

Complaint

IN THE MATTER OF

**SIMMONS ROCKWELL FORD MERCURY, INC.,
ET AL.**

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

Docket C-3950; File No. 9923247

Complaint, June 6, 2000--Decision, June 6, 2000

This consent order prohibits Respondent Simmons Rockwell Ford Mercury, Inc., in any lease advertisement, from making 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, unless the advertisement also states with "equal prominence" the total amount due at lease signing or delivery. The order also prohibits Respondent, in any lease, from stating the amount of any payment or that any or no initial payment is required at lease signing or delivery, unless the advertisement also states, clearly and conspicuously, all of the terms required by Regulation M, as amended and 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, amounts, 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. The order further enjoins Respondent, in any credit advertisement, from 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 disclosing, 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" or stating a rate of finance charge unless respondents state the rate as an "annual percentage rate" or the abbreviation "APR," using that term. All disclosure required in advertising must be made clearly and conspicuously in all forms of advertising in all forms of media.

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Participants

For the Commission: *Carole Reynolds, Michelle Chua, Jessica Rich, David Medine, and BE.*

For the Respondents: *Jeffrey M. Fetter, Scolaro, Schulman, Cohen, Lawler, & Burstein, P.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., corporations, and Donald M. Simmons, II and Richard L. Rockwell, individually and as officers of the corporations, ("respondents") 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. §§ 1667-1667f, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, and the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Simmons Rockwell Ford Mercury, Inc. is a New York corporation with its principal office or place of business at 105 Seneca Street, Hornell, New York 14843. Respondent offers automobiles for sale or lease to consumers.
2. Respondent Simmons Rockwell Autoplaza, Inc. is a New York corporation with its principal office or place of business at 784 County Route 64, Elmira, New York 14903. Respondent offers automobiles for sale or lease to consumers.
3. Respondent Don Simmons, Inc. is a Pennsylvania corporation with its principal office or place of business at 300 North Elmira Street, Sayre, Pennsylvania 18840, and 7327 Hammondsport Road, Bath, New York 14810. Respondent offers automobiles for

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sale or lease to consumers.

4. Respondent Donald M. Simmons, II is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, controls, and participates in the policies, acts, or practices of the corporations, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondents.

5. Respondent Richard L. Rockwell is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, controls, and participates in the policies, acts, or practices of the corporations, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondents.

6. 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 C.F.R. § 213.2, as amended.

5. 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 C.F.R. § 226.2, as amended.

6. 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.

7. Respondents have disseminated or have caused to be disseminated consumer lease and/or credit advertisements ("lease and/or credit advertisements") for automobiles, including but not

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necessarily limited to the attached Simmons Rockwell Exhibits A and B. Simmons Rockwell Exhibit A is an electronic advertisement. Simmons Rockwell Exhibit B is a print advertisement. These lease and/or credit advertisements contain the following statements:

A.

[Simmons Rockwell Exhibit A states several lease offers, including:]

**'99 SUBARU LEGACY
OUTBACK WAGON AWD**

* * *

**You Pay or Lease For
\$22,399 \$289*/mo.**

[A fine print, illegible disclosure near the bottom of the advertisement states: "* 36 month lease . . . \$1,000 down payment, 1st month payment, security deposit, acquisition, tax, and license fees due at delivery . . . *"]

* * *

**"'99 FORD RANGER 4 DR.
EXT. CAB XLT 4X4 FLARESIDE**

**You pay or . . . Lease for
\$19,999* \$325*/mo."**

[A fine print, illegible disclosure near the bottom of the advertisement states: "*36 month lease, \$1,000 cash or trade equity, 1st mo. security dep., acquisition fee, tax and license due at delivery . . . "]

(Simmons Rockwell Exhibit A)

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B.

[Simmons Rockwell Exhibit B contains the following lease and credit offer:]

**"99 FORD RANGER 4 DR.
EXT. CAB XLT 4X4 FLARESIDE**

...

**2.9%
APR up to
48 mo.**

YOU PAY	OR	LEASE FOR
\$18,999*		\$209*/MO."

[A fine print disclosure near the bottom of the advertisement states: "* 48 month lease, \$1,000 cash or trade equity, 1st mo. security dep., acquisition fee, tax and license due at delivery . . ."]

(Simmons Rockwell Exhibit B)

FEDERAL TRADE COMMISSION ACT VIOLATIONS

**COUNT I: Failure to Disclose, and/or Failure to
Disclose Adequately, Lease Terms**

10. In lease advertisements, including but not necessarily limited to Simmons Rockwell Exhibits A and B, respondents have represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the

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advertisements, including but not necessarily limited to the monthly payment amount.

