

Complaint

125 F.T.C.

IN THE MATTER OF

RUBIN POSTAER AND ASSOCIATES, INC.

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

Docket C-3794. Complaint, April 6, 1998--Decision, April 6, 1998

This consent order prohibits, among other things, the California-based advertising agency of American Honda Motor Co. from misrepresenting in any motor vehicle lease advertisement the total amount due at lease signing or delivery, the amount down, and/or the down payment, capitalized cost, reduction, or other amounts that reduce the capitalized cost of the vehicle (or that no such amount is required).

Appearances

For the Commission: *Rolando Berrelez, Sally Pitofsky and David Medine.*

For the respondent: *Stephen P. Durschlag, Winston & Strawn, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Rubin Postaer and Associates, Inc., a corporation ("respondent" or "Rubin Postaer"), 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 Rubin Postaer and Associates, Inc. is a California corporation with its principal office or place of business at 1333 Second Street, Santa Monica, California.

2. Respondent, at all times relevant to this complaint, was an advertising agency of American Honda Motor Co., Inc. ("Honda"), and prepared and disseminated advertisements to promote consumer leases of Honda vehicles, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

3. 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.

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

A. [Audio:] "Here's what you might put down on a typical car lease [\$1750]. At Honda, however, we had a different idea. We took our fully equipped 1995 Accord LX and lowered the downpayment to some rather nice round numbers. [pause] The zero down, short-term lease from your Honda dealer. Zero down and \$289 a month for 30 months."

[Video:] [View of an odometer set on \$1750 that rolls down to \$0000] "The \$0 Down Lease. The Accord LX \$0 Down \$289/30 months"

[The advertisement contains the following lease disclosure in white print superimposed on a black background and accompanied by background sound: ". . . Advertised rate based on 30-mo. closed-end lease for 1995 Honda Accord 4-Door LX w/Automatic Trans.(Model CD583S). MSRP \$18,880 (includes destination) with dealer cap. cost reduction of \$620.50. DEALER PARTICIPATION MAY AFFECT ACTUAL PAYMENT. Taxes, title, lic. & reg., ins., opt. equip. & services not included. Due at lease signing are 1st mo.'s lease payment, refundable security dep. equal to 1 mo.'s payment rounded to the next highest \$25 increment & applicable title, lic., reg. fee & tax. Total monthly payments \$8,670 + applicable tax. Opt. to purchase at lease end for \$12,548.50 + tax + official fees, except in NY & SD where no purchase opt. avail. If not purchased at lease end, customer returns vehicle & pays a disp. fee of no more than \$400. Lessee pays maint., ins., repairs, service, all related taxes, reg. renewals, excessive wear and use. Mi. charge of \$.15 [cents]/mi. over 12,000 mi./year. MSRP, dealer cap. cost reduction & opt. to purchase differ slightly in CA. . . ." The fine print is displayed on two screens, each containing a block of ten lines, each block appearing for approximately three seconds.] (Rubin Postaer Exhibit A).

B. [Audio:] "Now we've made the process of driving your own Accord just as streamlined. Lease an Accord LX for just \$239 a month."

[Video:] "\$239 a Month, 36 Months, \$1500 Down."

[The advertisement contains the following lease disclosure at the top of the screen in white print superimposed on a black background and accompanied by background sound: ". . . Advertised rate based on 36- month closed-end lease for the 1994 Accord LX Sedan with MSRP of \$18,330.00 with a dealer capitalized cost reduction of \$795.35 (\$965.35 in IL, IN, KS, ME, NY, OK, and UT where no security deposit is required); condition of dealer participation may affect actual rate. Taxes, title, license, and registration, insurance and optional equipment, and services not included. Due at lease signing are \$1,500.00 down- payment, first lease payment, refundable deposit equal to one payment rounded to the next highest \$25.00 increment where applicable, title, license and registration fee, and tax as applicable. Total monthly payment is \$8,604.00 (plus tax, as applicable).

