEAGE CHARGE OF 10 [CENTS] PER MILE OVER MILEAGE LIMIT. LESSEE PAYS FOR EXCESSIVE WEAR AND USE. PAYMENT BASED ON RESIDUALS IN EFFECT THROUGH MARCH 31, 1993. SEE YOUR PARTICIPATING DEALER FOR QUALIFICATION DETAILS." The fine print is displayed on two screens in blocks of at least 6 lines, each block appearing for approximately 4 seconds. The two screens containing this information are interrupted by two other screens that do not contain lease information.] (General Motors Exhibit B).

C. [Audio:] "And, it's all only \$289 a month."

[Video:] "\$289 36 MONTH GMAC SMARTLEASE"

[The advertisement contains a lease disclosure that describes additional lease costs and terms, including but not limited to a downpayment, a security deposit, a purchase option amount and other lease-end fees in an extremely small, blurred, dark blue print, superimposed over the dark-colored front of the advertised vehicle.

The fine print is displayed in a block of approximately 13 lines for approximately 2.5 seconds.] (General Motors Exhibit C).

D. "Two Summers, Two Winters, Two Springs, Two Falls. \$299 A Month."

[Bold but smaller]: "The S-Blazer 2-Year Lease. \$299 A Month. \$1350 Down." [The advertisement contains the following lease disclosure below a picture of the vehicle in white fine print superimposed over a black background: "\$299/month 24-month lease at participating dealers. Tax, license, title fees and insurance extra. Mileage charge of 10 cents per mile over 30,000. . . . \$23,075 M.S.R.P., including destination charge. First month's lease payment of \$298.45, \$1350 down payment, plus \$325 refundable security deposit for a total of \$1973.45 due at lease signing (includes capitalized cost reduction). Total of monthly payments is \$7162.80. . . . Option to purchase at lease end for \$16,173.30. . . . Lessee pays for excessive wear and use. . . ." (General Motors Exhibit D).

FEDERAL TRADE COMMISSION ACT VIOLATIONS COUNT I: MISREPRESENTATION IN LEASE ADVERTISING

6. Through the means described in paragraph five, respondent has represented, expressly or by implication, that the amount stated as "down" in respondent's lease advertisements is the total amount consumers must pay at lease inception to lease the advertised vehicles.

7. In truth and in fact, the amount stated as "down" in respondent's lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers must also pay additional fees beyond the amount stated as "down," such as the first month's payment and security deposit, at lease inception. Therefore, respondent's representation as alleged in paragraph six was, and is, false or misleading.

8. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT II: FAILURE TO DISCLOSE ADEQUATELY
IN LEASE ADVERTISING

9. In its lease advertisements, respondent has represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." These advertisements do not adequately disclose additional terms pertaining to the lease offer, including but not necessarily limited to a required security deposit and first month's payment due at lease inception. The existence of these additional terms would be material to consumers in deciding whether to lease a General Motors vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

10. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT III: CONSUMER LEASING ACT AND
REGULATION M VIOLATIONS

11. Respondent's lease advertisements, including but not necessarily limited to General Motors Exhibits A through D, state a monthly payment amount, the number of required payments, and/or an amount "down." The lease disclosures in these advertisements contain one or more of the following terms required by Regulation M: 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 total of periodic payments due under the lease; a

statement of whether or not the lessee has the option to purchase the leased property and at what price and time or the method of determining the purchase-option price; and 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.

12. The lease disclosures in respondent's television lease advertisements, including but not necessarily limited to General Motors Exhibits A, B, and C, are not clear and conspicuous because they appear on the screen in small type, against a background of similar shade, for a very short duration, with background sounds and images, and/or over a moving background. The lease disclosures in respondent's print lease advertisements, including but not necessarily limited to General Motors Exhibit D, are also not clear and conspicuous because they appear in small type.

13. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, as amended, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c), as amended.

