

Complaint

123 F.T.C.

IN THE MATTER OF

HULING BROS. CHEVROLET, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT,
THE TRUTH IN LENDING ACT AND REGULATION Z

Docket C-3732. Complaint, April 14, 1997--Decision, April 14, 1997

This consent order requires, among other things, the Seattle, Washington, automobile dealerships to correctly calculate the annual percentage rate ("APR") for financed purchases in accordance with Regulation Z, and to include in a clear and conspicuous manner all the disclosures required by law when a triggering term is used in an advertisement. The consent order prohibits the respondents from misrepresenting the terms of financed deals, the APR, the amount of any periodic payment, the availability of any advertised credit terms, the sale price, or the availability of any rebate.

Appearances

For the Commission: *Charles Harwood* and *George Zweibel*.

For the respondents: *James Aiken, Aiken & Fein*, Seattle, WA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Huling Bros. Chevrolet, Inc., a corporation; Huling Buick, Inc., a corporation; and Huling Bros. Chrysler/Plymouth, Inc., a corporation, have violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667e, as amended, and its implementing Regulation Z, 12 CFR Part 226, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Huling Bros. Chevrolet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4755 Fauntleroy Way S.W., Seattle, Washington.

PAR. 2. Huling Buick, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4545 Fauntleroy Way S.W., Seattle, Washington.

PAR. 3. Huling Bros. Chrysler/Plymouth, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Washington, with its principal place of business located at 4550 Fauntleroy Way S.W., Seattle, Washington.

PAR. 4. In the ordinary course and conduct of their business, respondents have been engaged in the dissemination of advertisements that promote, directly or indirectly, credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," "closed-end credit," and "consumer credit" are defined in the TILA and Regulation Z.

PAR. 5. The acts and practices of respondents alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

COUNT ONE

PAR. 6. Respondent Huling Bros. Chevrolet, Inc., in the course and conduct of its business, on numerous occasions has disseminated, or caused to be disseminated, advertisements that state annual percentage rates as well as monthly payment amounts and vehicle sales prices. In fact, in many instances, the advertisements understate the annual percentage rates by more than 1/4 of 1 percentage point, thereby failing to disclose accurately the annual percentage rate.

PAR. 7. Respondent's aforesaid practice violates Sections 107 and 144(c) and (d) of the TILA, 15 U.S.C. 1606 and 1664(c) and (d), and Sections 226.22(a) and 226.24(b) and (c) of Regulation Z, 12 CFR 226.22(a) and 226.24(b) and (c), and constitutes an unfair or deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT TWO

PAR. 8. Respondents Huling Bros. Chevrolet, Inc., Huling Buick, Inc., and Huling Bros. Chrysler/Plymouth, Inc., in the course and conduct of their business, on numerous occasions have disseminated, or caused to be disseminated, advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, or the amount of any payment, but fail to state the annual percentage rate.

PAR. 9. Respondents' aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. 1664(d), and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).

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COUNT THREE

PAR. 10. Respondents Huling Bros. Chevrolet, Inc., and Huling Buick, Inc., in the course and conduct of their business, on numerous occasions have disseminated, or caused to be disseminated, advertisements that state conflicting monthly payment amounts for the same transaction, thereby failing to disclose accurately the terms of repayment.

PAR. 11. Respondents' aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. 1664(d), and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), and constitutes an unfair or deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT FOUR

PAR. 12. Respondents Huling Bros. Chevrolet, Inc., Huling Buick, Inc., and Huling Bros. Chrysler/Plymouth, Inc., in the course and conduct of their business, on numerous occasions have disseminated, or caused to be disseminated, advertisements that state terms of repayment (such as monthly payment amounts) or annual percentage rates that are not actually arranged or offered by respondents.

PAR. 13. Respondents' aforesaid practice violates Section 142 of the TILA, 15 U.S.C. 1662, and Section 226.24(a) of Regulation Z, 12 CFR 226.24(a), and constitutes an unfair or deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT FIVE

PAR. 14. Respondents Huling Bros. Chevrolet, Inc., Huling Buick, Inc., and Huling Bros. Chrysler/Plymouth, Inc., in the course and conduct of their business, in numerous instances including but not limited to Exhibits A and B, have disseminated, or caused to be disseminated, advertisements offering new motor vehicles that state monthly payment amounts, sale prices, and rebates. In many instances, the advertisements represent that "College Graduate" or "1st Time Buyer" rebates are available in conjunction with a payment plan in which monthly payments are at one amount for the first 12 months and are approximately double that amount thereafter ("Half Payment Program"). In fact, these rebates are not available to purchasers who choose the Half Payment Program.

