

IN THE MATTER OF

LOU FUSZ AUTOMOTIVE NETWORK, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
CONSUMER LEASING ACT, THE TRUTH IN LENDING ACT AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3780. Complaint, Jan. 5, 1998--Decision, Jan. 5, 1998

This consent order prohibits, among other things, the St. Louis Missouri-area automobile dealership and its officer from omitting or burying key cost information in small, and at times, unreadable print in their automobile lease advertisements and from misrepresenting the costs of leasing, including the total amount due at lease signing. The consent order requires the respondents to disclose certain information clearly and conspicuously and to comply with all provisions of the specified acts and regulations.

Appearances

For the Commission: *Lauren Steinfeld* and *David Medine*.

For the respondents: *E. Perry Johnson*, *Bryan Cave, LLP*, St. Louis, MO. and *Elaine Foreman*, *Bryan Cave, LLP*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Lou Fusz Automotive Network, Inc., a corporation, and Louis J. Fusz, Jr., individually and as an officer of the corporation ("respondents" or "Lou Fusz"), have violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and the Truth in Lending Act, 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Lou Fusz Automotive Network, Inc. is a Missouri corporation with its principal office or place of business at 925 North Lindbergh Blvd., St. Louis, Missouri. Respondent offers automobiles for sale or lease to consumers.

2. Respondent Louis J. Fusz, Jr. is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Lou Fusz Automotive Network, Inc.

3. Respondents have 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.

4. Respondents have 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.

5. The acts and practices of respondents 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

6. Respondents have disseminated or have caused to be disseminated consumer lease advertisements ("lease advertisements") for automobiles in the print media, including but not necessarily limited to the attached Exhibits A through F. These lease advertisements contain the following statements:

A. "0 DOWN PLUS NO PAYMENT TIL SPRING -- 1995 ALTIMA GXE ... LEASE FOR ONLY \$217* per month -- 1994.5 SENTRA LE ... (sic) LEASE FOR ONLY \$186* PER MONTH"

[A fine print statement at the bottom of the ad states, "*36 month, 10% down cash or trade. 5.97% Mo. tax, personal property tax included. Only to qualified buyers."] (Exhibit A)

B. [Sunfire Coupe Offer]: "Available Only at LOU FUSZ PONTIAC -- 0 DOWN NO SEC. DEPOSIT Sunfire Leases start at \$219.12* per mo."

[A fine print statement at the bottom of the ad states, "*39 mo. lease, 36,000 mi., Stock #75015. First month payment taxes & lease fee not included."]

[Grand Prix Offer]: "Lease: \$233/mo."

[A fine print statement at the bottom of the ad states "36 month closed end lease. 10% down cash or trade. First month's payment and security deposit due at time of lease. Taxes and fees not included. 12,000 mi. per year."] (Exhibit B)

C. "1995 TOYOTA CAMRY LE LEASE FROM \$269* per mo."

[A fine print statement at the bottom of the ad states, "*36 mo. lease, 12,000 miles per year, all taxes included."] (Exhibit C)

D. "LEASE: \$159/mo. '95 Mitsubishi Galant ES"

[A fine print statement in the center of the ad states, "30 month closed end lease. 10% down cash or trade. 1st month's payment, refundable security deposit and license fees due at time of lease. 10,000 miles per year. Residual value \$11,644. Taxes excluded."] (Exhibit D)

E. "'95 Grand Am . . . \$234* Per Month 36 Month 1 Payment Lease"

[A fine print statement at the bottom of the ad states, "*All payments due at delivery, includes \$1000 customer cash & \$1000 cap. reduction. Taxes not included."] (Exhibit E)

F. "1995 NISSAN PATHFINDER . . . \$279 per mo.

[A fine print statement at the bottom of the ad states, "***12 mo. lease Pathfinder, 24 mo. Altima, 36 mo. 240 SX & 3002X. 10% down cash or trade. Based on 5.975% MO tax, 15,000 mi per year."] (Exhibit F)

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT I: MISREPRESENTATION OF INCEPTION FEES

7. In lease advertisements, including but not necessarily limited to Exhibit A and the Sunfire Coupe offer in Exhibit B, respondents have represented, expressly or by implication, that the amount stated as "down" is the total amount consumers must pay at lease inception to lease the advertised vehicles.

