

Complaint

IN THE MATTER OF

BILL CROUCH FOREIGN, INC., d/b/a BILL CROUCH
IMPORTS, INC. (formerly MAZDA OF BOULDER, INC.)

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

Docket C-3030. Complaint, July 31, 1980—Decision, July 31, 1980

This consent order requires, among other things, a Boulder, Colo. retail dealer for new Honda automobiles to cease from charging customers more than its actual cost for transporting vehicles to its showroom; misrepresenting that optional equipment is installed by the manufacturer or required by law; and failing to disclose to customers any additional charges that would be included in the purchase price of the automobile. The order further requires the firm to make refunds, in a prescribed manner, to eligible Honda Accord customers who had paid more than \$30.00 above the actual cost for freight; and retain specified records for a period of two years.

Appearances

For the Commission: *John H. Evans* and *Allen R. Franck*

For the respondent: *Miles C. Cortez, Jr.* and *Debra R. Lappin*,
Welborn, Dufford, Cook & Brown, Denver, Colo.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*, as amended), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bill Crouch Foreign, Inc., dba Bill Crouch Imports, Inc. (formerly Mazda of Boulder, Inc.), a corporation, hereinafter sometimes referred to as "respondent," has 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 is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado with its principal office and principal place of business located at 2555 Thirtieth St., Boulder, Colorado.

PAR. 2. Respondent is now, and for some time has been, engaged in the advertising, offering for sale, and sale of new automobiles, and the parts and equipment thereof, to retail customers. Respondent is an authorized dealer for the Honda Automobile Company.

PAR. 3. Respondent's volume of business is substantial and its acts and practices, as set forth herein, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

COUNT I

The allegations contained in Paragraphs One through Three are incorporated by reference herein as if fully set forth verbatim.

PAR. 4. In the course of offering for sale and selling new Honda automobiles to retail customers, respondent regularly has listed on purchase orders and bills of sale, and has collected from customers as part of the total purchase price, a charge for "Freight." This terminology represents that the charge is intended to reimburse the respondent for its actual costs or outlays to third parties for the transportation of new automobiles to the dealership from the point where they are delivered by the manufacturer.

PAR. 5. In truth and in fact, in many instances the charges referred to in Paragraph Four, which respondent has listed and collected from customers for "Freight," have exceeded respondent's actual outlays to third parties for the transportation of new automobiles.

PAR. 6. The practices described hereinabove have had the capacity and tendency to mislead and deceive new automobile consumers and have induced customers to make payments which they might not have made but for respondent's aforesaid representations.

PAR. 7. Respondent's conduct as alleged in Count I was and is to the detriment and injury of the purchasing public and constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. Furthermore, respondent's retention of funds collected from customers by means of such conduct constituted, and now constitutes, an unfair or deceptive act or practice in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

The allegations contained in Paragraphs One through Seven are incorporated by reference herein as if fully set forth verbatim.

PAR. 8. In the further course of selling new Honda automobiles to retail customers, respondent or respondent's agents regularly have represented to customers that the application or installation of

several dealer-installed items, including, but not limited to, "undercoating" and "Polyglycoat" (a chemical paint polish and sealant), is recommended, required, or performed by the automobile manufacturer or that the respondent has no control over the installation or application of these items.

PAR. 9. In truth and in fact, the items referred to in Paragraph Eight are installed or applied at the direction of respondent to new automobiles which come into respondent's possession. Furthermore, the manufacturer of these new automobiles neither recommends, requires, nor performs the installation or application of these items.

PAR. 10. Respondent's representations as set forth in Paragraph Eight were and are false and misleading. Relying upon such representations, customers have been misled into accepting and paying for items that they might otherwise not have purchased.

PAR. 11. Respondent's conduct as alleged in Count II was and is to the detriment and injury of the purchasing public, and constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

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 Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, as amended; and

The respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having hereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that 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 Bill Crouch Foreign, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 2555 Thirtieth St., in the City of Boulder and State of Colorado.
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

For purposes of this Order:

1. "New automobile" shall mean any passenger car or station wagon the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
2. "Optional equipment" shall mean, with respect to any new automobile, any equipment or features not included within the manufacturer's suggested retail price, as defined in 15 U.S.C. 1232(f)(1).

I

It is ordered. That respondent Bill Crouch Foreign, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any sale, offering for sale, advertising or distribution of new automobiles, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Listing on stickers affixed to any new automobile, or on purchase orders, bills of sale, or sales contracts, and collecting from consumers, any freight, transportation or destination charges that exceed respondent's cost as determined herein for the shipment of the new automobile from any port-of-entry to respondent's showrooms. For purposes of this Order, respondent's cost shall be deemed to be the amount shown on the most recent invoice received by respondent covering the shipment of comparable automobiles from a

comparable port-of-entry to respondent's showrooms plus five dollars (\$5.00).

2. Affirmatively representing that any optional equipment is recommended, required, or installed by the manufacturer or is required by law, unless such is in fact the case; *provided, however*, that this requirement shall not be construed to impose a duty on respondent or its agents to affirmatively disclose information regarding such optional equipment, including but not limited to the nature or source of or requirement for such equipment, except in response to a specific consumer inquiry.

3. Failing to disclose clearly and conspicuously, prior to signing of a completed purchase order, if the total purchase price exceeds the manufacturer's suggested retail price, the precise amount of any handling, service, or similar charges which will be included in the purchase price of a new automobile.

II

It is further ordered, That:

1. The respondent shall submit to the Commission, within fifteen (15) days after the date this Order is served on respondent's corporate president (hereinafter "date of service"), a notarized affidavit, executed by the president of respondent to the effect that the respondent has made or has caused to be made a good faith search of documents that pertain to purchasers of new Honda Accord automobiles from the respondent and that the respondent, to the best of its knowledge, has previously or simultaneously with said affidavit submitted to the Commission the names of all purchasers of such automobiles covered by this Order.

2. The respondent shall submit to the Commission, within sixty (60) days after the date of service, all necessary documents, including but not limited to, purchase orders, bills of sale, buyer's orders, freight invoices and billings, internal worksheets, and invoices and all other materials necessary for the Commission to determine the amount paid by the respondent to third parties for freight. Based upon the information supplied to the Commission by the respondent pursuant to this paragraph and Paragraph II(1), the Commission or its designee shall deliver to respondent a list of all purchasers of new Honda Accord automobiles who are "eligible class members," setting forth the amount of refund due from the respondent to each such class member, derived in accordance with Part II of this Order, which list shall be served on the respondent.

