

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

_____)	
In The Matter of)	
SUNTRUP BUICK-PONTIAC-GMC)	File Nos. 9523200 and
TRUCK, INC. and)	9523201
SUNTRUP FORD, INC.,)	AGREEMENT CONTAINING
corporations, and)	CONSENT ORDER
THOMAS SUNTRUP,)	
individually and as an)	
officer of the corporations.)	
_____)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of Suntrup Buick-Pontiac-GMC Truck, Inc. and Suntrup Ford, Inc., corporations, and Thomas Suntrup, individually and as an officer of the corporations ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Suntrup Buick-Pontiac-GMC Truck, Inc. and Suntrup Ford, Inc., by their duly authorized officers, and Thomas Suntrup, individually and as an officer of the corporations, and counsel for the Federal Trade Commission that:

1.a. Proposed respondent Suntrup Buick-Pontiac-GMC Truck, Inc. is a Delaware corporation with its principal office or place of business at 4200 N. Service Road, Saint Peters, Missouri 63376.

1.b. Proposed respondent Suntrup Ford, Inc. is a Missouri corporation with its principal office or place of business at 12750 Saint Charles Rock Road, Bridgeton, Missouri 63044.

1.c. Proposed respondent Thomas Suntrup is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations. His principal offices or places of business are the same as those of Suntrup Buick-Pontiac-GMC Truck, Inc. and Suntrup Ford, Inc.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right

they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. "Clearly and conspicuously" shall mean as follows:
 - a. In a television or video advertisement, the audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.
 - b. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.
 - c. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

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

2. "Equal prominence" shall mean as follows:
 - a. In a television or video advertisement, the video disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. The audio disclosure shall be delivered in the same or

similar manner, including but not necessarily limited to volume, cadence, pace, and placement.

- b. In a print advertisement, the disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.
- c. In a radio advertisement, the disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.

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

3. "Total amount due at lease inception" shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later.

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

5. Unless otherwise specified, "respondents" shall mean Suntrup Buick-Pontiac-GMC Truck, Inc. and Suntrup Ford, Inc., corporations, their successors and assigns and their officers; Thomas Suntrup, individually and as an officer of the corporations; and each of the above's agents, representatives, and employees.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended, shall not, in any manner, expressly or by implication:

- A. Misrepresent the costs of leasing a vehicle, including but not necessarily limited to the total amount due at lease inception.
- B. State any amount due at lease inception (or that no such amount is required), except for the statement of a periodic payment, unless the advertisement also states

with equal prominence the total amount due at lease inception.

C. State 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 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, respondents may comply with the requirements of this subparagraph by utilizing Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. § 1667c(a), as amended by Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, 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 (October 7, 1996) and 62 Fed. Reg. 15364, 15368 (Apr. 1, 1997) (to be codified at 12 C.F.R. § 213.7(d)) ("revised Regulation M"), as amended. For radio lease advertisements, respondents 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 Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) (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, respondents may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of revised Regulation M, as amended.

- D. Fail to comply in any other respect with Regulation M, 12 C.F.R. § 213, as amended, and the CLA, 15 U.S.C. §§ 1667-1667e, as amended. Respondents may comply with the requirements of this subparagraph by utilizing revised Regulation M, 61 Fed. Reg. 52246 (Oct. 7, 1996) and 62 Fed. Reg. 15364 (Apr. 1, 1997) (to be codified at 12 C.F.R. § 213), as amended.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any extension of consumer credit in or affecting commerce, as "advertisement" and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended, shall not, in any manner, expressly or by implication:

- A. State the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by Section 144 of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1664, as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended, as more fully set out in Section 226.24(c) of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.24(c), as amended, as follows:
1. the amount or percentage of the downpayment;
 2. the terms of repayment, including but not necessarily limited to the amount of any balloon payment; 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.

- B. State a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term, as required by Section 144 of the TILA, 15 U.S.C. § 1664, 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 Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.24(b), as amended.
- C. Fail to comply in any other respect with Regulation Z, 12 C.F.R. § 226, as amended, and the TILA, 15 U.S.C. §§ 1601-1667, as amended.