8. In truth and in fact, the amount stated as "down" in respondents' lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers are required to pay significant amounts at lease signing, including but not limited to one or more of the following: a downpayment, security deposit, lease fee, first month's payment, and taxes. Therefore, respondents' representation as alleged in paragraph seven was, and is, false or misleading.

9. Respondents' 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 INCEPTION FEES

10. In lease advertisements, including but not necessarily limited to Exhibits A through F, respondents have 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."

11. These lease advertisements do not adequately disclose additional terms pertaining to obligations at lease inception, including

but not necessarily limited to one or more of the following charges: a required downpayment, security deposit, lease fee, first month's payment, and taxes.

12. These additional terms would be material to consumers in deciding whether to visit respondents' dealership and/or whether to lease an automobile from respondents. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

13. Respondents' 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: MISREPRESENTATION OF LEASE TERMS
ACTUALLY AVAILABLE

14. In lease advertisements, including but not necessarily limited to Exhibit A, respondents have represented, expressly or by implication, that consumers can lease the advertised vehicles at the advertised terms, including but not limited to the monthly payment amount and amount stated as "down."

15. In truth and in fact, respondents have not offered the advertised vehicles at the advertised lease terms. Therefore, respondents' representation as alleged in paragraph fourteen was, and is, false or misleading.

16. Respondents' 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 IV: MISREPRESENTATION OF ONE PAYMENT LEASE PLANS

17. In advertisements for Lou Fusz's "one payment" lease plan, including but not necessarily limited to Exhibit E, respondents have represented, expressly or by implication, that consumers can lease the advertised vehicles by making equal monthly payments for a specified lease term.

18. In truth and in fact, under Lou Fusz's "one payment" lease plan, consumers must pay all lease payments at lease signing. Therefore, respondents' representation as alleged in paragraph seventeen was, and is, false or misleading.

19. Respondents' 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).

CONSUMER LEASING ACT AND REGULATION M VIOLATIONS
COUNT V: FAILURE TO DISCLOSE REQUIRED INFORMATION

20. In lease advertisements, including but not necessarily limited to Exhibits A through F, respondents have stated a monthly payment amount, the number of required payments, and/or an amount "down."

21. These lease advertisements have failed to disclose the following items of information required by Regulation M: 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 scheduled 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, in lieu of disclosure of the price, 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.

22. Respondents' practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, and Section 213.5 of Regulation M, 12 CFR 213.5(c).

COUNT VI: FAILURE TO MAKE ADVERTISED TERMS
USUALLY AND CUSTOMARILY AVAILABLE

23. In lease advertisements, including but not necessarily limited to Exhibit A, respondents have represented, expressly or by implication, that consumers can lease the advertised vehicles at the advertised terms, including but not limited to the monthly payment amount and amount stated as "down."

24. Respondents have not usually and customarily offered the advertised vehicles at the advertised lease terms.

25. Respondents' practices have violated Section 213.5(a) of Regulation M, 12 CFR 213.5(a).

CREDIT ADVERTISING

26. Respondents have disseminated or have caused to be disseminated credit sale advertisements ("credit advertisements") for automobiles in the print media, including but not necessarily limited to the attached Exhibit F. These advertisements contain the following statements:

Complaint

125 F.T.C.

"1995 NISSAN QUEST 1.9%* APR FINANCING"

[A fine print statement at the bottom of the ad states, "**To qualified buyers, 24 mo. term, special rates on 24, 36 and 48 mo."] (Exhibit F)

TRUTH IN LENDING ACT AND REGULATION Z VIOLATIONS
COUNT VII: FAILURE TO DISCLOSE REQUIRED INFORMATION

27. In credit advertisements, including but not necessarily limited to Exhibit F, respondents have stated the number of payments or period of repayment as terms for financing the purchase of the advertised vehicles.

28. These advertisements have failed to disclose the following items of information required by Regulation Z: the amount or percentage of the downpayment and the monthly payment amount.

29. Respondents' practices have violated Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).

Commissioner Thompson and Commissioner Swindle not participating.