3. On the ninetieth (90th) day after service on the respondent of

the list of eligible class members as provided in Paragraph II(2) above, the respondent shall make refunds to eligible class members in the following manner:

(a) except as provided in subparagraph (b) below, submit to the Commission or its designee a refund check, undated, drawn on the account of respondent made payable to each eligible class member or his or her legal representative in the amount provided by the Commission;

(b) in the event a refund check for any eligible class member is not so submitted, submit to the Commission or its designee a list of "disputed eligible class members" stating the reasons why the purchaser whose name is shown on the list prepared by the Commission is not an eligible class member or is not entitled to the refund in the amount specified by the Commission, as the case may be. If necessary, counsel for the Commission and counsel for the respondent shall thereafter confer and determine if and/or in what amount a refund is due and owing to any such disputed eligible class member.

4. Thereafter, the Commission or its designee shall send to each eligible class member, by registered mail, with return receipt requested, and with copy to respondent, a letter in the language, manner, and form shown in Appendix A, with an enclosed stamped envelope showing the address of the Commission or its designee. Upon receipt of the executed Receipt and Waiver form from an eligible class member, as provided in Appendix A, the Commission or its designee shall thereafter enter a current date on the appropriate refund check submitted to the Commission by respondent in accordance with Paragraph II(3) above and forward the check to such eligible class member.

5. On or before the three-hundredth (300th) day after date of service, the Commission or its designee shall serve on respondent (a) a list of names, addresses and received refunds in accordance with the provisions of this Part II, and (b) a list of names, addresses and refund amounts of those eligible class members whose initial mailing in the form of Appendix A or refund check was returned by the United States Postal Service. The Federal Trade Commission shall have one year from the date of service of this list to locate such eligible class members. At such time as any class member is located, the Federal Trade Commission shall follow the procedure authorized in Paragraph II(4) above with respect to the initial mailing of a letter in the form of Appendix A and subsequent mailing, if appropriate, of a refund check to such eligible class member.

6. The respondent shall, on the three-hundred and thirtieth (330th) day after the date of service, file with the Commission a report in writing setting forth the manner and form in which it has complied with Part II of this Order.

7. At the end of the one-year period described in Paragraph II(5) above, the Commission shall return to the respondent all refund checks payable to eligible class members whom the Commission is unable to locate and respondent shall thereupon be relieved of any further obligation to make payments to such eligible class members.

8. Except as modified by Paragraph II(9) below, "eligible class members" means those persons who purchased any new Honda Accord automobile at the respondent's showrooms between July 15, 1976 and the date of service of this Order, and who paid any amount for "freight," or charge of similar import, in excess of respondent's actual outlays to third parties to transport the automobile from the port-of-entry to respondent's showrooms, if such actual outlays are known, or, if unknown, in excess of respondent's outlays as computed pursuant to subparagraph 10(b) below.

9. If at the time of sale the charge made by the respondent for "freight" to a person who purchased a new Honda Accord automobile between July 15, 1976 and the date of service of this Order was a "good faith estimate" of the respondent's actual freight outlays to third parties, such person shall not be an "eligible class member" within the meaning of this Consent Order. Any charge for freight made by the respondent shall be deemed a "good faith estimate" by the respondent if such charge cannot be shown to have exceeded the respondent's subsequent actual outlays, or, if unknown, its estimated outlays, as determined under subparagraph 10(b) below, to third parties for transportation of the automobile from the port-of-entry to the respondent's showrooms by more than thirty dollars (\$30.00).

10. The respondent shall make refund payments to each eligible class member as follows:

(a) each eligible class member shall receive as a refund one-half (1/2) of that amount by which the charge paid by the class member to the respondent for "freight" exceeded the respondent's actual outlays to third parties for transportation of the automobile purchased by the class member from the port-of-entry to respondent's showrooms.

(b) if such actual outlay is unknown, each eligible class member shall receive as a refund one-half (1/2) of that amount by which the charge paid by the class member to the respondent for "freight" exceeded the average sum paid by the respondent to third parties to

transport automobiles comparable to that purchased by the class member from comparable ports-of-entry to respondent's showrooms during the three (3) calendar months preceding the month of sale to the class member.

The amount of each refund under this section shall be determined by the Commission on the basis of the information supplied by the respondent under Paragraph II(2) above.

11. The respondent shall maintain records and documents for two (2) years after the filing of the report referred to in Paragraph 6 of Part II of this Order, which demonstrate that the respondent has complied with Part II of this order.

12. If any duty required to be performed on a certain day under Part II of this Order falls upon a non-business day, the respondent herein shall perform such duty on the next following business day.

III

It is further ordered, That:

1. Respondent shall notify the Commission at least thirty (30) days prior to any proposed changes in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other changes in the corporation which may affect compliance obligations arising out of the Order.

2. Respondent shall forthwith deliver a copy of this Order to each of its operating divisions and to each of its present and future officers; and forthwith deliver a summary of this Order, stating that the respondent is subject to an order of the Commission and enumerating the requirements of Part I of this order, to each employee or agent who is engaged in the sale of new automobiles, or who, directly or indirectly, has any responsibility relating in any way to the pricing of new automobiles, or who is engaged in any aspect of the preparation, creation, or placing of advertising; and the respondent shall secure a signed statement acknowledging receipt of said order or summary from each such person.

3. Respondent shall retain each of its sales contracts and freight invoices for new automobiles for two (2) years after the date of the sales transaction, and shall make such records available for inspection and copying upon reasonable request by the Commission or any of its duly authorized representatives.

4. Respondent shall, at reasonable times, afford the Commission, or any of its duly authorized representatives, access to such records,

memoranda, and other documents relating to the provisions contained herein as may be appropriate to enable the Commission to determine respondent's compliance with the Order.

5. Respondent shall within sixty (60) days after service of this Order upon respondent file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

IN THE MATTER OF
BENEFICIAL CORPORATION, ET AL.

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

Docket C-3032. Complaint, August 5, 1980—Decision, August 5, 1980

This consent order requires, among other things, a Wilmington, Del. firm and Beneficial Management Corp. of Morristown, N.J. to cease, in connection with the extension of consumer credit and purchase of consumer contracts, from misrepresenting the effect of state laws and consumer's right to assert against contract holder any claim or defense arising from the contract. The order further bars respondents from using past notice to defeat any valid consumer claim and requires them to notify all active account consumers who received the notice that their claims and defenses have not been waived.