CREDIT ADVERTISING

14. Respondent has disseminated or has caused to be disseminated credit sale advertisements ("credit advertisements") for General Motors vehicles, including but not necessarily limited to General Motors Exhibits E and F. General Motors Exhibits E and F are television credit advertisements (attached in video and storyboard format). These advertisements contain the following statements:

A. [Audio:] "Then we told them that Jimmy was only \$299 a month with a GMAC SmartBuy. [Consumer #6:] \$299 a month? [Consumer #7:] \$299 a month -- that's great. [Consumer #8:] A Jimmy like this for \$299 a month would be fantastic."

[Video:] "\$299 a month 36-Month GMAC SmartBuy."

[The advertisement contains the following credit disclosure in white print superimposed on a light-colored background, and accompanied by background sound and images: "Example based on Jimmy MSRP of \$20,498. 6.9% APR GMAC SMARTBUY FINANCING. For 36 months, 35 months at \$299.38 per month and final payment of \$9441.94. \$3350 down, actual down payment may vary. Tax, license, title fees and insurance extra. Purchaser may refinance the final payment, or with 30 days advance written notice sell the vehicle to GMAC at end of term and pay \$250 disposal fee plus any excess mileage and wear charges. Dealer financial participation may affect consumer cost. See your participating dealer for qualification details. You must take retail delivery out of dealer stock by 9/22/93." The fine print is displayed in a scrolling format of 11 lines for approximately 4 seconds.] (General Motors Exhibit E).

B. [Audio:] "Still waiting to buy a new Buick? Well don't. Buick's Model Year Close-Out is on. . . . Or get this great SmartBuy payment."
[Video:] "Still waiting to buy a new Buick? Well Don't. Buick's 1995 Model Year Close-Out. . . . Buick Regal SmartBuy \$249 per month 30 months/\$2000 down."
[The advertisement contains the following credit disclosure at the bottom of the screen in white print superimposed on a black background with a moving vehicle above the disclosure block and accompanied by background sound: "For cash back, you must take retail delivery from dealer stock by 11/30/95. SmartBuy on 1995 Regal Custom SE with 3800 engine. \$20,853 MSRP incl. destination charge for a monthly payment of \$248.67/mo. 30 mo. \$2000 cash down or trade-in value (\$3500 down payment less \$1500 customer cash back). First month's payment plus down payment trade-in value for total of \$3746.67 due at lease signing. Payment based on capitalized cost of _____. Tax, title, license, doc. fee extra. Must take retail delivery from dealer stock by October. 4, 1995. GMAC must approve the SmartBuy. Options at contract maturity: pay the final payment of \$11,677.68, refinance the final payment with GMAC, sell the vehicle to GMAC and remit \$250 disposal fee plus 15 cents/mile for mileage exceeding 30,000 miles for excessive wear and use. See participating Buick dealers for qualification details." The fine print is displayed in a scrolling format of 11 lines for approximately 4 seconds.] (General Motors Exhibit F).

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT IV: MISREPRESENTATION IN CREDIT ADVERTISING

15. Through the means described in paragraph fourteen, respondent has represented, expressly or by implication, that consumers can buy the advertised General Motors vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down."

16. In truth and in fact, consumers cannot buy the advertised General Motors vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." Consumers are also responsible for a final balloon payment of several thousand dollars to purchase the advertised vehicles. Therefore, respondent's representation as alleged in paragraph fifteen was, and is, false or misleading.

17. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT V: FAILURE TO DISCLOSE ADEQUATELY
IN CREDIT ADVERTISING

18. In its credit advertisements, respondent has represented, expressly or by implication, that consumers can buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." These advertisements do not adequately disclose additional terms pertaining to the credit offer, including but not necessarily limited to a final balloon payment of several thousand dollars and the annual percentage rate. The existence of these additional terms would be material to consumers in deciding whether to buy a General Motors vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

19. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

COUNT VI: TRUTH IN LENDING ACT AND
REGULATION Z VIOLATIONS

20. Respondent's credit advertisements, including but not necessarily limited to General Motors Exhibits E and F, state a monthly payment amount and/or an amount "down." The credit disclosures in these advertisements contain the following terms required by Regulation Z: the annual percentage rate and the terms of repayment.