Lou FUSZ
AUTOMOTIVE NETWORK

0 DOWN
PLUS NO PAYMENT TIL SPRING

1995 ALTIMA GXE
Choose From More
Than 100 ALTIMAS In Stock

LEASE **\$217*** per month FOR ONLY



1994.5 SENTRA LE



Limited Edition! Power Windows and Locks, AM/FM Cassette, Air Conditioning, Cruise, Fold Down Rear Seat

LEASE FOR ONLY **\$186*** per month

1995 NISSAN MAXIMA

190 Horsepower, Air Conditioning, Power Windows and Locks, AM/FM Cassette, Tilt Wheel, Cruise Control and More

Starting From **\$19,995***



Lou Fusz
NISSAN™
Lindbergh & Olive

997-3400

*36 month, 10% down cash or trade. 5.97% Mo. tax. personal property tax included. Only to qualified buyers

With Respect!
Lou Fusz

Complaint

125 F.T.C.

EXHIBIT B

Lou Fusz

Come See the All-New '95 Sunfire!

Over 20 to choose from—hurry in for the best selection!

Available Only At
LOU FUSZ PONTIAC

0 DOWN
NO SEC. DEPOSIT
Sunfire Leases start at \$219.12/mo.

'95 Sunfire Sedan
Lease: **\$233/mo.**

'95 Sunfire Coupe
ABS Brakes, Dual Air Bags, AM/FM Cassette
*39 mo. lease, 36,000 mi., Stock #75015. First month payment taxes & license fee not included.

'95 Grand Prix Dual air bags, AM/FM stereo, Power locks and windows. Much more!
36 month closed end lease, 10% down cash or 1/3 first month's payment and security deposit due at time of lease. Taxes and fees not included. 12,000 mi. per year.
By The Pontiac Corporation, Pontiac, MI

LOU FUSZ PONTIAC
Lindbergh & Olive • 994-1500

Best Value

111

Complaint

EXHIBIT C

Lou Fusz Exhibit C

LOU FUSZ AUTOMOTIVE NETWORK

AUTO SHOW SPECIALS

1995 TOYOTA TERCEL
 Dealer Stock #95-0389
 Air, Power, Stereo, & Brakes, Stereo, Cassette, Dual Air Bags & Much More
LEASE FROM \$199*
*30 mos. lease, \$1,000 down, 15,000 mi. per year, all taxes included



MISSOURI'S #1 AVALON DEALER!
1995 TOYOTA AVALON
 TOYOTA'S NEWEST LUXURY CAR



1995 TOYOTA CAMRY LE
 Stock #950374, Auto, Air, Power, Stereo, Brakes, Door Locks, Windows, Tilt, Cruise, Cassette
LEASE FROM \$269*
ALL TAXES INCLUDED
*30 mos. lease, \$2,000 down per year, all taxes included



LOU FUSZ
TOYOTA
LINDBERGH & MANCHESTER 966-5404

©1995 L.C.T.

Complaint

125 F.T.C.

EXHIBIT D

Lou Fusz Exhibit D

For Sale \$100—Automobiles For Sale \$100—Automobiles For Sale \$100—Automobiles For Sale \$100—Automobiles For Sale \$100—Automobiles For Sale

END OF YEAR CLEARANCE

Score Big Savings!

Time is running out on the biggest sale of the year on all 14 Lou Fusz car lines. Take advantage of clearance prices on all inventory in stock—at our lowest prices of the year. Lou Fusz offers Network discounts nobody else in town can touch on any car, truck or van—new or used—currently in stock. Hurry—sale ends this Saturday!

With Respect

LOU FUSZ

AUTOMOTIVE NETWORK®

TIME
Q Lou Fusz - Where the Best Deals are Found

IN ELLISVILLE

St. Louis' Largest Dealer!

Lease: **\$159/mo.**

'95 Mitsubishi Galant ES
Air. Dual air bags. AM/FM cassette. Power windows/locks/mirrors. Cruise control. Tilt wheel. Much more!

30 month closed end lease. 10% down cash or trade. 1st month's payment, refundable security deposit and finance fees due at time of lease. 10,000 miles per year. Standard value \$17,464. Taxes excluded.

1995 Galant ES and Eclipse arriving daily!



LOU FUSZ MITSUBISHI
15978 Manchester Rd. in Ellisville
2 blocks west of Clarkson 394-5700

IN ELLISVILLE

Ellisville's Largest Buick Dealer!