Appearances

For the Commission: *Ivan L. Orton* and *Randall H. Brook*.

For the respondents: *John P. Howland*, for Beneficial Management Corporation, Morristown, N.J.

COMPLAINT

The Federal Trade Commission, having reason to believe that Beneficial Corporation and Beneficial Management Corporation have violated Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding is in the public interest, issues this complaint.

PARAGRAPH 1. Respondent Beneficial Corporation ("Beneficial") is a Delaware corporation with its office and principal place of business at 1300 Market St., Wilmington, Delaware.

Respondent Beneficial Management Corporation ("Beneficial Management") is a Delaware corporation with its office and principal place of business at 200 South St., Morristown, New Jersey.

Beneficial directs and controls the Beneficial Finance System comprised of wholly owned subsidiaries including local loan offices and Beneficial Management. Beneficial Management provides centralized accounting, auditing and legal services to these consumer finance subsidiaries.

Allegations below stated in the present tense include the past tense.

PAR. 2. Beneficial through Beneficial Finance System is engaged in the extension of consumer credit to the general public. It purchases

installment contracts and other consumer credit agreements from retailers in addition to making direct consumer loans.

PAR. 3. In connection with the extension of consumer credit and purchase of contracts, Beneficial and Beneficial Management has supervised the dissemination of legal forms and other printed materials throughout the country. This is done through the United States mails. Beneficial and Beneficial Management maintain a substantial course of trade in extending consumer credit and purchasing retail contracts in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course of purchasing consumer credit contracts, the Beneficial Finance System becomes a holder of these consumer credit contracts as "holder" is used in the FTC Trade Regulation Rule, Preservation of Consumer Claims and Defenses, 16 C.F.R. 433 (the "Holder Rule").

PAR. 5. These contracts usually, if not always, contain the following notice as required by the Holder Rule.

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

This notice is required by the FTC to preserve the consumer's legally sufficient claims and defenses so that they may be asserted against a creditor where a seller fails to keep its side of the bargain.

PAR. 6. Upon purchasing these contracts, the Beneficial Finance System sends "Notification of Purchase" forms to the consumers whose contracts were purchased. These notices contain the following language or language to the following effect:

THE FOLLOWING REFERENCES MAY APPLY TO THE STATE(S) INDICATED

ARIZONA—YOU HAVE NINETY (90) DAYS FROM THE DATE OF RECEIPT OF THE GOODS OR RENDERING OF SERVICES WITHIN WHICH TO NOTIFY US IN WRITING OF ANY COMPLAINTS, CLAIMS OR DEFENSES WHICH YOU MAY HAVE AGAINST THE SELLER. SUCH WRITTEN NOTICE MUST BE SENT BY CERTIFIED MAIL TO THE SELLER AND YOU SHOULD FORWARD A COPY TO US. IF SUCH WRITTEN NOTICE IS NOT RECEIVED WITHIN THE NINETY (90) DAY PERIOD, THE ASSIGNEE WILL HAVE THE RIGHT TO ENFORCE THE CONTRACT FREE OF ANY CLAIMS OR DEFENSE THE BUYER OR LESSEE MAY HAVE AGAINST THE SELLER OR LESSOR WHICH HAS ARISEN BEFORE THE END OF THE NINETY (90) DAY PERIOD.

DELAWARE—WITHIN 15 DAYS OF THE DATE OF MAILING OF THIS NOTICE YOU MUST NOTIFY THIS OFFICE IN WRITING OF ANY FACTS GIVING RISE TO ANY CLAIM OR DEFENSE THAT YOU MAY HAVE AGAINST THE SELLER OR ELSE SUCH CLAIM IS WAIVED.

IDAHO— . . . THREE (3) MONTHS . . .

Decision and Order

96 F.T.C.

INDIANA AND SOUTH DAKOTA— . . . 60 DAYS . . .*IOWA, NORTH CAROLINA, OKLAHOMA AND TENNESSEE*— . . . 30 DAYS . . .*MARYLAND*— . . . NINETY (90) DAYS . . .*PENNSYLVANIA AND WYOMING*— . . . 45 DAYS . . .*TEXAS*— . . . 3 DAYS . . .*WEST VIRGINIA*— . . . 180 DAYS . . .*WISCONSIN*— . . . 12 MONTHS . . .

PAR. 7. The representation that the consumer waives the right to assert claims or defenses if the Beneficial Finance System is not notified is false. Consumers continue to have this right as stated in the contract.

State laws like those referenced by the Beneficial Finance System on the "Notification of Purchase" forms might apply to contracts not governed by the Holder Rule. However, some of the references themselves misrepresent state law. All of the references misrepresent the impact of state law on contracts governed by the Holder Rule.

PAR. 8. The notice has the tendency and capacity to deter consumers from asserting valid claims and defenses against the Beneficial Finance System.

For example, consumers with valid warranty claims against a seller might feel that they had no claim against the Beneficial Finance System and had to continue making payments. This would undermine the purpose of the Holder Rule.

PAR. 9. For the reasons stated above, the acts and practices of Beneficial and Beneficial Management are to the prejudice and injury of the public and constitute false, misleading, deceptive and unfair acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission has initiated an investigation of certain acts and practices of the respondents Beneficial Corporation and Beneficial Management Corporation. The respondents have been furnished with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration. This complaint, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended.

The respondents, their attorney, and counsel for the Commission have executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and other provisions as required by the Commission's Rules.

The Commission considered the matter and determined that it had reason to believe that the respondents have violated the Federal Trade Commission Act, as amended, and that complaint should issue. It then accepted the executed consent agreement and placed it on the public record for a period of 60 days. Part III of the Order has been modified to follow the complaint allegations. The correction notice required by Part III must be sent only to accounts in the 15 states whose laws were misrepresented by Beneficial's original notice. Now, in conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission issues its complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent Beneficial Corporation is a Delaware corporation. Its office and principal place of business is located at 1300 Market St., Wilmington, Delaware.

Respondent Beneficial Management Corporation is a Delaware corporation. Its office and principal place of business is located at 200 South St., Morristown, New Jersey.