III.

IT IS FURTHER ORDERED that respondents Suntrup Buick-Pontiac-GMC Truck, Inc. and Suntrup Ford, Inc., and their successors and assigns, and respondent Thomas Suntrup shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

IV.

IT IS FURTHER ORDERED that respondents Suntrup Buick-Pontiac-GMC Truck, Inc. and Suntrup Ford, Inc., and their successors and assigns, and respondent Thomas Suntrup shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondents Suntrup Buick-Pontiac-GMC Truck, Inc. and Suntrup Ford, Inc., and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporations that may

affect compliance obligations arising under this order, including but not necessarily limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondent Thomas Suntrup, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment involving the advertising and/or extension of a "consumer lease," as that term is defined in the CLA and its implementing Regulation M, or the advertising and/or extension of "consumer credit," as that term is defined in the TILA and its implementing Regulation Z. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondents Suntrup Buick-Pontiac-GMC Truck, Inc. and Suntrup Ford, Inc., and their successors and assigns, and respondent Thomas Suntrup shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 19__

SUNTRUP BUICK-PONTIAC-GMC TRUCK,
INC.

By: _____
THOMAS SUNTRUP
President

SUNTRUP FORD, INC.

By: _____
THOMAS SUNTRUP
President

THOMAS SUNTRUP, individually
and as an officer of the
corporations

PAUL SIMON, JR.
Helfrey, Simon, and Jones, P.C.
Attorney for respondents

FEDERAL TRADE COMMISSION

By: _____
LAUREN B. STEINFELD
Counsel for the Federal Trade
Commission

APPROVED:

DAVID MEDINE
Associate Director
Division of Credit Practices

JOAN Z. BERNSTEIN
Director
Bureau of Consumer Protection

the same as those of Suntrup Buick-Pontiac-GMC Truck, Inc. and Suntrup Ford, Inc.

4. Respondents have disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.

5. Respondents have disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.

6. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

LEASE ADVERTISING

7. Respondents have disseminated or have caused to be disseminated consumer lease advertisements ("lease advertisements") for automobiles in the print media, including but not necessarily limited to the attached Exhibits A through E. These lease advertisements contain the following statements:

- A. "NO PAYMENT TIL APRIL '95
'95 GRAND AM SEDAN
\$225** per mo. lease"

[A fine print statement at the bottom of the ad states, "***36 mo. lease with 10% of MSRP cap reduction plus first payment sec. deposit & license plus tax with 12,000 mi. per yr. and approved credit."]

* * *

"NO PAYMENT TIL APRIL '95
1995 THUNDERBIRD LX . . .
\$275** per mo. lease"

[A fine print statement at the bottom of the ad states,
"24 mo. lease with 10% of MSRP cap reduction plus
first payment sec. dep. & license plus tax with 15,000
mi. per year and approved credit."] (Exhibit A)

B. "NO PAYMENT TIL APRIL '95
'95 BONNEVILLE SE SEDAN . . .
\$281** per mo. lease"

[A fine print statement at the bottom of the ad states,
"36 mo. lease with 10% of MSRP cap reduction plus
first payment sec. deposit & license plus tax with
12,000 mi. per yr. and approved credit."]

* * *

"1994 ESCORT LX
\$178** per mo. lease"

[A fine print statement at the bottom of the ad states,
"24 mo. lease with 10% of MSRP cap reduction plus
first payment sec. dep. & license plus tax with 15,000
mi. per year and approved credit."] (Exhibit B)

C. "1995 PONTIAC GRAND AM COUPE . . .
LEASE \$188** 36 MONTHS"

[A fine print statement at the bottom of the ad states,
"All prices include all rebates and incentives, and
commercial rebates where applicable. For conv. vans
add \$799 for trim kit. Vehicle pictures may differ
from actual pictures. 10% of MSRP cap reduction plus
first payment sec. deposit and license plus tax with
12,000 miles per year and approved credit."]