21. The credit disclosures in respondent's television credit advertisements, including but not necessarily limited to General Motors Exhibits E and F, are not clear and conspicuous because they appear on the screen in small type, against a background of similar shade, for a very short duration, in a rapid scrolling format, and/or with background sounds.

22. Respondent's practices violate Section 144 of the Truth in Lending Act, 15 U.S.C. 1664, as amended, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), as amended.

Complaint

123 F.T.C.

EXHIBIT A

General Motors Exhibit A

VIDEO

(Black and white scene of man fishing. Red Blazer on rocks.)

[Super]:

Two Summers

Two Winters

Two Springs

Two Falls

[Super]:

All This

[Super]:

2 Years. \$299 a Month.

\$1,260 Down.

[Disclosure*]

*[First Screen]:

SEE YOUR PARTICIPATING DEALER FOR QUALIFICATION DETAILS. Example based on \$22,847 MSRP incl. destination charge, 1st month & lease payment \$298.63, \$1260 down payment plus \$325 refundable security deposit for a total of \$1883.63 due at lease signing (incl. capitalized cost reduction). Tax, license, title fees and insurance extra. Mileage charge of 10 [cents] mile over 30,000. GMAC must approve lease.

[Second Screen]:

SEE YOUR PARTICIPATING DEALER FOR QUALIFICATION DETAILS. Total of monthly payments is \$7,167.12. Payments may be higher in AL, AR, CA, NY, TX, and VA. Option to purchase at lease end for \$16,022.82 is fixed at lease signing and varies by model, equip., level, usage, and length of lease. Lessee pays for excessive wear and use.

AUDIO

(Background sound throughout)

Two Summers

Two Winters

Two Springs

Two Falls

All this, just \$299 a month.

The S-Blazer 2 year lease.

Why drive an imitation when you can drive the vehicle that originated the species?

Chevy S-Blazer

241

Complaint

EXHIBIT B

General Motors Exhibit B

VIDEO

[Title Card]:
Party On, Dude

(Running shot of Achieva S Sedan)
[Super]:
\$209 per month/\$1075 Down

[Disclosure*]
[Title Card]:
Excellent
[Title Card]:
Major Bummer
(Running shot of Achieva S Sedan)
[Super]:
\$209 a month/\$1075 Down.
[Disclosure**]
[Title Card]:
Most Excellent
[Title Card]:
Demand Better
[Title Card]:
Achieva by Oldsmobile

* FIRST MONTH'S LEASE PAYMENT OF \$208.72, REFUNDABLE SECURITY DEPOSIT OF \$225 AND A \$1,075 CAPITALIZED COST REDUCTION FOR A TOTAL OF \$1,508.72 DUE AT LEASE SIGNING. TAX, LICENSE, TITLE, FEES, AND INSURANCE ARE EXTRA. GMAC MUST APPROVE LEASE. EXAMPLE BASED ON ACHIEVA S SEDAN: \$15,164 M.S.R.P., INCLUDING DESTINATION CHARGE.

MONTHLY PAYMENTS BASED ON CAPITALIZED COST OF \$13,225.88 INCLUDING

** CAPITALIZED COST REDUCTION TOTAL OF 48 MONTHLY PAYMENTS IS \$10,018.56. AMOUNT OF CAPITALIZED COST REDUCTION MAY BE SLIGHTLY HIGHER IN AL, AR, CA,

AUDIO

(Background music throughout)
[Announcer]:
If your team wins tonight, you'll wanna celebrate.

Like by leasing an Oldsmobile Achieva with air, anti-lock brakes and more for just \$209 a month.

Of course, if your team loses, you'll probably be depressed, in which case you'll want to console yourself. Like by leasing an Oldsmobile Achieva for just \$209 a month.

It's your choice.

NY, TX, AND VA. OPTION TO PURCHASE AT LEASE END FOR \$6,030.64. MILEAGE CHARGE OF 10 [CENTS] PER MILE OVER MILEAGE LIMIT. LESSEE PAYS FOR EXCESSIVE WEAR AND USE. PAYMENT BASED ON RESIDUALS IN EFFECT THROUGH MARCH 31, 1993.