Respondent Beneficial Corporation directs and controls the Beneficial Finance System comprised of wholly-owned subsidiaries including local loan offices and Beneficial Management.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

3. The proceeding is in the public interest.

ORDER

This order applies to respondents Beneficial Corporation ("Beneficial") and Beneficial Management Corporation ("Beneficial Management"), their successors, assigns, officers, agents and employees, whether acting directly or through any corporation, subsidiary, division or other device, including any part of the Beneficial Finance System.

I.

It is ordered, That Beneficial and Beneficial Management cease

and desist from representing, directly or by implication, that a consumer's right to assert claims or defenses against a holder of the consumer's contract:

A. is contingent upon the consumer giving notice of the claim or defense to the holder within a stated time after the holder purchases the contract;

B. is in any other way limited by state law unless this is true.

II.

It is further ordered. That Beneficial not assert any defect in a consumer's assertion of a claim or defense against the Beneficial Finance System (or any part of it) when that defect is based on the consumer's failure to give prior notice to the Beneficial Finance System (or any part of it).

III.

It is further ordered. That Beneficial Management, within 30 days after service of this order, send the following notice to all active installment sales contract accounts in Arizona, Delaware, Idaho, Indiana, Iowa, Maryland, North Carolina, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, West Virginia, Wisconsin and Wyoming:

Dear Customer:

When we purchased your contract, we sent you a notice. This notice said you might not have the right to assert claims or defenses against us unless you notified us within a certain time period.

This statement was not correct.

You have always had the right to assert claims or defenses against us that you could assert against the seller. You have this right even if you have not previously told us of your claim or defense.

Beneficial Finance System
Affiliated Companies

IV.

It is further ordered. That respondents maintain complete business records relative to the manner and form of their compliance with this Order. Respondents shall retain each record for at least three years. Upon reasonable notice, respondents shall make any and all

the records available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

V.

It is further ordered, That Beneficial forthwith distribute a copy of this Order to each office of its respective domestic consumer finance subsidiaries.

VI.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in the corporation which may affect compliance obligations arising out of the Order.

VII.

It is further ordered, That respondents shall, within 60 days after service of this Order, file with the Commission a report setting forth in detail the manner and form in which they have complied with this Order.

IN THE MATTER OF
HERBERT R. GIBSON, SR., ET AL.

MODIFYING ORDER AND OPINION IN REGARD TO ALLEGED
VIOLATION OF SEC. 2 OF THE CLAYTON ACT AND THE FEDERAL
TRADE COMMISSION ACT

Docket 9016. Final Order, April 30, 1980—Modifying Order, Aug. 8, 1980

This order, granting in part, and denying in part, respondents' petitions for reconsideration, modifies the order issued on April 30, 1980, 45 FR 38352, 95 F.T.C. 564, by inserting the word "while" before the word "acting," in paragraph 1, line 2 of Section II; and by inserting a comma and the phrase "while acting as a buyer or acting for in behalf of or subject to the direct or indirect control of a buyer," after the word "respondent[s]," in paragraph 2, line 3 of Section II.

ORDER GRANTING IN PART, AND DENYING IN PART, RESPONDENTS'
PETITIONS FOR RECONSIDERATION

An opinion and final order in this matter having been issued on April 30, 1980; respondents having been served by mail with the said opinion and order on May 20, 1980 and May 21, 1980; respondents having petitioned for reconsideration of said opinion and order on June 12, 1980; and the Commission, for the reasons stated in the accompanying opinion, having determined to grant in part, and deny in part, respondents' petitions for reconsideration;

It is ordered, That the final order to cease and desist be, and hereby is, modified as follows:

In paragraph 1 of Section II of the Order, line 2, insert the word "while" in front of the word "acting"; and

In paragraph 2 of Section II of the Order, line 3, after the word "respondent[s]," insert a comma and the phrase "while acting as a buyer or acting for or in behalf of or subject to the direct or indirect control of a buyer,".

OPINION OF THE COMMISSION

BY CLANTON, *Commissioner*:

Respondents have filed two petitions for reconsideration of our recent opinion and order. Each petition asserts: (1) that the language and coverage of Section II of the Final Order should be changed; (2) that application of the opinion of the Court of Appeals in *Grolier, Inc. v. FTC*, 615 F.2d 1215 (9th Cir. 1980), requires disqualification of the administrative law judge ("ALJ"), Theodor P. von Brand, and hence

dismissal or remand of the case; and (3) that certain actions taken by the Commission during periods of allegedly lapsed appropriations, including actions taken in the investigation and adjudication of this case, violated the Antideficiency Act, 31 U.S.C. 665(a) (1976), and hence require dismissal or remand of the case.

Section 3.55 of the Commission's Rules of Practice limits the scope of a petition for reconsideration to "new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission." While certain of respondents' objections are appropriate for disposition by reconsideration, other contentions are not new or are untimely. We consider each of the objections raised *seriatim*.

A.

The petition filed by Herbert R. Gibson, Jr., Gerald P. Gibson and others objects to the inclusion of any respondent other than Herbert R. Gibson, Sr. in the provisions of Section II of the Final Order, which essentially enjoins respondents from violating Section 2(c) of the Clayton Act, 15 U.S.C. 13(c) (1976), as amended. This issue of order coverage is not new and these respondents had ample opportunity, which they exercised, to address this question during the course of trial and on appeal to the Commission. See, *e.g.*, Answering Brief of Herbert R. Gibson, Jr., filed May 29, 1979, at 9. The instant request is, therefore, inappropriate, *cf. Interstate Builders, Inc.*, 72 F.T.C. 1009, 1010 (1967); *Lester S. Cotherman*, 77 F.T.C. 1621, 1622 (1970), and is denied.

The petition filed by Herbert R. Gibson, Sr. and Belva Gibson notes that the language of paragraphs 1 and 2 of Section II of the Final Order are at variance, in that only the former includes the phrase "as a buyer or acting for or in behalf of or subject to the direct or indirect control of a buyer." The petition requests that the latter paragraph be altered to conform to the former. As the petitioners surmise, it was the Commission's intention that this phrase appear in both paragraphs, and an appropriate order correcting this typographical omission is annexed. To sum up, all Gibson respondents, except dissolved corporations, are bound by Section II of the Final Order not to receive or induce payments which would violate Section 2(c) of the Clayton Act. This proscription applies irrespective of whether the respondent acts as a buyer, or on behalf of or subject to the control of a buyer.

B.

