

Complaint

IN THE MATTER OF

DISCOUNT AUTO MART, INC., TRADING AS DON ALLEN
MOTORS, ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7909. Complaint, June 3, 1960—Decision, Dec. 22, 1960

Consent order requiring Wash., D.C., used car dealers to cease advertising falsely that they sold used cars "For \$1 Down", for "No Money Down", when purchasers were frequently required to contract for small loans to meet down payment requirements in addition to installment financing of the balance; that they offered bank rate financing; that low financing plans were offered to military personnel and government workers; that terms as low as \$12.95 per month were available; that cars were guaranteed 100% as to parts and labor, when in fact they were mostly sold "as is", with no guarantee; and that they financed their used car sales, when they actually relied on others, including small loan companies, for financing.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Discount Auto Mart, Inc., a corporation trading as Don Allen Motors, and Sylvan Herman, individually and as an officer of said corporation, and Joseph Zola, individually, hereinafter referred to as respondents, have violated the provisions of said Act, 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 Discount Auto Mart, Inc., is a corporation organized and existing under and by virtue of the laws of the District of Columbia. Its office and principal place of business is located at 1200 K Street, N.W., Washington, D.C. Said corporation trades under the name of Don Allen Motors.

Respondent Sylvan Herman is an officer of the respondent corporation. He formulates, directs and controls the acts and practices of the corporate respondent, as hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondent Joseph Zola is the credit manager of the corporate respondent and he participates in the acts and practices of said respondent, as hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia. Their volume of business is substantial.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of their used automobiles, respondents have made certain statements in newspapers published in the District of Columbia. Typical, but not all inclusive, of said statements are the following:

These Five Repossessions Will Go For \$1 Down Today!
No Money Down on Approved Credit
Low Bank Rates
Special Low Financing for Military & Gov't Workers
Take Over With Payments 12.95 Per Month
Guaranteed 100% Parts-Labor For One Full Year At No Extra Cost to You

PAR. 4. Through the use of the aforesaid statements the respondents represent that:

- (a) They sell used cars on credit with little or no down payments.
- (b) They offer bank rate financing.
- (c) Special low financing plans are offered to military personnel and government workers.
- (d) Terms as low as \$12.95 per months are available to purchasers.
- (e) Cars are guaranteed 100% as to parts and labor for one full year at no extra cost.

PAR. 5. Said statements and representations are false, misleading and deceptive. In truth and in fact:

(a) Respondents do not sell cars without a down payment. When a minimum sum, such as one dollar, is accepted by the respondents in connection with a car order or bill of sale, it is not, in fact, a down payment but is received for the purpose of providing a consideration for a contract of purchase. Frequently, purchasers of respondents' used cars are required to contract for small loans, mostly with sources outside the District of Columbia, in order to meet respondents' down payment requirements, which are described as "pick-up payments," and in addition to installment financing of the balance. The represented low monthly payments do not include said small loan charges.

(b) Bank rate financing is not offered by the respondents with respect to sales of used cars.

(c) Respondents have no special low rate financing plans for the benefit of military personnel and government workers.

(d) Used cars have seldom, if ever, been sold on terms as low as \$12.95 per month.

(e) Respondents, in most instances, sell their used cars "as is" and no guarantee or warranty is given. In fact a provision is incorporated in each car order and bill of sale to such effect. In those cases where a purported guarantee or warranty is made, it is limited in nature, which limitations are not fully disclosed and, an additional charge is made for its inclusion in the sale of a used car.

PAR. 6. In connection with the sale of their used cars, the respondents represent, and have represented, that the corporate respondent, Discount Auto Mart, Inc., finances such transactions, whereas, in fact, it relies on others, including small loan companies, for such financing.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of used automobiles.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of a substantial number of respondents' used automobiles by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Ames W. Williams and *Mr. Michael P. Hughes* for the Commission.

Mr. Murray Kivitz, of Washington, D.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia, with the use of false, misleading and deceptive statements, representations and practices in connection with the advertising and sale of their used cars, in violation of the Federal Trade Commission Act.

After the issuance of the complaint, a deposition was taken which indicates that the deponent, individual respondent Joseph Zola, was not responsible for and did not participate in the formation and direction of corporation policy respecting the acts and practices set forth in the complaint. Thereafter the remaining respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, the deposition of respondent Joseph Zola being attached to and incorporated in said agreement, which was subsequently approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and transmitted to the Hearing Examiner for consideration.