Option to purchase at end of lease for \$10,061.50 plus tax and official fees, except in MS, NY, and SD where no option available. Lessee pays maintenance, insurance, repairs, service, any and all related taxes, registration renewals, and excessive wear and use. Mileage charge of \$.15/mile over 15,000 miles per year. A disposition fee up to \$400.00 is due if vehicle not purchased at end of lease term" The fine print is displayed on three screens, each containing a block of eight lines, each block appearing for approximately three seconds.] (Rubin Postaer Exhibit B).

C. "INTRODUCING ZIP, ZERO, NADA. Civic LX \$229 per month/30 months Accord LX \$289 per month/30 months Passport 4WDLX \$389 per month/30 months The \$0 down lease Now, for a limited time, you can get an affordable, short-term lease on a fully equipped Honda for zero (as in zip, as in nada) dollars down"

[The advertisement contains the following lease disclosure at the bottom of the page in small print: ". . . Taxes, title, lic. & reg., ins., opt. equip. & services not included. Due at lease signing are 1st mo.'s lease payment, refundable security dep. equal to 1 mo.'s payment rounded to the next highest \$25 increment (except where no security dep. is collected) & applicable title, lic., reg. fee & tax. Total monthly payments \$6,870 for the Civic LX Sedan, \$8,670 for the Accord LX Sedan and \$11,670 for the Passport 4WD LX + applicable tax. Opt. to purchase at lease end for \$9,681.50 for the Civic LX Sedan, \$12,649.60 for the Accord LX Sedan and \$15,879.50 for the Passport 4WD LX + tax + official fees, except in MS, NY & SD where no purchase opt. avail. If not purchased at lease end, customer returns vehicle & pays a disp. fee of no more than \$400. Lessee pays maint., ins., repairs, service, all related taxes, reg. renewals, excessive wear & use. Mi. Charge of 15[cents]/mi. over 12,000 mi/yr. . . ."] (Rubin Postaer Exhibit C).

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

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that the amount stated as "down" in respondent's lease advertisements, including but not necessarily limited to "\$0 down," is the total amount consumers must pay at lease inception to lease the advertised vehicles.

6. 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 five was, and is, false or misleading.

7. Respondent knew or should have known that the representation set forth in paragraph five was, and is, false and 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 the 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 Honda vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

10. Respondent knew or should have known that the failure to disclose adequately material terms set forth in paragraph nine was, and is, deceptive.

11. 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

12. Respondent's lease advertisements, including but not necessarily limited to Rubin Postaer Exhibits A through C, 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.

13. The lease disclosures in respondent's television lease advertisements, including but not necessarily limited to Rubin Postaer Exhibits A and B, are not clear and conspicuous because they appear on the screen in small type for a very short duration. The lease

disclosures in respondent's print lease advertisements, including but not necessarily limited to Rubin Postaer Exhibit C, are not clear and conspicuous because they appear in small type.

14. 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.

Commissioner Thompson and Commissioner Swindle not participating.

EXHIBIT A

Rubin Postaer Exhibit A

VIDEO

AUDIO

(Open with view of odometer
and Accord LX Sedan)

(Background music throughout)

(Odometer reads \$1750)

Here's what you might put down on a
typical car lease.

(Engine starts revving)

(Odometer starts to scroll down)

At Honda, however, we had a different
idea. We took our fully equipped 1995
Accord LX and lowered the
downpayment to some rather nice
round numbers.

[Super]:
The \$0 Down Lease.
From your Honda dealer.

(Odometer reads \$0000)

The zero down short-term lease
from your Honda dealer.

[Super]:
The Accord LX
\$0 Down
\$289/30 months

\$0 down and \$289 a month for 30 months.