MSRP: \$30,725

Lease: **\$369/mo.**

'95 Buick Park Avenue
Full size comfort—loaded with extras!

30 month closed end lease with 10% of MSRP down as cap cost reduction. 12,000 miles per year included. Sales and personal property tax excluded.

Includes LUXURY PACKAGE



PAUL FUSZ BUICK
15970 Manchester Rd. in Ellisville
2 blocks west of Clarkson 394-4000

EXHIBIT E

Lou Fusz Exhibit E

LOU FUSZ ANNOUNCES NEW LEASE PROGRAM ON '95's!

'95 Grand Am	'95 Transport	'95 Bonneville
 Stock #66016		
6 Cyl., Air, AM/FM Cassette, Cruise, ABS Brakes, Air Bag, Auto., 4 Spd., Intermittent Wipers, Auto Door Locks, Child Safety Locks, Power Windows	4 Spd., Auto., Air, Cruise, AM/FM Radio System With Clock & Cassette, Power Door Locks, Power Windows, Electric Rear Window, Defogger, 7 Passenger Seating, Power Sliding Door, Remote Keyless Entry	Keyless Entry, Custom Interior, 3.8 Liter V-6, 4 Spd., Auto., Alum. Alloy Wheels, 16" Touring Tires, Spoiler, Illum. Entry System, AM/FM Cassette, Power Windows, Power Mirrors, Power Door Locks, Power Seat, Variable Effort Steering
\$234* Per Month 36 Month 1 Payment Lease	\$287* Per Month 36 Month 1 Payment Lease	\$321* Per Month 36 Month 1 Payment Lease
*All payments due at delivery, includes \$1000 customer cash & \$1000 cap. reduction. Taxes not included.	*Includes 12,000 mi. per year. All payments due at delivery, includes \$1000 cust. cash & \$1000 cap. reduction. Taxes not included.	*All payments due at delivery, includes \$1000 customer cash & \$1000 cap. reduction. Taxes not included. 12,000 mi. Luxury lease.

LOU FUSZ
PONTIAC LINDBERGH & OLIVE **994-1500**

[illegible]

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 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 respondents with violation of the Federal Trade Commission Act, the Consumer Leasing Act and its implementing Regulation M, and the Truth in Lending Act and its implementing Regulation Z; and

The respondents, their attorneys, 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 the respondents 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 respondents have violated the said Acts and Regulations, 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 Lou Fusz Automotive Network, Inc. is a Missouri corporation with its principal office or place of business at 925 North Lindbergh Blvd., St. Louis, Missouri.
2. Respondent Louis J. Fusz, Jr. is an officer of the corporate respondent. His principal office or place of business is the same as that of Lou Fusz Automotive Network, Inc.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For the purposes of this order, the following definitions shall apply:

1. *"Clearly and conspicuously"* shall mean as follows:

a. In a television or video advertisement, the audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

b. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.

c. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

2. *"Equal prominence"* shall mean as follows:

a. In a television or video advertisement, the video disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. The audio disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.

b. In a print advertisement, the disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.

c. In a radio advertisement, the disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. "*One payment lease*" shall mean a lease transaction where all or substantially all payments due under the lease contract are to be paid at lease inception.

4. "*Total amount due at lease inception*" 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.

5. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

6. Unless otherwise specified, "*respondents*" shall mean Lou Fusz Automotive Network, Inc., a corporation, its successors and assigns and its officers; and Louis J. Fusz, Jr., individually and as an officer of the corporation; and each of the above's agents, representatives, and employees.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the costs of leasing a vehicle, including but not necessarily limited to the total amount due at lease inception.

B. State any amount due at lease inception (or that no such amount is required), except for the statement of a periodic payment, unless the advertisement also states with equal prominence the total amount due at lease inception.

C. Misrepresent the type of the transaction advertised, including but not necessarily limited to the fact that the offer is for a one payment lease.

D. State that a specific lease of any vehicle at specific amounts or terms is available unless respondents usually and customarily lease or will lease such property at those amounts or terms.