See your participating dealer for qualification details.

EXHIBIT C

General Motors Exhibit C

VIDEO

(Consumer standing in front of Jimmy)

[Super and scrolling]:
1993 GMC Jimmy 4-Wheel Drive
Air Conditioning Automatic
Transmission AM/FM Stereo
Cassette Power Steering Power
Windows Power Door Locks

[Super]:
4 Wheel Anti-Lock Brakes

[Super and scrolling]:
4.3 Liter V6 Engine Fully
Independent Front Suspension

[Super]:
\$289 for 36 Month GMAC
SmartLease

AUDIO

(Background music throughout)

[Announcer]:
What would it take to get you to
look at a GMC Jimmy?

[Consumer]:
Compared to what?

[Announcer]:
Ford Explorer.

[Consumer]:
Okay Shoot.

This GMC Jimmy comes with 4-wheel drive, air, automatic transmission, AM/FM cassette, power steering, power windows and locks.

[Consumer]:
Gimme more.

[Announcer]:
The GMC Jimmy has 4 wheel anti-lock brakes, also standard.

[Consumer]:
No kidding?

[Announcer]:
And this GMC Jimmy comes with standard with a 4.3 Liter V6 and an independent suspension. Explorer? doesn't have it.

[Announcer]:
And it's all only \$289 a month.

241

Complaint

[Disclosure*]

* A down payment of \$1,562.90, plus first month's lease payment of \$289.00 and \$300 refundable security deposit for a total of \$2,151.90 due at lease signing. Tax, license, title fees and insurance extra. You must take retail delivery out of dealer stock by 12/31/92. GMAC must approve lease. Example based on 1993 Jimmy with an MSRP of \$23,661 including destination charge. Total of 36 monthly payments is \$10,404. Option to purchase at lease for \$13,274. Mileage charge of 10 cents per mile over 45,000 miles. Lessee pays for excessive wear and use. See your participating dealer for qualification details. Manufacturer's rebate not available under this program.

[Note: GM did not provide a storyboard for this advertisement and the disclosure in this ad were indecipherable when viewed on television. Therefore, staff used a storyboard from a virtually identical advertisement to fill in some of the indecipherable terms.]

[Consumer]:

Forget Ford, GMC Jimmy is the only way to go.

[Announcer]:

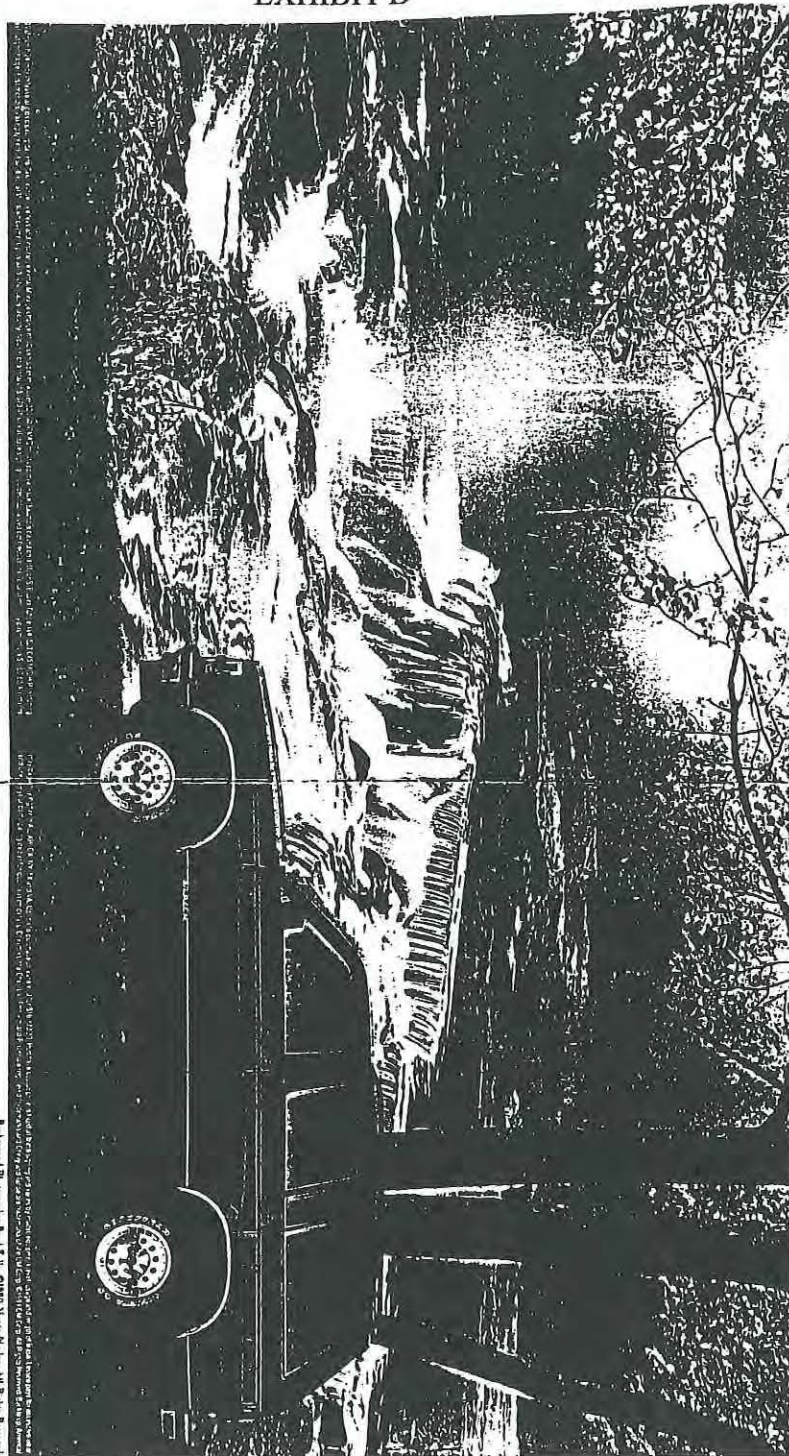
See your GMC truck dealer today.

Complaint

123 F.T.C.

EXHIBIT D

TWO SUMMERS, TWO WINTERS, TWO SPRINGS, TWO FALLS. \$299 A MONTH.



The S-Blazer 2-Year Lease, \$299 A Month, \$150 Down. Whichever said, "You only go around once," was wrong. With the S-Blazer 2-Year Lease Plan, you go around twice. Two glorious years of travel and adventure in a '94 Chevy.

S-Blazer. Three 4x4, With a 200 HP V-6, electronic anti-lock brakes, multi-buckets 4WD, aluminum wheels, air, and power windows and locks. S-Blazer is not just

solidly reliable that's well equipped to go anywhere, do anything. S-Blazer gives you all this, and after just two years, it gives you something that's new to a lease your freedom. Make the most

two years the best years of your life. S-Blazer. Spend them in a Chevy S-Blazer. The vehicle that redefined the species. CHEVROLET

GENERAL MOTORS
EXHIBIT D

GM100024

241

Complaint

EXHIBIT E

General Motors Exhibit E

VIDEO

(Potential consumers standing in front of Jimmy at shopping mall)

[Super]:
GMC Jimmy

[Super]:
3-Year 36,000 Mile No Deductible Warranty
[smaller type]:
See your GMC Truck dealer for terms of this limited warranty

[Super]:
\$299 a month 36-month GMAC SmartBuy

[Disclosure, scrolling*]

* Example based on Jimmy MSRP of \$20,498. 6.9% APR GMAC SMARTBUY FINANCING. For 36 months, 35 months at \$299.38 per month and final payment of \$9221.94. \$3350 down, actual down payment may vary. Tax, license, title fees and insurance extra. Purchaser may refinance the final payment, or with 30 days advance written notice sell the vehicle to GMAC at end of term and pay \$250 disposal fee plus any excess mileage and wear charges. Dealer financial participation may affect consumer cost. See your

AUDIO

(Background music throughout)

[Announcer]:
We asked folks why they liked the 1993 GMC Jimmy.