(View Disclosure*)

Leadership Leasing

*(First screen):
SUBJECT TO LIMITED AVAILABILITY.
Avail. thru January 5, 1995
at participating Honda dealers to
approved lessees by American Honda
Finance Corp. Advertised rate based
on 30-mo. closed-end lease for 1995
Honda Accord 4-Door LX w/Automatic
Trans. (Model CD583S.) MSRP \$18,880
(includes destination) with dealer
cap. cost reduction of \$620.50
DEALER PARTICIPATION MAY AFFECT
ACTUAL PAYMENT. Taxes, title, lic.
& reg., ins., opt. equip. & services
not included. Due at lease signing
are 1st mo.'s lease payment,
refundable security dep. equal to
1 mo.'s payment rounded to the
next highest \$25 increment &
applicable title, lic.

(Second screen):
reg. fee & tax. Total monthly payments
\$289 - applicable tax. 1st mo.
purchase at lease end for \$12,548.50 + tax

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EXHIBIT A

& official fees, except in NY & SD where no purchase opt. avail.
If not purchased at lease end, customer returns vehicle & pays a disp. fee of no more than \$400.
Lessee pays maint., ins., repairs, service, all related taxes, reg. renewals, excessive wear and use.
Mi. charge of \$.15 [cents] /mi. over 12,000 mi./year. MSRP, dealer cap. cost reduction & opt. to purchase differ slightly in CA.
This offer may not be available in conjunction with any other advertised offer. See your participating Honda dealer for details.

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EXHIBIT B

Rubin Postaer Exhibit B

VIDEO

(Open with view of white stream
and view of Accord LX)

AUDIO

(Background music throughout)

Motor Trend calls it the most fuel-efficient, the best performing, the quietest, the strongest, and the safest Accord we've ever built. And they named us Motor Trend Import Car of the Year.

[Super]:
\$239 a Month, 36 Months,
\$1500 Down.

Now we've made the process of driving
your own Accord just as streamlined.

(View Disclosure*)

Lease an Accord LX for just \$239 a month.
Leadership leasing from Honda.

We Won. You Win. A Car Ahead.

We Won. You Win.

*[First screen]:
Available through 2/28/94, at
participating Honda dealers to
qualified lessees approved
by American Honda Fin. Corp.
Subject to availability.
Advertised rate based on
36-month closed-end lease for
the 1994 Accord LX Sedan with
MSRP of \$18,330.00 with a dealer
capitalized cost reduction of
\$795.35 (\$965.35 in IL, IN, KS,
ME, NY, OK, and UT where no
security deposit is required);
condition of dealer
participation may affect actual
rate. Taxes, title, license,
and

[Second screen]:
registration, insurance and optional
equipment, and services not included.
Due at lease signing are \$1,500.00
down-payment, first lease payment,
refundable deposit equal to one
payment rounded to the next
highest \$25.00 increment where
applicable. title license and
registration fees and taxes
applicable. Total monthly

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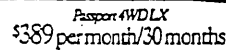
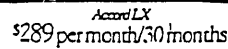
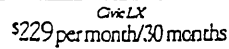
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EXHIBIT B

payment is \$8,604.00 (plus tax, as applicable). Option to purchase at end of lease for \$10,061.50 plus tax and official fees, except in MS, NY, and

[Third screen]:
SD where no option available. Lessee pays maintenance, insurance, repairs, service, any and all related taxes, registration renewals, and excessive wear and use. Mileage charge of \$.15/mile over 15,000 miles per year. A disposition fee up to \$400.00 is due if vehicle not purchased at end of lease term. MSRP, dealer capital cost reduction, and option-to-purchase price differ in AK, CA and HI. See participating Honda dealers for details.

Introducing Zip, Zero, Nada.



Now for a limited time, you can get an affordable, short-term lease on a fully equipped Honda for size (as in tips, as in nautical dollars down).

— Lease the practical, reliable Civic LX, for example, and discover how far your money will take you in an automobile. (At all times, remember windows and tires must have crisscross, quarter-deck check and double

in-trim suspension all come standard. Or lease the luxurious, fully equipped Accord LX.

The car has an automatic transmission, air conditioning and much more and happens that you'll know what we're talking about. It's the kind of thing that has been selling up in America among middle-class buyers.