11. These lease advertisements have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees, such as taxes, licenses and registration fees, are required as part of the total amount due at lease inception. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. The failure to disclose, and/or failure to disclose adequately, these additional terms, in light of the representation made, was, and is, a deceptive practice.

12. 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 II: Failure to Disclose, and/or Failure to Disclose
Clearly and Conspicuously, Required Lease Information**

13. Respondents' lease advertisements, including but not necessarily limited to Simmons Rockwell Exhibits A and B, state the monthly payment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, certain additional terms required by the Consumer Leasing Act and Regulation M, as amended, including one or more of the following terms:

- a. that the transaction advertised is a lease;
- b. the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation. This total amount may: (1) exclude third-party fees that vary by state or locality, such as taxes, licenses and registration fees,

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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;

- c. whether or not a security deposit is required;
- d. the number, amounts, and timing of scheduled payments; and
- e. that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

14. The lease disclosures required by Regulation M, if provided, are not clear and conspicuous because they appear in fine print and/or are illegible.

15. Respondents' practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.

TRUTH IN LENDING ACT AND REGULATION Z VIOLATIONS

COUNT III: Failure to Disclose, and/or Failure to Disclose Clearly and Conspicuously, Required Credit Information

16. In credit advertisements, including but not necessarily limited to Simmons Rockwell Exhibit B, respondents have stated the number of payments required to finance the transaction and an annual percentage rate (expressed as an "APR"), but have failed to disclose, and/or have failed to disclose clearly and conspicuously, certain additional terms required by the Truth in Lending Act and

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Regulation Z, including the amount of the downpayment and the full terms of repayment, such as the amount of the monthly payment.

17. The credit disclosures required by Regulation Z, if provided, are not clear and conspicuous because they appear in blurred print.

18. Respondents' practices have violated Section 144 of the TILA, 15 U.S.C. §§ 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. §§ 226.24(c), as amended.

THEREFORE, the Federal Trade Commission this sixth day of June, 2000, has issued this complaint against Respondents.

By the Commission.

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 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 Consumer Leasing Act, 15 U.S.C. § 1667 et seq., and its implementing Regulation M, 12 C.F.R. § 213, the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and its implementing Regulation Z, 12 C.F.R. § 226, and the Federal Trade Commission Act, 15 U.S.C. § 45 et seq.; and

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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 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, 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.

The Commission having thereafter considered the matter and having determined that it has 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 thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdiction findings and enters the following order:

1. Respondent Simmons Rockwell Ford Mercury, Inc. is a New York corporation with its principal office or place of business at 105 Seneca Street, Hornell, New York 14843.
2. Respondent Simmons Rockwell Autoplaza, Inc. is a New York corporation with its principal office or place of business at 784 County Route 64, Elmira, New York 14903.
3. Respondent Don Simmons, Inc. is a Pennsylvania corporation with its principal office or place of business at 300 North Elmira Street, Sayre, Pennsylvania 18840 and 7327 Hammondsport Road, Bath, New York 14810.

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4. Respondent Donald M. Simmons, II is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations. His principal office or place of business is the same as those of the corporate respondents.
5. Respondent Richard L. Rockwell is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations. His principal office or place of business is the same as those of the corporate respondents.
6. 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, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it.
 - b. In a print advertisement, a disclosure shall be in a type size and location sufficient for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

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The disclosure shall be in understandable language and syntax. 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, video, radio, or Internet or other electronic advertisement, a video disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. An 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, a disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.

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

3. "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 C.F.R. § 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 C.F.R. § 213.7, as amended.)

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4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. Unless otherwise specified, "respondents" shall mean Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., corporations, their successors and assigns and their officers; Donald M. Simmons, II, and Richard L. Rockwell, individually and as officers of the corporations; 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 C.F.R. § 213.2, as amended, shall not, in any manner, expressly or by implication:

- A. Misrepresent, in any manner, directly or by implication, the costs or terms of leasing a vehicle, including but not limited to the total amount due at lease signing or delivery.
- 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, unless the advertisement also states with equal prominence 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, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as amended, as follows:
 1. that the transaction advertised is a lease;

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2. the total amount due at lease signing or delivery;
3. whether or not a security deposit is required;
4. the number, amounts, 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 C.F.R. § 213.7, as amended.)

For radio advertisements, respondents 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 C.F.R. § 213.7(f), as amended. For television advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

- B. Fail to comply in any other respect with Regulation M, 12 C.F.R. § 213, as amended, and the CLA, 15 U.S.C. §§ 1667-1667f, 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

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commerce, as "advertisement" and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R.