[Consumer #1]:
This is a quality truck.

[Consumer #2]:
Jimmy's very comfortable.

[Consumer #3]:
Jimmy has a real sporty look.

[Announcer]:
We told them about the Jimmy 3-year no deductible warranty.

[Consumer #4]:
No deductible warranty?

[Consumer #5]:
No deductible warranty -- you can't beat that.

[Announcer]:
Then we told them that Jimmy was only \$299 a month with a GMAC Smartbuy.

[Consumer #6]:
\$299 a month?

[Consumer #7]:
\$299 month that's great.

[Consumer #8]:
A Jimmy like this for \$299 a month would be fantastic.

Complaint

123 F.T.C.

participating dealer for qualification details. You must take retail delivery out of dealer stock by 9/22/93.

EXHIBIT F

General Motors Exhibit F

VIDEO

(Moving footage of Buick)
[Consumer pointing at title card reading, Super]:
Still waiting to buy a new Buick?
[Consumer pointing at title card reading, Super]:
Well Don't.

(Moving footage of Buick)
[Consumer sitting on title card letters reading, Super]:
Buick 1995 Model Year Close-Out
(Moving footage of Buick)
[Woman sitting near title card letters reading, Super]:
\$1500 Cash Back. Buick LeSabre, Roadmaster, Regal, Century, and Skylark.
[Woman sitting near title card letters reading, Super]:
Buick Regal SmartBuy \$249 per month 30 months/\$2000 down.

(Moving footage of Buick)
[Disclosure*]
[Consumer walking by title card letters reading, Super]:
You're just in time.

* For cash back, you must take retail delivery from dealer stock by 11/30/95. SmartBuy on 1995 Regal Custom SE with 3800 engine \$20,853 MSRP incl. destination charge for a monthly payment of \$248.67/mo. 30 mo. \$2000 cash down or trade-in value (\$3500 down payment less \$1500 customer cash back). First month's payment plus down payment trade-in value for

AUDIO

(Background music throughout -- "I can't wait forever. . .")

Still waiting to buy a new Buick?

Well don't.

Buick Model Year Close-Out is on.

Get \$1500 cash back on all these new Buicks.

Or get this great SmartBuy payment.

For the biggest savings of the year.

You're just in time.
Now wouldn't you really rather have a Buick?

241

Complaint

total of \$3746.67 due at lease signing. Payment based on capitalized cost of _____. Tax, title, license, doc. fee extra. Must take retail delivery from dealer stock by October 4, 1995. GMAC must approve the SmartBuy. Options at contract maturity pay the final payment of \$11,677.68, refinance the final payment with GMAC, sell the vehicle to GMAC and remit \$250 disposal fee plus 15 cents/mile for mileage exceeding 30,000 miles for excessive wear and use. See participating Buick dealers for qualification 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 the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 the 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 General Motors Corp. is a Delaware corporation with its principal office or place of business at 3044 West Grand Boulevard, Detroit, Michigan.

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. *"Clearly and conspicuously"* as used herein shall mean:

1) Video or written disclosures must be made in a manner that is readable and understandable to a reasonable consumer and 2) audio or oral disclosures must be made in a manner that is audible and understandable to a reasonable consumer.

2. *"Total amount due at lease inception"* as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later, excluding dealer and government mandated fees and charges (if any).

3. *"Balloon payment"* as used herein shall mean any scheduled payment with respect to a consumer credit transaction that is at least twice as large as the average of earlier scheduled payments.

4. Unless otherwise specified, *"respondent"* as used herein shall mean General Motors Corp., its successors and assigns, and its officers, agents, representatives, and employees.

5. *"In or affecting commerce"* as used herein shall mean as defined in Section 4 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 44.

I.

It is ordered, That respondent, 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 in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of revised Regulation M, 61 Fed. Reg. 52,246, 52,258 (Oct. 7, 1996)(to be codified at 12 CFR 213.2) ("revised Regulation M"), as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the total amount due at lease inception, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required).