(It's the kind of thing that makes them have only

your own way in life, but even makes your own road, because the rugged, 175-horsepower Honda Passport 4-wheel drive LX.

You'll better buy, however, because this zero down lease offer is only available for a limited time.

And if you wait too long, this time and date is what you may end up with.

Leadership Leasing™  At your Honda dealer.

1. 1970-1971 - 1972 - 1973 - 1974 - 1975 - 1976 - 1977 - 1978 - 1979 - 1980 - 1981 - 1982 - 1983 - 1984 - 1985 - 1986 - 1987 - 1988 - 1989 - 1990 - 1991 - 1992 - 1993 - 1994 - 1995 - 1996 - 1997 - 1998 - 1999 - 2000 - 2001 - 2002 - 2003 - 2004 - 2005 - 2006 - 2007 - 2008 - 2009 - 2010 - 2011 - 2012 - 2013 - 2014 - 2015 - 2016 - 2017 - 2018 - 2019 - 2020 - 2021 - 2022 - 2023 - 2024 - 2025 - 2026 - 2027 - 2028 - 2029 - 2030 - 2031 - 2032 - 2033 - 2034 - 2035 - 2036 - 2037 - 2038 - 2039 - 2040 - 2041 - 2042 - 2043 - 2044 - 2045 - 2046 - 2047 - 2048 - 2049 - 2050 - 2051 - 2052 - 2053 - 2054 - 2055 - 2056 - 2057 - 2058 - 2059 - 2060 - 2061 - 2062 - 2063 - 2064 - 2065 - 2066 - 2067 - 2068 - 2069 - 2070 - 2071 - 2072 - 2073 - 2074 - 2075 - 2076 - 2077 - 2078 - 2079 - 2080 - 2081 - 2082 - 2083 - 2084 - 2085 - 2086 - 2087 - 2088 - 2089 - 2090 - 2091 - 2092 - 2093 - 2094 - 2095 - 2096 - 2097 - 2098 - 2099 - 2100 - 2101 - 2102 - 2103 - 2104 - 2105 - 2106 - 2107 - 2108 - 2109 - 2110 - 2111 - 2112 - 2113 - 2114 - 2115 - 2116 - 2117 - 2118 - 2119 - 2120 - 2121 - 2122 - 2123 - 2124 - 2125 - 2126 - 2127 - 2128 - 2129 - 2130 - 2131 - 2132 - 2133 - 2134 - 2135 - 2136 - 2137 - 2138 - 2139 - 2140 - 2141 - 2142 - 2143 - 2144 - 2145 - 2146 - 2147 - 2148 - 2149 - 2150 - 2151 - 2152 - 2153 - 2154 - 2155 - 2156 - 2157 - 2158 - 2159 - 2160 - 2161 - 2162 - 2163 - 2164 - 2165 - 2166 - 2167 - 2168 - 2169 - 2170 - 2171 - 2172 - 2173 - 2174 - 2175 - 2176 - 2177 - 2178 - 2179 - 2180 - 2181 - 2182 - 2183 - 2184 - 2185 - 2186 - 2187 - 2188 - 2189 - 2190 - 2191 - 2192 - 2193 - 2194 - 2195 - 2196 - 2197 - 2198 - 2199 - 2200 - 2201 - 2202 - 2203 - 2204 - 2205 - 2206 - 2207 - 2208 - 2209 - 2210 - 2211 - 2212 - 2213 - 2214 - 2215 - 2216 - 2217 - 2218 - 2219 - 2220 - 2221 - 2222 - 2223 - 2224 - 2225 - 2226 - 2227 - 2228 - 2229 - 2230 - 2231 - 2232 - 2233 - 2234 - 2235 - 2236 - 2237 - 2238 - 2239 - 2240 - 2241 - 2242 - 2243 - 2244 - 2245 - 2246 - 2247 - 2248 - 2249 - 2250 - 2251 - 2252 - 2253 - 2254 - 2255 - 2256 - 2257 - 2258 - 2259 - 2260 - 2261 - 2262 - 2263 - 2264 - 2265 - 2266 - 2267 - 2268 - 2269 - 2270 - 2271 - 2272 - 2273 - 2274 - 2275 - 2276 - 2277 - 2278 - 2279 - 2280 - 2281 - 2282 - 2283 - 2284 - 2285 - 2286 - 2287 - 2288 - 2289 - 2290 - 2291 - 2292 - 2293 - 2294 - 2295 - 2296 - 2297 - 2298 - 2299 - 2300 - 2301 - 2302 - 2303 - 2304 - 2305 - 2306 - 2307 - 2308 - 2309 - 2310 - 2311 - 2312 - 2313 - 2314 - 2315 - 2316 - 2317 - 2318 - 2319 - 2320 - 2321 - 2322 - 2323 - 2324 - 2325 - 2326 - 2327 - 2328 - 2329 - 2330 - 2331 - 2332 - 2333 - 2334 - 2335 - 2336 - 2337 - 2338 - 2339 - 2340 - 2341 -