§ 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 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(d) of the TILA, 15 U.S.C. §1664(d), as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended.)

- B. State a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term.

(Section 144(c) of the TILA, 15 U.S.C. § 1664(c), as amended, and Section 226.24(b) of Regulation Z, 12 C.F.R. § 226.24(b), as amended.)

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

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III.

IT IS FURTHER ORDERED that respondents Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., and each of their successors and assigns, and respondents Donald M. Simmons, II and Richard L. Rockwell, 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 respondents Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., and each of their successors and assigns, and respondents Donald M. Simmons, II and Richard L. Rockwell, 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 respondents Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., and each of their successors and assigns, shall notify the Commission at least thirty (30) days prior

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to any change in the corporations 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 respondents learn less than thirty (30) days prior to the date such action is to take place, respondents 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. 20580.

VI.

IT IS FURTHER ORDERED that respondents Donald M. Simmons, II and Richard L. Rockwell, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of each of their current business or employment, or of their 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, as amended, 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 respondents' new business address and telephone number and a description of the nature of the business or employment and each of their 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. 20580.

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VII.

IT IS FURTHER ORDERED that respondents Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., and each of their successors and assigns, and respondents Donald M. Simmons, II and Richard L. Rockwell, 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 June 6, 2020, 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

Analysis to Aid Public Comment

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.

By the Commission.

Analysis of Proposed Consent Orders to Aid Public Comment

Summary: The Federal Trade Commission has accepted separate agreements, subject to final approval, to proposed consent orders from respondents: 1) R.N. Motors, Inc., Red Noland Cadillac, Inc., and Nelson B. Noland ("Red Noland"); and 2) Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., Don Simmons, Inc., and Donald M. Simmons, II and Richard L. Rockwell ("Simmons Rockwell"). The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Red Noland and Simmons Rockwell complaints allege that these respondents disseminated automobile lease advertisements that violate the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. The Simmons Rockwell complaint also alleges that it disseminated automobile credit advertisements that violate the Truth in Lending Act ("TILA") and Regulation Z.

Analysis to Aid Public Comment

Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board to promulgate regulations implementing such statutes -- Regulations M and Z respectively. See 15 U.S.C. §1667 et seq; 15 U.S.C. § 1601 et seq; 12 C.F.R. § 213; 12 C.F.R. § 226.

I. The Complaints

A. FTC Act Violations

The Red Noland complaint alleges that, based on the terms prominently stated in their lease advertisements, including but not necessarily limited to the monthly payment amount, the downpayment, and the security deposit, respondent failed to disclose, and failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees such as taxes, licenses, and registration fees are required as part of the total amount due at lease inception. The Simmons Rockwell complaint alleges that, based on the terms prominently stated in their lease advertisements, including but not necessarily limited to the monthly payment amount, respondent failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees, such as taxes, licenses, and registration fees, are required as part of the total amount due at lease inception. The Red Noland and Simmons Rockwell complaints allege that the required information does not appear at all or appears in fine print and/or is illegible in the advertisements and that this information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from

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respondents. These practices, according to both complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

The Red Noland and Simmons Rockwell complaints also allege that respondents' lease advertisements have violated the CLA and Regulation M. The Red Noland complaint alleges that respondent's ads state the monthly payment amount, the downpayment, and the security deposit; the Simmons Rockwell complaint alleges that respondent's ads state the monthly payment amount -- all "triggering" terms under these laws. The Red Noland and Simmons Rockwell complaints allege that respondents failed to disclose, and/or fail to disclose clearly and conspicuously, certain additional "triggered" terms, as applicable and as follows: 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; whether or not a security deposit is required; and the number, amounts, and timing of scheduled payments.

According to the complaints, Red Noland's lease disclosures are omitted altogether and are not clear and conspicuous. Simmons Rockwell's lease disclosures, if provided, are not clear and conspicuous because they appear in fine print and/or are illegible.

The Red Noland and Simmons Rockwell complaints, therefore, allege that these practices violate Section 184 of the CLA, 15 U.S.C. § 1667c, as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.

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In addition, the Red Noland complaint alleges that respondent's lease advertisements state specific lease rates for each of certain advertised vehicles, but fail to disclose, and fail to disclose clearly and conspicuously, the following notice concerning lease rates required by Regulation M: "This percentage may not measure the overall cost of financing this lease."

The Red Noland complaint, therefore, alleges that this practice violates Section 213.4(s) of Regulation M, 12 C.F.R. § 213.4(s).

