

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:                     Robert Pitofsky, Chairman  
                                      Mary L. Azcuenaga  
                                      Janet D. Steiger  
                                      Roscoe B. Starek, III  
                                      Christine A. Varney

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In The Matter of                     )  
                                      )  
                                      )  
HERB GORDON AUTO WORLD, INC. dba )     DOCKET NO. C-3734  
  HERB GORDON AUTO WORLD,         )  
  HERB GORDON DODGE                 )     DECISION AND ORDER  
  HERB GORDON MERCEDES-BENZ        )  
  HERB GORDON NISSAN                )  
  HERB GORDON OLDSMOBILE           )  
  HERB GORDON VOLVO, and            )  
  HERB GORDON USED CARS,            )  
  a corporation.                     )  
                                      )  
                                      )  

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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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act, 15 U.S.C. § 1601 et seq. and its implementing Regulation Z, 12 C.F.R. § 226, the Consumer Leasing Act, 15 U.S.C. § 1667 et seq. and its implementing Regulation M, 12 C.F.R. § 213 and the Federal Trade Commission Act, 15 U.S.C. § 45 et seq.; 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 considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts and Regulation, 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 § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3121-3161 Automobile Blvd., Silver Spring, Maryland 20904.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

#### DEFINITIONS

"Clearly and conspicuously" as used herein shall mean:

- (a) In a television or videotaped advertisement, the required disclosures made in the audio portion of the advertisement shall be delivered in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer. The required disclosures made in the video portion of the advertisement shall appear on the screen in a size, shade, contrast, prominence and location, and for a duration, as to be readily noticeable, readable and comprehensible to an ordinary consumer.
- (b) In a radio advertisement, the required disclosures shall be delivered in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer.
- (c) In a print advertisement (including but not limited to mail solicitations), the required disclosures shall appear in a size, shade,

contrast, prominence and location as to be readily noticeable, readable and comprehensible to an ordinary consumer.

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

I.

IT IS ORDERED that respondent Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, 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, as "advertisement" and "consumer credit" are defined in the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to whether there may be a balloon payment or second series of installment payments, and the amount of any balloon payment or the number and amount of any second series of installment payments.

B. Stating any number or amount of payment(s) required to repay the debt, without stating accurately, clearly and conspicuously, all of the terms required by Regulation Z, as follows, and as amended:

- (1) the amount or percentage of the downpayment;
- (2) the terms of repayment, including the amount of any balloon payment, or the number and amount of any second series of installment payments; 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, as more fully set out in Section 226.24(c) of the

Federal Reserve Board's Official Staff Commentary to Regulation Z (hereinafter referred to as "Commentary"), 12 C.F.R. § 226.24(c), Supp. 1, as amended).

C. 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 stating, clearly and conspicuously, all of the terms required by Regulation Z, as follows, and as amended:

- (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, as more fully set out in Section 226.24(c) of the Commentary, 12 C.F.R. § 226.24(c), Supp. 1, as amended).

D. Stating a rate of finance charge without stating the rate as an "annual percentage rate" using that term or the abbreviation "APR," as required by Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(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, as more fully set out in Section 226.24(b) of the Commentary, 12 C.F.R. § 226.24(b), Supp. 1, as amended).

E. Failing to state only those terms that actually are or will be arranged or offered by the creditor, in any advertisement for credit that states specific credit terms, as required by Regulation Z.

(Section 142 of the TILA, 15 U.S.C. § 1662, as amended, and Section 226.24(a) of Regulation Z, 12 C.F.R. § 226.24(a), as amended).

F. Failing to comply in any other respect with Regulation Z and the TILA.

(Regulation Z, 12 C.F.R. § 226, as amended, and the TILA, 15 U.S.C. §§ 1601-1667, as amended).

## II.

IT IS ORDERED that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote or assist directly or indirectly any consumer lease, as "advertisement" and "consumer lease" are defined in the Consumer Leasing Act ("CLA"), 15 U.S.C. § 1667-1667e, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the costs or terms of leasing a vehicle.

B. Stating the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, unless all of the following items are disclosed, clearly and conspicuously, as applicable, as required by Regulation M, as amended:

- (1) that the transaction advertised is a lease;
- (2) the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;
- (3) the number, amounts, due dates or periods of scheduled payments and the total of such payments under the lease;
- (4) a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and
- (5) a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

For all lease advertisements, respondent may comply with the requirements of this subparagraph by utilizing Section 184(a) of the CLA, 15 U.S.C. § 1667c(a), as amended by Title II, Section

2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 ("Omnibus Act"), Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) (to be codified at 15 U.S.C. § 1667c(a)) ("Section 184(a) of the revised CLA"), as amended, or by utilizing Section 213.7(d) of revised Regulation M, 61 Fed. Reg. 52246, 52261 (Oct. 7, 1996) (to be codified at 12 C.F.R. § 213.7(d)) ("revised Regulation M"), as amended. For radio lease advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 184(b) of the CLA, 15 U.S.C. § 1667c(b), as amended by Title II, Section 2605 of the Omnibus Act (to be codified at 15 U.S.C. § 1667c(c)) ("Section 184(c) of the revised CLA"), as amended, or by utilizing Section 213.7(f) of revised Regulation M (to be codified at 12 C.F.R. § 213.7(f)), as amended. For television lease advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of revised Regulation M, as amended.

(Sections 184(a)-(b) of the CLA, 15 U.S.C. §§ 1667c(a)-(b), as amended, and Section 213.5(c) of Regulation M, 12 C.F.R. § 213.5(c), as amended).

C. Stating that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease such property at those amounts or terms, as required by Regulation M.

(Section 213.5(a) of Regulation M, 12 C.F.R. § 213.5(a), as amended).

D. Failing to comply in any other respect with Regulation M and the CLA.

Respondent may comply with the requirements of this subparagraph by utilizing revised Regulation M, 61 Fed. Reg. 52246 (Oct. 7, 1996) (to be codified at 12 C.F.R. § 213), as amended.

(Regulation M, 12 C.F.R. § 213, as amended, and the CLA, 15 U.S.C. §§ 1667-1667e, as amended).

### III.

IT IS FURTHER ORDERED that respondent, its successors and assigns shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and secure from each such person a signed statement acknowledging receipt of said order.



IV.

IT IS FURTHER ORDERED that respondent, its successors and assigns shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate entity 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 the order.

V.

IT IS FURTHER ORDERED that for five years after the date of service of this order respondent, its successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI.

IT IS FURTHER ORDERED that respondent, its successors and assigns shall, within sixty (60) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VII.

IT IS FURTHER ORDERED that this order will terminate on April 15, 2017, or twenty 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 paragraph in this order that terminates in less than twenty 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 paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never

filed, except that the 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.

Donald S. Clark  
Secretary

ISSUED: April 15, 1997