All respondents petition for reconsideration of the Commission's opinion and order in light of *Grolier, Inc. v. FTC*, 615 F.2d 1215 (9th Cir. 1980). In that case, the Commission issued a complaint charging Grolier with violating Section 5 of the Federal Trade Commission Act. During the course of the hearings, Administrative Law Judge von Brand advised the parties that he had previously served as an attorney-advisor to former Commissioner Everette MacIntyre from 1963 to January 1971, during which time the Commission was investigating Grolier and its subsidiaries. "Upon learning of ALJ von Brand's advisory responsibility during the eight-year period, Grolier requested that the judge disqualify himself from further participation in the proceedings." 615 F.2d at 1217. Judge von Brand declined to recuse himself, and the Commission affirmed Judge von Brand's decision in an interlocutory order, 87 F.T.C. 179, 179-81 (1976), and again in its final order and opinion, 91 F.T.C. 315, 485-86 (1978). On appeal, the Ninth Circuit concluded that the Commission had incorrectly interpreted Section 5(c) of the Administrative Procedure Act, 5 U.S.C. 554(d) (1976), in ruling on Grolier's disqualification challenge, and remanded the case to the Commission.

Although respondents in this case have not submitted a motion and affidavits as required by Rules of Practice Section 3.42(g)(2),¹ we understand the facts to be essentially as follows. Beginning in 1967, the Commission and its staff investigated respondents; the investigation culminated in a complaint issued in 1975. Judge von Brand presided over the proceedings from the issuance of the complaint, through trial (which began on December 19, 1977), and until his issuance of the initial decision in early 1979.

Judge von Brand had previously served with the Commission as an attorney-advisor to Commissioner MacIntyre from 1963 until 1971. During Judge von Brand's tenure as attorney-advisor to Commissioner MacIntyre, the Commissioners themselves, including Commissioner MacIntyre, participated in certain decisions connected

¹ In relevant part, Rules of Practice Section 3.42(g), 16 C.F.R. 3.42(g), provides: "Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, such party may file with the Secretary, a motion addressed to the Administrative Law Judge . . . to be supported by affidavits setting forth the alleged grounds for disqualification." The requirement of affidavits, grounded in 5 U.S.C. 556 (1976), is not an empty formality to be cast aside unilaterally by a party to a Commission proceeding. There are many reasons for such a requirement. An affidavit provides an exact, sworn recitation of facts, collected in one place; a disqualification motion must not be made by a party, nor taken by the Commission, lightly. "Such a charge, unfairly made, not only impugns without warrant the integrity of the government official entrusted with responsibility for deciding a given dispute, but it also unnecessarily tarnishes our beneficent traditions of legal due process." *Marcus v. Director, Office of Wkrs' Comp. Prog.*, 548 F.2d 1044, 1050 (D.C. Cir. 1976) (per curiam). Accordingly, the affidavit requirement serves not only to focus the facts underlying the charge, but to foster an atmosphere of solemnity commensurate with the gravity of the claim. Respondents' failure to submit affidavits is thus an independently sufficient basis to deny their petitions in this respect.

with the investigation of respondents (e.g., the Commission voted on two investigational resolutions and ruled on a motion to quash three subpoenas).

In a pretrial conference on February 23, 1977 (about one year after issuance of the Commission's interlocutory opinion affirming Judge von Brand's participation in *Grolier*, *supra*, and almost ten months before the start of trial in this case), Judge von Brand, apparently acting out of candor and an abundance of caution, disclosed to the parties on the record² the fact of his prior service to Commissioner MacIntyre, and recited his "understanding that none of the respondents * * * would raise an objection to [his] continuing in the case on that ground." (Tr. at 242.) All counsel, including counsel for the instant petitioners, responded unequivocally that there would be no such objection. (*Id.* at 242-43.) The case proceeded through trial, and, consistent with their statements, respondents did not object to Judge von Brand's participation. Neither did respondents object in their appeal papers before the Commission, or at oral argument in July, 1979.

The Ninth Circuit's opinion in *Grolier* was issued on January 24, 1980; respondents did not attempt to present a *Grolier*-type challenge to Judge von Brand in this case before the Commission's decision and order issued on April 30, 1980.

Respondents now urge, for the first time, that the Ninth Circuit's decision in *Grolier* requires the Commission, under the Constitution, the Administrative Procedure Act, and the Commission's Rules of Practice³ either (1) to disqualify Judge von Brand and (a) dismiss the case or (b) vacate its decision and remand for a new trial;⁴ or (2) to grant discovery in the form, *inter alia*, of a deposition from Judge

² The transcript reveals that Judge von Brand disclosed his prior service off the record as well. (Tr. at 242.)

³ The Court of Appeals' decision in *Grolier* involved only an interpretation of Section 5(c) of the Administrative Procedure Act, 5 U.S.C. 554(d) (1976), and did not purport to interpret the Constitution or the Commission's Rules of Practice; accordingly, it offers no basis for relief on those grounds.

Respondents' very general assertion of their right to trial by a "fair and impartial judiciary" is based upon the due process clause of the Fifth Amendment. While we are and must be sensitive to such considerations, neither will we substitute our judgment for that of the federal judiciary or the Congress. Assuming *arguendo* that Judge von Brand possessed some familiarity with the facts of the case gained through his service to Commissioner MacIntyre (notwithstanding that Judge von Brand's tenure as an attorney-advisor ended four years before issuance of the complaint), his presiding over the trial would not constitute a due process violation. "Mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not * * * disqualify a decisionmaker." *Hortonville Joint School District No. 1 v. Horton Education Ass'n*, 426 U.S. 482, 493 (1976); *accord*, *Withrow v. Larkin*, 421 U.S. 35, 47-59 (1975) (contention that combination of investigative and adjudicative functions violates due process carries difficult burden of persuasion); *Pangburn v. CAB*, 311 F.2d 349, 358 Cir. 1962). Moreover, under the exception contained in the fourth sentence to Section 5(c) of the APA, agency members may participate in investigative and adjudicative decisions in the same case. To hold that Judge von Brand's participation violated the Constitution would thus be to declare that the Administrative Procedure Act is constitutionally deficient. *Cf. Withrow v. Larkin*, *supra*, 421 U.S. at 56 (APA not unconstitutional).

As to the respondents' reference to the Commission's Rules, they cite none, and we are aware of none, that might be relevant.