C. TILA and Regulation Z Violations

The Simmons Rockwell complaint alleges that respondent's credit advertisements have violated the TILA and Regulation Z. It alleges that respondent's credit ads state the number of payments required to finance the transaction and an annual percentage rate (expressed as an "APR"), but failed to disclose, and/or failed to disclose clearly and conspicuously, certain additional terms required by Regulation Z, including the amount of the downpayment and the full terms of repayment, such as the amount of the monthly payment.

According to the complaint, Simmons Rockwell's credit disclosures, if provided, are not clear and conspicuous because they appear in blurred print.

The Simmons Rockwell complaint, therefore, alleges that these practices violate Section 144 of the TILA, 15 U.S.C. § 1664, as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended.

II. Proposed Consent Orders

The Red Noland and Simmons Rockwell proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, Paragraph I.A. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease advertisement, from misrepresenting, in any manner, directly or by implication, the costs or terms of leasing a vehicle, including but not limited to the total amount due at lease signing or delivery.

Paragraph I.B. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease advertisement, from making 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, unless the advertisement also states with "equal prominence" the total amount due at lease signing or delivery. The "prominence" requirement prohibits respondents from running deceptive advertisements that highlight low amounts due at lease inception with inadequate disclosure of the actual total lease inception fees. This "prominence" requirement for lease inception fees is also found in Regulation M.

Paragraph I.C. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease, from stating the amount of any payment or that any or no initial payment is required at lease signing or delivery, unless the advertisement also states, clearly and conspicuously, all of the terms required by Regulation M, as amended and 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, amounts, 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.

Analysis to Aid Public Comment

Furthermore, Paragraph I.D. of the Red Noland proposed order prohibits this respondent from stating a percentage rate in an advertisement or in documents evidencing the lease transaction, unless respondent also states the notice required by Regulation M that "this percentage may not measure the overall cost of financing this lease."

Paragraph I.D. of the Simmons Rockwell proposed order, and paragraph I.E. of the Red Noland proposed order, prohibit respondents from engaging in any other violation of Regulation M, as amended.

In addition, Paragraph II. A. of the Simmons Rockwell proposed order enjoins respondent, in any credit advertisement, from 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 disclosing, 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. Paragraph II.B. of this proposed order also prohibits Simmons Rockwell from stating a rate of finance charge unless respondents state the rate as an "annual percentage rate" or the abbreviation "APR," using that term. Paragraph III.C. of this proposed order also enjoins Simmons Rockwell from engaging in any other violation of Regulation Z, as amended.

The information required by Paragraph I of the Red Noland proposed order (lease advertisements), and Paragraphs I and II of the Simmons Rockwell proposed order (lease and credit advertisements), must be disclosed "clearly and conspicuously." Both proposed orders define the term "clearly and conspicuously"

Analysis to Aid Public Comment

for Red Noland's and Simmons Rockwell's advertisements in all media. In a television, video, radio or Internet or other electronic advertisement, the required disclosures made in the audio portion of the advertisement must be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend. The required disclosures in the video portion of the advertisement must be of a size and shade, and must appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend. In a print advertisement, the required disclosures must be in a type size and location sufficient for an ordinary consumer to read and comprehend, in print that contrasts with the background against which it appears. Additionally, the required disclosures must be in understandable language and syntax. Further, nothing contrary to, inconsistent with, or in mitigation of the required disclosures shall be used in any advertisement.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Complaint

IN THE MATTER OF

MICHAEL G. CHRISMAN, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3951; File No. 0023113
Complaint, June 7, 2000--Decision, June 7, 2000*

This consent order requires Respondents Michael G. Chrisman and Michelle R. Chrisman individually and doing business as DayTrading International to have a reasonable basis substantiating any representation about the percentage, ratio, or number of trades that a user of any trading program could reasonably expect to be profitable; the amount of earnings, income, or profit that a user of any trading program could reasonably expect to attain; the rate of return that a user of any trading program could reasonably expect to attain or the length of time over which such a rate of return could reasonably be expected; or the past performance of a trading program, or claims about any financial benefit or other benefit from any trading program. The order also prohibits Respondents from misrepresenting that since January 1996, respondents' "Daily Picks Newsletter" program has returned an average of 167 percent annually or that during 1996 and 1997, respondents' "Hot Small Caps Newsletter" program returned an average annual return of 214 percent, or that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed. In addition, the order requires Respondent to disclose, clearly and conspicuously, "DAY TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation he makes about the financial benefits of any trading program.

Participants

For the Commission: *Michael Ostheimer, C. Lee Peeler, and BE.*

For the Respondents: *Lora A. Brzezynski, McKenna & Cuneo, L.L.P.*