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

COUNT SIX

PAR. 16. Respondent Huling Buick, Inc., in the course and conduct of its business, has disseminated, or caused to be disseminated, advertisements that state a rate of a finance charge, but fail to state the rate as an "annual percentage rate," using that term or the abbreviation "APR."

PAR. 17. Respondent's aforesaid practice violates Section 144(c) of the TILA, 15 U.S.C. 1664(c), and Section 226.24(b) of Regulation Z, 12 CFR 226.24(b).

EXHIBIT B

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Seattle Regional Office proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondents with violation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and its implementing Regulation Z, 12 CFR 226, and the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts and Regulation, 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 Huling Bros. Chevrolet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4755 Fauntleroy Way S.W., Seattle, Washington.

2. Respondent Huling Buick, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4545 Fauntleroy Way S.W., Seattle, Washington.

3. Respondent Huling Bros. Chrysler/Plymouth, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place

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of business located at 4550 Fauntleroy Way S.W., Seattle, Washington.

4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondents Huling Bros. Chevrolet, Inc., a corporation, its successors and assigns, and its officers; Huling Buick, Inc., a corporation, its successors and assigns, and its officers; and Huling Bros. Chrysler/Plymouth, Inc., a corporation, its successors and assigns, and its officers; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any extension of consumer credit, as "advertisement" and "consumer credit" are defined in the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667e, as amended, and in Regulation Z, 12 CFR Part 226, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to the annual percentage rate, the amount of any periodic payment amount, or the availability of any advertised credit term; the sale price; or the availability of any advertised rebate.

B. Stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term, and failing to calculate the rate in accordance with Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(Sections 144 and 107 of the TILA, 15 U.S.C. 1664 and 1606, and Sections 226.24(b) and 226.22 of Regulation Z, 12 CFR 226.24(b) and 226.22)

C. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without stating

accurately, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

- (1) The amount or percentage of the downpayment;
- (2) The terms of repayment; and
- (3) The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c))

D. Failing to state only those terms that actually are or will be arranged or offered by the creditor, in any advertisement for credit that states specific credit terms, as required by Regulation Z.

(Section 142 of the TILA, 15 U.S.C. 1662, and Section 226.24(a) of Regulation Z, 12 CFR 226.24(a))

E. Failing to comply in any other respect with the Truth in Lending Act, 15 U.S.C. 1601-1667e, as amended, or its implementing regulation, Regulation Z, 12 CFR Part 226, as amended.

II.

It is further ordered, That respondents, and their successors and assigns, shall distribute a copy of this order to all present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order, and that respondents, and their successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

III.

It is further ordered, That each respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate entity, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the order.

IV.

It is further ordered, That for five (5) years after the date of service of this order respondents, and their successors and assigns, shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

V.

It is further ordered, That respondents, and their successors and assigns, shall, within sixty (60) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VI.

This order will terminate on April 14, 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 paragraph 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 paragraph.

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

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IN THE MATTER OF

1554 CORPORATION, ET AL.

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

Docket C-3733. Complaint, April 14, 1997--Decision, April 14, 1997

This consent order prohibits, among other things, the California company, doing business as The Mellinger Company, and its president from making any unsubstantiated success, profitability, performance, benefits, efficacy or success rate claims with regard to a business opportunity product or service. The consent order also prohibits the respondents from using testimonials or endorsements that make deceptive or unsubstantiated representations.

Appearances

For the Commission: *Justin Dingfelder, Lemuel Dowdy and Jonathan Cowen.*

For the respondents: *Shirley Johnson, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that 1554 Corporation, a corporation, and Brainerd L. Mellinger, III, individually as an officer of 1554 Corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent 1554 Corporation is a California corporation, with its office and principal place of business located at 6100 Variel Ave., Woodland Hills, CA. Respondent 1554 Corporation has traded and done business as The Mellinger Company.

Respondent Brainerd L. Mellinger, III, is president of the corporate respondent. Individually, or in concert with others, he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

PAR. 2. Respondents have, individually or in concert with others, created and disseminated advertisements for the Mellinger World Trade Mail Order Plan ("Mellinger Plan"), and have offered for sale