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 Rubin Postaer and Associates, Inc. is a California corporation with its principal office or place of business located at 1333 Second Street, Santa Monica, California.

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 signing or delivery*" 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. The total amount due at lease signing or delivery may 1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

3. Unless otherwise specified, "*respondent*" as used herein shall mean Rubin Postaer and Associates, Inc., its successors and assigns, and its officers, agents, representatives, and employees.

4. "*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 involving motor vehicles 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) and 62 Fed. Reg. 15,364 (April 1, 1997)(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 signing or delivery, 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 signing or delivery 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 signing or delivery.

C. State the amount of any payment or that any or no initial payment is required at lease signing or delivery 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 signing or delivery;
3. Whether or not 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, 3009-473 (Sept. 30, 1996) ("revised CLA"), as amended, and Section 213.7(d)(2) of revised Regulation M, 61 Fed. Reg. at 52,261 and 62 Fed. Reg. at 15,368 (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 signing or delivery") 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 Rubin Postaer and Associates, Inc., 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.

V.

It is further ordered, That respondent Rubin Postaer and Associates, Inc., and its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, distribute a copy of this order to all current principals, officers,

directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease advertising; and

B. For a period of ten (10) years from the date of service of this order, distribute a copy of this order to all future principals, officers, directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease advertising, within thirty (30) days after the person or entity assumes such position or responsibilities.

VI.

It is further ordered, That respondent Rubin Postaer and Associates, 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 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.

VII.

It is further ordered, That respondent Rubin Postaer and Associates, Inc., 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.

VIII.

This order will terminate on April 6, 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 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.

Commissioner Thompson and Commissioner Swindle not participating.

IN THE MATTER OF

SENSORMATIC ELECTRONICS CORPORATION

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

Docket C-3795. Complaint, April 6, 1998--Decision, April 6, 1998

This consent order prohibits, among other things, the Florida-based manufacturer of electronic article surveillance equipment from entering into any agreement that prohibits, restricts, impedes, interferes with, restrains, places limitations on, or advises against engaging in truthful, non-deceptive advertising, comparative advertising or promotional and sales activities. In addition, the consent order nullifies the agreement, between Sensormatic Electronics Corporation and Checkpoint Systems, Inc., to restrict advertising and promotional claims about each other's products or services.

Appearances

For the Commission: *William Lanning, Michael McNeely and William Baer.*

For the respondent: *Randy Smith, Crowell & Moring, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated and are violating the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sensormatic Electronics Corporation (hereinafter "Sensormatic"), a manufacturer of electronic article surveillance (hereinafter "EAS") equipment, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 951 Yamato Road, Boca Raton, Florida.

PAR. 2. Respondent Checkpoint Systems, Inc. (hereinafter "Checkpoint"), a manufacturer of EAS equipment, is a corporation organized, existing, and doing business under and by virtue of the