⁴ Even if fully applicable, *Grolier* at most would require reconsideration by the Commission. The Ninth Circuit's opinion, by its terms, requires neither retrial nor dismissal. 615 F.2d at 1222.

von Brand and access to Commission records. In our view, even apart from estoppel due to respondents' waiver, there is an important element—timeliness—present in *Grolier*, but lacking here, which makes the cases altogether different; indeed, respondents' lack of timeliness bars them from any relief.

"A basic requirement for any disqualification motion is, of course, that it be presented either at the outset of the proceeding or immediately after ascertainment of the circumstances that prompt its filing." *Kroger Co.*, Dkt. 9102 (Order filed June 5, 1980, at 2) (quoting 5 U.S.C. 556(b)). See Rules of Practice Section 3.42(g)(2) (motion to be filed "[w]henver" a party deems ALJ disqualified; also provides for expedited Commission determination). In this respect, the Commission's requirements are consistent with the "general rule governing disqualification, normally applicable to the federal judiciary and the administrative agencies alike," that disqualification claims must be raised "as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist." *Marcus v. Director, Office of Wkrs.' Comp. Prog.*, 548 F.2d 1044, 1051 (D.C. Cir. 1976) (per curiam) (footnotes omitted); accord, *Capitol Transp., Inc. v. United States*, 612 F.2d 1312, 1325 (1st Cir. 1979); *Duffield v. Charleston Area Medical Center, Inc.*, 503 F.2d 512, 515-16 (4th Cir. 1974) (collecting cases); *Safeway Stores, Inc. v. FTC*, 366 F.2d 795, 802-03 (9th Cir. 1966), cert. denied, 386 U.S. 932 (1967); *R. A. Holman & Co. v. SEC*, 366 F.2d 446, 454-55 (2d Cir. 1966), cert. denied, 389 U.S. 991 (1967); *Marquette Cement Mfg. Co. v. FTC*, 147 F.2d 589, 592 (7th Cir.), aff'd, 333 U.S. 683 (1945). See also *United States v. L. A. Tucker Truck Lines*, 344 U.S. 33, 38 (1952). The rule of timeliness requires that a party act as soon as possible after the facts have become known. *Satterfield v. Edenton-Chowan Bd. of Ed.*, 530 F.2d 567, 574 (4th Cir. 1975) (citing cases); and inaction may waive a separation-of-functions disqualification claim, *International Paper Co. v. FPC*, 438 F.2d 1349, 1357 (2d Cir.), cert. denied, 404 U.S. 827 (1971); *Democrat Printing Co. v. FPC*, 202 F.2d 298 (D.C. Cir. 1952); see *Satterfield v. Edenton-Chowan Bd. of Ed.*, supra; *Duffield v. Charleston Area Medical Center*, supra. Under Section 3.42(g)(2) of the Commission's Rules of Practice, a party "may" choose to present a disqualification challenge; it need not do so. However, if it chooses to do so, it must do so promptly after the facts supporting the charge are known to it. A disqualification challenge to an ALJ's participation subsequent to the Commission's final decision based on circumstances known to a party before the Commission's final decision is not timely. *Capitol Transp., Inc. v. United States*, supra; *International Paper Co. v. FPC*, supra; *Safeway Stores, Inc. v. FTC*, supra.

The reasons supporting such a rule are manifold. A contrary holding, *inter alia*, would allow a party the possibility of invalidating the proceedings retroactively, unilaterally, and at will, if it feared or received an unfavorable ruling, or merely wished to delay the proceedings; might cause substantial delays, and, if retrial were required, significant unnecessary duplication of effort and expenditure of resources; and might make determinations of disqualification more difficult and less certain because of the passage of time. See generally *Marcus v. Director, Office of Wkrs.' Comp. Prog.*, *supra*, 548 F.2d at 1050-51; *Duffield v. Charleston Areas Medical Center*, *supra*.

Applying these principles to this case, it is clear that the facts are substantially different from those in *Grolier*. In *Grolier*, the respondents in the Commission's adjudicative proceedings raised the issue promptly after Judge von Brand's record announcement of his prior service as attorney-advisor to Commissioner MacIntyre; both the ALJ and the Commission considered the claims promptly, during trial and before the closing of the record. Despite the ALJ's and the Commission's interlocutory rulings, the *Grolier* respondents pressed their claim—as was their right—on appeal of the initial decision to the Commission and on appeal of the Commission's decision to the Ninth Circuit. Moreover, the *Grolier* respondents never agreed not to present their disqualification claims.

In this case, Judge von Brand formally notified the parties on February 23, 1977, of his prior service to Commissioner MacIntyre. It is thus clear that, in the event that respondents did not know of Judge von Brand's service to Commissioner MacIntyre as of the time of Judge von Brand's appointment as an ALJ or as of the time the Commission issued its interlocutory order in *Grolier* in 1976, they did know of it at least nine months before trial began. Respondents agreed to put forward no objection, and, indeed, honored that agreement throughout the administrative trial and appeal of this case. Consistent with the above-cited authorities, which require timeliness in a disqualification application, respondents may not now for the first time raise this issue.

Of course, respondents do not contend that their failure to object—indeed, their agreement not to object—was predicated upon the Commission's 1976 *Grolier* ruling. Rather, they only suggest, in an indirect manner, that their failure to raise the issue at oral argument in July, 1979 was based on their reliance on *Grolier*. Yet, after the Ninth Circuit's decision in *Grolier*, they waited months before presenting any objection. During this time, the Commission issued its final order and opinion. Accordingly, even assuming that

an objection might have been timely after the Ninth Circuit's decision in *Grolier*, it is untimely now.

Finally, we note that respondents have not demonstrated or even asserted that they were prejudiced by any bias or reliance on extra-record materials by Judge von Brand; our review of the record convinces us that Judge von Brand was impartial in every respect, that his decision was thoroughly researched, and that his meticulous findings and conclusions were firmly and exclusively based on the record evidence. Of course, to the extent respondents challenged Judge von Brand's findings, conclusions, and proposed order, we undertook an exhaustive, independent review. In that review, we did not find that issues of demeanor or discretion were especially important in the determination of the case; thus, even if it were to be determined that Judge von Brand was disqualified, our decision of April 30, 1980, would not be void, as respondents have neither demonstrated nor suggested actual prejudice from his presiding, and we perceive none.⁵ See Attorney General's Manual on the Administrative Procedure Act at 73-74 (1974).

For the foregoing reasons, respondents' motion for reconsideration based upon Judge von Brand's participation is denied.

C.