All parties to the agreement assent to the dismissal of the charges as to Joseph Zola, individually.

The agreement states that respondent Discount Auto Mart, Inc., trading as Don Allen Motors, is a corporation existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1200 K Street, N.W., Washington, D.C., and that respondent Sylvan Herman is an officer of the respondent corporation and formulates, directs and controls the acts and practices of the corporate respondent, his business address being the same as that of the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Discount Auto Mart, Inc., a corporation, trading as Don Allen Motors or under any other name, and its officers, and Sylvan Herman, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of used automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Used automobiles can be purchased with no money down or for a down payment in any amount not in accordance with the fact;
2. They offer or make available bank rate financing or misrepresenting in any manner the financing rates under which used automobiles are sold;
3. They offer special low financing for military or Government workers, or misrepresenting in any manner the nature of the financing offered to such persons;
4. Terms as low as \$12.95 or any other amount per month or for any other period are available to purchasers, unless such is the fact;
5. Used automobiles are guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly disclosed and if a charge is made for the guarantee, such fact and the amount of the service charge is clearly disclosed;
6. Used automobiles are guaranteed when, in fact, no guarantee is given to the purchaser;
7. Respondents finance the retail sales of used automobiles.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Joseph Zola.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22nd day of December, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Discount Auto Mart, Inc., trading as Don Allen Motors, and Sylvan Herman, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Complaint

57 F.T.C.

IN THE MATTER OF

SPAULDING INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 7966. Complaint, June 22, 1960—Decision, Dec. 28, 1960*

Consent order requiring Chicago manufacturers of plastic dinnerware to cease representing falsely that their sets were made solely of melamine when most of the pieces were made of other material, through use of the words "Melamine Copolymer" that melamine is a copolymer, and that their sets were "Advertised in Life"; to cease using the word "Guaranteed" in advertising when any guarantee was limited both as to time and extent and a service charge was made for adjustments; and to cease attaching or furnishing preticketing streamers and other printed material representing fictitious amounts as the usual retail prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Spaulding Industries, Inc., a corporation, and Harry Wohl, Gilbert B. Fern and Dorothy Pollenz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, 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 Spaulding Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 3520 North Spaulding Avenue, in the City of Chicago, State of Illinois.

Respondents Harry Wohl, Gilbert B. Fern and Dorothy Pollenz are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of plastic dinnerware to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States

1490

Complaint

of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of their product, have engaged in the practice of misrepresenting the material of which their product is made or composed, and using fictitious prices in connection therewith, by the following methods and means:

(1) Representing, or causing to be represented, directly or by implication:

(a) Through the use of the descriptive word "Melamine" that the plastic dinnerware sets sold by them are made solely of melamine. In truth and in fact, while said sets contain some pieces made of melamine, most of the pieces are made of material other than melamine.

(b) Through the use of the descriptive terms "Melamine Copolymer" and "Melamine-Copolymer", that melamine is a copolymer. In truth and in fact, melamine is not a copolymer.

(2) By attaching or furnishing, or causing to be attached or furnished, pre-ticketing streamers, letters, printed mailers, price sheets, advertising mats and other printed material to or with the plastic dinnerware sets upon which a certain amount is printed, that said amount is the usual and customary retail price of said plastic dinnerware sets. In truth and in fact, said amount is fictitious and in excess of the usual and regular retail price of said plastic dinnerware sets.

PAR. 5. By the aforesaid practices, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the quality and usual and customary retail price of said plastic dinnerware sets.

PAR. 6. In the course and conduct of their business, and for the purpose of inducing the sale of their plastic dinnerware sets, respondents have stated that their plastic dinnerware sets were "Advertised in Life," said statement being made in streamers, cartons, mailers and advertising mats which were distributed to retailers throughout the United States.

PAR. 7. Said statement was false, misleading and deceptive. In truth and in fact, respondents' said plastic dinnerware sets were never advertised in Life.

PAR. 8. Respondents used the word "Guaranteed" in the advertising of their said product, thereby representing that said product was guaranteed by them in every respect and likewise used the expression