E. State the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease unless all of the following

items are disclosed, clearly and conspicuously, as required by Regulation M, as amended:

- (1) That the transaction advertised is a lease;
- (2) The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;
- (3) The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;
- (4) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and
- (5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

For all lease advertisements, respondents may comply with the requirements of this subparagraph by utilizing Section 184(a) of the Consumer Leasing Act ("CLA"), 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, 3009-473 (Sept. 30, 1996) (to be codified at 15 U.S.C. 1667c(a)) ("Section 184(a) of the revised CLA"), as amended, or by utilizing Section 213.7(d) of revised Regulation M, 61 Fed. Reg. 52246, 52261 (October 7, 1996) and 62 Fed. Reg. 15364, 15368 (Apr. 1, 1997) (to be codified at 12 CFR 213.7(d)) ("revised Regulation M"), as amended. For radio lease advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 184(b) of the CLA, 15 U.S.C. 1667c(b), 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, 3009-473 (Sept. 30, 1996) (to be codified at 15 U.S.C. 1667c(c)) ("Section 184(c) of the revised CLA"), as amended, or by utilizing Section 213.7(f) of revised Regulation M (to be codified at 12 CFR 213.7(f)), as amended. For television lease advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of revised Regulation M, as amended.

F. Fail to comply in any other respect with Regulation M, 12 CFR 213, as amended, and the CLA, 15 U.S.C. 1667-1667e, as amended. Respondents may comply with the requirements of this subparagraph regarding Regulation M by utilizing revised Regulation M, 61 Fed. Reg. 52246 (Oct. 7, 1996) and 62 Fed. Reg. 15364 (Apr. 1, 1997) (to be codified at 12 CFR 213), as amended.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any extension of consumer credit 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. State 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 disclosing clearly and conspicuously all of the terms required by Section 144 of the Truth in Lending Act ("TILA"), 15 U.S.C. 1664, as amended, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), as amended, as more fully set out in Section 226.24(c) of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 CFR 226.24(c), as amended, 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.

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

III.

It is further ordered, That respondent Lou Fusz Automotive Network, Inc., and its successors and assigns, and respondent Louis J. Fusz, Jr. shall, for five (5) years after the last date of dissemination

of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

IV.

It is further ordered, That respondent Lou Fusz Automotive Network, Inc., and its successors and assigns, and respondent Louis J. Fusz, Jr. shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

It is further ordered, That respondent Lou Fusz Automotive Network, Inc., 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 a 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.

VI.

It is further ordered, That respondent Louis J. Fusz, Jr., for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment involving the advertising and/or extension of a "consumer lease," as that term is defined in the CLA and its implementing Regulation M, or the advertising and/or extension of "consumer credit," as that term is defined in the TILA and its implementing Regulation Z. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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.

VII.

It is further ordered, That respondent Lou Fusz Automotive Network, Inc., and its successors and assigns, and respondent Louis J. Fusz, Jr. shall, within sixty (60) 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.

VIII.

This order will terminate on January 5, 2018, 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 respondents 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 of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Commissioner Thompson and Commissioner Swindle not participating.

IN THE MATTER OF

MONTEDISON S.P.A, 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-3580. Consent Order, May 25, 1995--Modifying Order, Jan. 9, 1998

This order reopens the proceeding and modifies the 1995 consent order (119 FTC 676) by eliminating the prior approval provision and substituting a limited prior notice provision for certain acquisitions.

ORDER REOPENING AND MODIFYING ORDER

On August 11, 1997, Montedison S.p.A ("Montedison"), Montell N.V. ("Montell"), Shell Oil Company ("Shell"), Royal Dutch Petroleum Company, and The "Shell" Transport and Trading Company p.l.c. ("the petitioners"), filed a Petition To Reopen And Modify Order ("Petition") in Docket No. C-3580 ("order") pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions ("Prior Approval Policy Statement").¹ The Petition requests that the Commission reopen and modify the order to eliminate the prior approval provision set forth in paragraph VII of the order. The Petition was placed on the public record for thirty days and one comment was received. The Commission has determined to reopen the order and to grant the Petition in part.

The complaint in this matter alleged that the petitioners' formation of Montell, a joint venture that merged the majority of Shell's and Montedison's worldwide polyolefins businesses, violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, by lessening competition and tending to create a monopoly in, among other markets, the licensing of polypropylene technology, polypropylene technology and the licensing of polypropylene catalysts and catalyst technology "throughout the world."²

¹ 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep., (CCH) ¶ 13,241.

² Complaint ¶¶ III and V.