Finally, respondents assert that the Commission took various actions in this adjudication and in the investigation preceding it at times when the Commission was without authority and without appropriated funds, and, consequently, that the Commission violated the Antideficiency Act. Respondents assert that the Commission should either declare the entire adjudicatory proceeding void or remand the proceeding to the Administrative Law Judge to allow discovery by respondents as to the Commission acts performed during periods of lapsed appropriations.

The Antideficiency Act, 31 U.S.C. 655(a) (1976), prohibits any government officer or employee, unless expressly authorized by statute, from incurring any obligation on the part of the United States to pay money in advance of appropriations for that purpose.

⁵ Ironically enough, at another point in this proceeding, Judge von Brand suggested to the parties that it might be necessary or advisable to have another ALJ assigned to this case because of his heavy case load. When asked for his reaction to this possibility, counsel for Herbert R. Gibson, Sr., and Herbert R. Gibson, Jr., told Judge von Brand "We'd like to keep you." Tr. at 276.

Although the Commission's funding did lapse during several of the periods listed by respondents in their petitions for reconsideration,⁶ the legal validity of the Commission's actions is unaffected by the temporary lapse of appropriations for the following reasons.

First, actions by Commission employees completed prior to the expiration of appropriations do not create an unfunded obligation and, therefore, do not result in a violation of the Antideficiency Act.

Second, even if a Commission action on the *Gibson* matter was not completed prior to the expiration of appropriations and, therefore, were to be interpreted as incurring a Commission obligation, such action was ratified by Congress when the Commission's funding was made retroactive either explicitly or implicitly to the start of the period of lapsed appropriations.⁷ As noted in the recent opinion letter of the Attorney General, on which respondents rely, such a ratification has the effect of providing legal authority for agency actions, even where there was none before. Letter from Attorney General Benjamin Civiletti to President Jimmy Carter (April 25, 1980). Thus, even assuming that respondents have standing to challenge the Commission actions,⁸ none of the Commission's activities has been invalidated by the Antideficiency Act.

In this respect, too, therefore, the petitions for reconsideration are denied.

⁶ Contrary to respondents' assertion, the Commission's funding did not lapse during the periods July 1-September 30, 1976, and March 12-March 15, 1980. See Public Laws 94-121 and 96-123, respectively. The former period, in particular, related not to a lapse in funding, but to a change in the United States Government's fiscal year.

⁷ See Public Laws 93-118, 93-124, 93-448, 93-563, 95-431, 96-86, and 96-219.

⁸ Neither the Antideficiency Act itself nor its legislative history or scheme suggests that private persons are to be afforded a remedy under the Act. The language of the statute specifies that a government officer or employee who violates Sections 665(a) or (b) of the Act will be subjected to administrative and/or criminal penalties. 31 U.S.C. 665(i)(1). Moreover, the legislative history clearly indicates that the intended beneficiary of the regulatory scheme was Congress; the statutory scheme was designed to require the careful apportionment by Federal agencies of the funds distributed by Congress and thereby ensure the efficient administration of the government's business.

Complaint

96 F.T.C.

IN THE MATTER OF
CHRYSLER CORPORATION

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

Docket C-3033. Complaint, Aug. 12, 1980—Decision, Aug. 12, 1980

This consent order requires, among other things, a Highland Park, Mich. manufacturer of motor vehicles to cease failing to notify owners of 1976/1977 Aspens and Volares, purchased or driven in specified states and locales, of the availability of replacement and reimbursement programs for premature rusting; remove and replace, without charge, the front fender(s) of vehicles that began to experience premature rusting within 36 months-in-service; and reimburse owners of affected vehicles for costs incurred in attempting to correct the premature rusting problem. The manufacturer is further required to notify dealers, in writing, of the existence of premature rusting; supply them with an adequate supply of replacement parts; and inform them of the firm's obligations under the terms of the order.

Appearances

For the Commission: *Aaron H. Bulloff, Richard H. Gateley, David Montgomery, Noble F. Jones and David V. Plottner.*

For the respondent: *Robert T. Talbot-Stern, Detroit, Mich.*

COMPLAINT

Having reason to believe that Chrysler Corporation, a corporation, has violated Section 5 of the Federal Trade Commission Act, and that a proceeding against it would be in the public interest, the Federal Trade Commission issues this complaint stating its charges. This complaint is issued pursuant to the provisions of and by virtue of the authority granted by the Federal Trade Commission Act.

PARAGRAPH 1. Respondent Chrysler Corporation is a Delaware corporation. Respondent's address is 12000 Lynn Townsend Drive, Highland Park, Michigan.

PAR. 2. Respondent is now, and has been, engaged in the manufacture, advertising, sale, and distribution of motor vehicles.

PAR. 3. Respondent causes motor vehicles to be shipped to purchasers in various states, and therefore maintains, and at all times mentioned in this complaint has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. For the purpose of this complaint, "premature rusting"

shall mean rusting which may perforate the top rear portion of the front fenders of 1976 and 1977 model year Aspens and Volares. Rusting attributable to normal deterioration as a result of age is excluded.

PAR. 5. Aspen and Volare vehicles produced from 1975 through 1977 are subject to premature rusting.

PAR. 6. Notwithstanding its knowledge since 1977 of premature rusting, respondent has failed, and is failing, to disclose to owners of Aspen and Volare vehicles the possibility of premature rusting, and the nature and extent of repairs necessary to correct such rusting. Respondent's failure to disclose this information to owners of vehicles subject to such rusting may cause owners substantial economic harm due to their inability to avoid or prevent premature rust. Such failure to disclose is an unfair or deceptive act or practice.

PAR. 7. In some cases, when owners have complained of premature rusting, respondent has provided replacement fenders free of charge. In other cases, respondent has provided replacement fenders free of charge and has paid labor costs for installing replacement fenders. In most instances, however, owners are not compensated because they are unaware of respondent's actions with respect to providing replacement fenders free of charge or paying labor costs.

PAR. 8. Respondent has failed, and is failing, to disclose to owners of Aspen and Volare vehicles its actions with respect to providing replacement fenders free of charge or paying labor costs. Respondent's failure to disclose such actions to owners of affected vehicles may cause them substantial economic harm by denying them an opportunity to request compensation from respondent. Such failure to disclose is an unfair or deceptive act or practice.