B. Make any reference to any charge that is part of the total amount due at lease inception or that no such charge is required, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease inception.

C. State the amount of any payment or that any or no initial payment is required at lease inception unless all of the following items are disclosed clearly and conspicuously, as applicable:

1. That the transaction advertised is a lease;
2. The total amount due at lease inception;
3. That a security deposit is required;
4. The number, amount, and timing of scheduled payments; and
5. That an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

II.

It is further ordered, That an advertisement that complies with subparagraph I.C shall be deemed to satisfy the requirements of Section 184(a) of the Consumer Leasing Act, 15 U.S.C. 1667c(a), as amended by Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, 110 Stat. 3009, ____ (Sept. 30, 1996) ("revised CLA"), as amended, and Section 213.7(d)(2) of revised Regulation M, 61 Fed. Reg. at 52,261 (to be codified at 12 CFR 213.7(d)(2)), as amended.

III.

It is further ordered, That if the revised CLA, as amended, or revised Regulation M, as amended, are amended in the future to alter definition 2 of this order ("total amount due at lease inception") or to require or permit advertising disclosures that are different from those set forth in subparagraphs I.B or I.C of this order, then the change or changes shall be incorporated in subparagraph I.B, subparagraph I.C, and/or definition 2 for the purpose of complying with subparagraphs I.B and I.C only, as appropriate; provided however, that all other requirements of this order, including definition 1 ("clearly and conspicuously"), will survive any such revisions.

IV.

It is further ordered, That respondent, 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 extension of consumer credit in or affecting commerce, as "advertisement" and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 CFR 226.2, as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the existence and amount of any balloon payment or the annual percentage rate.

B. State the amount of any payment, including but not limited to any monthly payment, in any advertisement unless the amount of any balloon payment is disclosed prominently and in close proximity to the most prominent of the above statements.

C. State the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any periodic payment, including but not limited to any monthly payment, or the amount of any finance charge, without disclosing clearly and conspicuously:

1. The amount or percentage of the downpayment;
2. The terms of repayment, including but not limited to the amount of any balloon payment; and
3. The correct annual percentage rate, using that term or the abbreviation "APR," as defined in Regulation Z and the Official Staff Commentary to Regulation Z. If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

V.

It is further ordered, That respondent General Motors Corp., and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

VI.

It is further ordered, That respondent General Motors Corp., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this order and to all advertising

agencies; and shall secure from each such person or entity a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel or entities within thirty (30) days after the date of service of this order, and to such future personnel or entities within thirty (30) days after the person or entity assumes such position or responsibilities.

VII.

It is further ordered, That respondent General Motors Corp., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not necessarily limited to dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VIII.

It is further ordered, That respondent General Motors Corp., and its successors and assigns, shall within one hundred and twenty (120) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IX.

This order will terminate on February 6, 2017, or twenty (20) 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 Part in this order that terminates in less than twenty (20) 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 Part.

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 Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

123 F.T.C.

IN THE MATTER OF

AMERICAN HONDA MOTOR CO., INC.

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

Docket C-3711. Complaint, Feb. 6, 1997--Decision, Feb. 6, 1997

This consent order prohibits, among other things, a California-based automobile manufacturer from misrepresenting the total amount due at lease inception, requires the manufacturer to provide consumers with clear, readable, and understandable cost information in their car lease and financed purchase advertising, requires advertisements, that reference an initial payment or state that no initial payment is due, to clearly and conspicuously disclose, as applicable, that the deal is a lease, and to disclose the fact that an extra charge may be imposed at the end of the lease based on the residual value of the car.

Appearances

For the Commission: *Rolando Berrelez, Sally Pitofsky and Lauren Steinfeld.*

For the respondent: *Richard Feinstein, McKenna & Cuneo, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that American Honda Motor Co., Inc., a corporation ("respondent" or "Honda"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, and the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent American Honda Motor Co., Inc. is a California corporation with its principal office or place of business at 1919 Torrance Boulevard, Torrance, California. Respondent manufactures and distributes vehicles and offers such vehicles for sale or lease to consumers.