

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

BOZELL WORLDWIDE, INC.

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

Docket C-3845. Complaint, Jan. 4, 1999--Decision, Jan. 4, 1999

This consent order, among other things, prohibits Bozell Worldwide, Inc., the national advertising agency for Chrysler Corporation, from disseminating deceptive lease and/or credit advertising and requires the disclosure of cost information in advertisements mandated by the Consumer Leasing Act.

Participants

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

For the respondent: *Merton Simons, Southfield, MI.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Bozell Worldwide, Inc., a corporation ("respondent" or "Bozell"), 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 Bozell Worldwide, Inc. is a Delaware corporation with its principal office or place of business at 40 West 23rd Street, New York, New York.

2. Respondent, at all times relevant to this complaint, has provided advertising services to Chrysler Corporation ("Chrysler") and to dealer marketing groups that promote Chrysler and Jeep vehicles ("Chrysler vehicles"). 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. 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 prepared and disseminated consumer lease advertisements ("lease advertisements") for Chrysler vehicles, including but not necessarily limited to the attached Bozell Exhibit A. Bozell Exhibit A is a television lease advertisement (attached in video and storyboard format). The advertisement contains the following statements:

A. [Video:][Footage of two cars, exterior and interior shots]

"Sebring JX Convertible
\$299/mo. 30 mos."

[The advertisement contains the following disclosure at the bottom of the screen in white fine print superimposed on a black background for approximately 3 seconds:

"\$1,619 Due at signing (plus tax, title & license) Limited model shown, higher. Call 1-888-CHRYSLER for lease example details."

[Audio:] "Some decisions are harder than others. The Chrysler Sebring LXI Coupe or the Sebring Limited Convertible. For the passionate side. Fully independent suspension, speed sensitive steering, multi-valve V6, and a luxurious leather-trimmed interior. The practical side -- lease the convertible for just two ninety-nine a month and on the coupe get one thousand cash back and luxurious leather at no extra charge. Some decisions are easier than others. Chrysler -- engineered to be great cars."

[Super:] "\$1000 Cash Back
Chrysler Sebring Coupe"
[Chrysler logo]

ENGINEERED TO BE GREAT CARS" (Bozell Exhibit A).

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT I: FAILURE TO DISCLOSE ADEQUATELY IN LEASE ADVERTISING

5. In lease advertisements, including but not necessarily limited to Bozell Exhibit A, 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. These advertisements do not adequately disclose additional terms pertaining to the lease offer, such as the total amount of any payments due at

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Complaint

lease inception. The existence of these additional terms would be material to consumers in deciding whether to lease a Chrysler vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

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

7. 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: MISREPRESENTATION OF MODEL AVAILABILITY

8. In lease advertisements, including but not necessarily limited to Bozell Exhibit A, respondent has represented, expressly or by implication, that consumers can lease the Chrysler vehicles featured in respondent's advertisements at the lease terms prominently stated in the advertisements.

9. In truth and in fact, consumers cannot lease the Chrysler vehicles featured in the advertisements at the terms prominently stated in the advertisements. The prominently stated lease terms in respondent's advertisements apply to Chrysler models of lesser value than the Chrysler vehicles featured in the advertisements. The fine print disclosures in respondent's lease advertisements, including but not necessarily limited to "Limited model shown, higher" in Bozell Exhibit A, are inadequate to disclaim or modify the representation as alleged in paragraph eight. Therefore, respondent's representation as alleged in paragraph eight, was, and is, false or misleading.

10. Respondent knew or should have known that the representation set forth in paragraph eight was, and is, false and misleading.

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 Bozell Exhibit A, state a monthly payment amount but fail to disclose clearly and conspicuously certain additional terms required by the Consumer Leasing Act and

Regulation M, including one or more of the following terms: that the transaction advertised is a lease; the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation, and that such amount: 1) excludes third-party fees, such as taxes, licenses, and registration fees, and discloses that fact or 2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality are disclosed; whether or not a security deposit is required; and the number, amount, and timing of scheduled payments.

13. The lease disclosures in respondent's television lease advertisements, including but not necessarily limited to Bozell Exhibit A, are not clear and conspicuous because they appear on the screen in very small type, for a very short duration, and/or accompanied by background sounds and images.

14. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, as amended, and Section 213.7 of Regulation M, 12 CFR 213.7, as amended.

BOZELL EXHIBIT A

[Audio:] "Some decisions are harder than others. The Chrysler Sebring LXI Coupe or the Sebring Limited Convertible. For the passionate side. Fully independent suspension, speed sensitive steering, multi-valve V6, and a luxurious leather-trimmed interior. The practical side -- lease the convertible for just two ninety-nine a month and on the coupe get a thousand cash back and luxurious leather at no extra charge. Some decisions are easier than others. Chrysler -- engineered to be great cars."

[Video:] [Footage of two cars, exterior and interior shots]

[Super: white letters on black background]

"Sebring JX Convertible
\$299/mo. 30 mos."

[The advertisement contains the following disclosure at the bottom of the screen in white fine print superimposed on a black background for approximately 3 seconds:

"\$1,619 Due at signing (plus tax, title & license) Limited model shown, higher. Call 1-888-CHRYSLER for lease example details."]

[Footage of two cars]

[Super:]

"\$1000 Cash Back
Chrysler Sebring Coupe"
"CHRYSLER
[Chrysler logo]

ENGINEERED TO BE GREAT CARS"

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 Bozell Worldwide, Inc. is a Delaware corporation with its principal office or place of business at 40 West 23rd Street, New York, New York.

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, as required by Regulation M, 12 CFR 213, as amended. 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 such fees may vary by state or locality are disclosed. (Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

3. Unless otherwise specified, "*respondent*" as used herein shall mean Bozell Worldwide, 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 Regulation M, 12 CFR 213.2, as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the vehicle model(s) available to consumers in connection with any advertised lease offer;

B. 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);

C. 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;

D. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows:

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.

(Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667c(a), as amended, and Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

For radio advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. 1667c(C), and Section 213.7(f) of Regulation M, 12 CFR 213.7(f), as amended. For television advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

II.

It is further ordered, That respondent Bozell Worldwide, 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.

III.

It is further ordered, That respondent Bozell Worldwide, 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.

IV.

It is further ordered, That respondent Bozell Worldwide, 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.

V.

It is further ordered, That respondent Bozell Worldwide, 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.

VI.

This order will terminate on January 4, 2019, 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.

IN THE MATTER OF
MARTIN ADVERTISING, INC.

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

Docket C-3846. Complaint, Jan. 4, 1999--Decision, Jan. 4, 1999

This consent order, among other things, prohibits Martin Advertising, Inc., a regional advertising agency for General Motors' dealerships and associations, from disseminating deceptive lease and/or credit advertising and requires the disclosure of cost information in advertisements mandated by the Consumer Leasing Act and/or the Truth in Lending Act.

Participants

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

For the respondent: *Jonathan Waller, Campbell & Waller, Birmingham, AL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Martin Advertising, Inc., a corporation ("respondent" or "Martin"), has 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 Martin Advertising, Inc. is a Delaware corporation with its principal office or place of business at 2801 University Boulevard, Suite 200, Birmingham, Alabama.

2. Respondent, at all times relevant to this complaint, has provided advertising services to automobile dealers and dealer marketing groups, including but not limited to dealer marketing groups that promote General Motors Corporation ("GM") vehicles. Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and