PAR. 9. Respondent's acts and practices, as alleged in this complaint, were and are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

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 Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its counsel, 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 respondent that the law has been violated as alleged in such complaint, 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 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Chrysler Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 12000 Lynn Townsend Drive, in the City of Highland Park, State of Michigan.

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

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

1. "Motor vehicle(s)" shall mean all 1976 and 1977 model year Aspens and Volares.

2. "Premature rusting" shall mean the presence of holes, blisters or bubbles in exterior paint caused by rust in the top rear portion of the front fender(s) of motor vehicles within two feet of the rear edge of such fender(s).

3. "Dealer(s)" shall mean any person(s), partnership(s), firm(s), or corporation(s) which, pursuant to a sales and service agreement with respondent receives on consignment or purchases motor vehicles from respondent for resale or lease to the public, including

any person(s), partnership(s), firm(s), or corporation(s) owned or operated by respondent.

4. "Owner" shall mean any person, partnership, firm, or corporation having custody and/or possession of a motor vehicle, including those vehicles held for resale.

5. "Remove and replace" shall mean removing any front fender affected by premature rusting and replacing it with a new, one-side galvanized front fender; *provided that* if such replacement fender is not available due to circumstances beyond respondent's control, respondent may substitute a zincrometal front fender. Also included in this term is the labor necessary to hang and paint the replacement front fender and to affix trim and accessory items, including splash shields.

6. "Months-in-service" shall be calculated as beginning on the date on which Chrysler began warranty coverage on the motor vehicle. If the date on which warranty coverage began ("in-service" date) cannot be established by Chrysler, then such date shall be calculated as beginning on:

October 1, 1976, for any 1976 model year motor vehicle;

October 1, 1977, for any 1977 model year motor vehicle.

I

It is ordered, That respondent Chrysler Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Failing to send by first-class mail, within sixty (60) days after the date of service of this Order, a copy of the letter attached to this Order as Attachment A, incorporated herein by reference, a form approved by the Federal Trade Commission, and a self-addressed, postage-paid envelope. This material shall be sent in one envelope similar in all material respects to Attachment B of this Order, incorporated herein by reference. The letter, form, and self-addressed, postage-paid envelope shall be mailed to each owner of a motor vehicle registered in any of the following states or localities, and to each owner of a motor vehicle purchased in any of the said

states or localities, even though the vehicle is no longer registered in that state or locality.

All counties within the states of:

Connecticut	New Hampshire
Delaware	New Jersey
Illinois	New York
Indiana	Ohio
Iowa	Pennsylvania
Maine	Rhode Island
Massachusetts	Vermont
Michigan	Wisconsin

The following counties in Maryland, Minnesota and West Virginia:

Maryland

Allegheny	Garrett
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Minnesota

Anoka	Mower
Blue Earth	Nicollet
Carlton	Olmsted
Carver	Pine
Chisago	Ramsey
Dakota	Rice
Dodge	Scott
Faribault	Sherburne
Fillmore	Sibley
Freeborn	Steele
Goodhue	Wabasha
Hennepin	Waseca
Houston	Washington
Isanti	Winona
LeSueur	Wright
McLeod	

West Virginia

Brooke	Monongalia
Hancock	Ohio
Marion	Preston
Marshall	Wetzel

B. Failing to remove and replace the front fender(s) of any motor vehicle at no cost to the owner within one hundred twenty (120) days after the owner initially contacts respondent or a dealer, *provided that* respondent may require any owner to sign a statement, approved by the Federal Trade Commission, that the vehicle began to experience premature rusting within thirty-six (36) months-in-service.

C. Failing to reimburse any owner of a motor vehicle for the actual or the usual and customary charges in the owner's trade area, whichever is lower, for parts and labor for front fender repairs or replacements made at the owner's expense which eliminated, or were made in an attempt to eliminate, premature rusting, *provided that* respondent may require any owner to sign a statement, approved by the Federal Trade Commission, that the vehicle experienced premature rusting within thirty-six (36) months-in-service and to furnish reasonable evidence of repair or replacement. Such reimbursement shall be made within sixty (60) days after the owner initially contacts respondent or a dealer. For owners who were sent the letter and form pursuant to paragraph A of part I of this Order, such repairs or replacements must have been made prior to an owner's receipt of the letter and form.

D. Failing to provide all dealers with adequate supplies of front fenders and any other items necessary to effectuate removal and replacement.

E. Failing to provide all dealers with adequate supplies of unsigned statements referenced in paragraphs B and C of part I of this Order.

F. Failing to notify all dealers in writing within ten (10) days after the date of service of this Order of the existence of premature rusting, of the necessity for using galvanized front fenders or zincrometal front fenders and of the terms and conditions of respondent's obligations under this Order.

II

It is further ordered, That respondent's obligations under paragraphs B and C of part I of this Order shall not extend to those owners who initially contact respondent or a dealer after November 1, 1980, or after 42 months-in-service, whichever date is later.

III

It is further ordered, That respondent maintain documents demonstrating compliance with this Order for a period not less than three

(3) years. Such documents shall be made available to the Commission or its staff for inspection and copying upon reasonable request, and shall include, but are not necessarily limited to, those revealing:

A. The name and last known address of each owner who was sent the disclosures required by paragraph A of part I of this Order.

B. The name and last known address of each owner who requested repairs or reimbursement for repairs for premature rusting.

C. The name and last known address of each owner whose motor vehicle was repaired or who was reimbursed for repairs as required by paragraphs B and C of part I of this Order.

D. Communications with respondent concerning repairs or reimbursements for repairs made to motor vehicles affected by premature rusting.

E. Each instance arising under paragraph C of part I of this Order where Chrysler reimbursed an owner of a motor vehicle for less than one hundred percent (100%) of the actual charges for parts and labor, and those documents revealing the underlying basis for determining the usual and customary charges in each such instance.

F. Each instance arising under paragraphs B or C of part I of this Order involving a dispute over months-in-service, unless Chrysler determined to remove or replace front fenders or reimburse an owner in accordance with said paragraphs, notwithstanding the fact that the vehicle allegedly exceeded thirty-six (36) months-in-service.

G. Each instance arising under paragraph B of part I of this Order when Chrysler failed to remove and replace the front fenders of any motor vehicle, and each instance arising under paragraph C of part I of this Order when Chrysler failed to reimburse any owner of a motor vehicle, and those documents revealing the underlying basis for such failures.

IV

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, and at one year intervals thereafter through 1982, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form in which it has complied with this Order.

V

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate

respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