* * *

"LEASE \$249** PER MO.
\$13,999*

1995 TAURUS"

[A fine print statement at the lower right hand corner of the ad states, "*** 24 mo. Lease with 10% of MSRP cap reduction plus first payment sec. dep & license plus tax with 15,000 mi. per year and approved credit."] (Exhibit C)

- D. "NO PAYMENT TIL MARCH '95
'95 GRAND AM COUPE SE . . .
LEASE \$262** per mo."

[A fine print statement at the bottom of the ad states, "***36 mo. lease with 10% of MSRP cap reduction plus first payment sec. deposit & license plus tax with 15,000 mi. per yr. and approved credit."] (Exhibit D)

* * *

"\$1995 PROBE
LEASE \$215** PER MO."

[A fine print statement at the bottom of the ad states, "**24 mo. lease with 10% of MSRP cap reduction plus first payment sec. dep. & license plus tax with 15,000 mi. per year and approved credit."] (Exhibit D)

- E. "'95 CENTURY SEDAN
\$249** per mo. lease"

[A fine print statement at the bottom of the ad states, "***36 mo. lease with 10% of MSRP cap reduction plus first payment sec. deposit & license plus tax with 15,000 mi. per yr. and approved credit."] (Exhibit E)

FEDERAL TRADE COMMISSION ACT VIOLATIONS
Count I: Misrepresentation of Inception Fees

8. In lease advertisements, including but not necessarily limited to Exhibits A, B, and D, respondents have represented, expressly or by implication, that consumers have no monetary obligations at lease signing, including no obligation to pay a periodic payment.

9. In truth and in fact, consumers are required to pay significant amounts at lease signing, including but not limited to one or more of the following: a downpayment, security deposit, documentary fee, a periodic payment, and taxes. Therefore, respondents' representation as alleged in Paragraph 8 was, and is, false or misleading.

10. Respondents' practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

Count II: Failure to Disclose Adequately Inception Fees

11. In lease advertisements, including but not necessarily limited to Exhibits A through E, respondents have represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount.

12. These lease advertisements do not adequately disclose additional terms pertaining to obligations at lease inception, including but not necessarily limited to one or more of the following charges: a required downpayment, security deposit, documentary fee, first month's payment, and taxes. This information does not appear at all, appears in very fine print, and/or is referenced by asterisks that do not correspond to the asterisks depicted in the main text of the advertisements.

13. These additional terms would be material to consumers in deciding whether to visit respondents' dealership and/or whether to lease an automobile from respondents. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

14. Respondents' practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

CONSUMER LEASING ACT AND REGULATION M VIOLATIONS
Count III: Failure to Disclose Required Information
Clearly and Conspicuously

15. In lease advertisements, including but not necessarily limited to Exhibits A through E, respondents have stated a monthly payment amount and/or the number of required payments.

16. These lease advertisements have failed to disclose clearly and conspicuously the following items of information required by Regulation M: 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; the total of scheduled payments due under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time or, in lieu of disclosure of the price, the method of determining the purchase-option price; and 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.

17. Respondents' practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, and Section 213.5(c) of Regulation M, 12 C.F.R. § 213.5(c).

CREDIT ADVERTISING

18. Respondents have disseminated or have caused to be disseminated credit sale advertisements ("credit advertisements") for automobiles in the print media, including but not necessarily limited to the attached Exhibits A, B, and E. These advertisements contain the following statements:

A. "'95 FIREBIRDS . . . \$17,995*"

[A fine print statement at the bottom of the ad states, "*All prices include all rebates & incentives. Also includes \$1000 cash or trade equity and commercial rebates where applicable. . ."] (Exhibit A)

B. "'95 SONOMA . . . \$13,995*"

[A fine print statement at the bottom of the ad states, "*All prices include all rebates & incentives. Also includes \$1000 cash or trade equity and commercial rebates where applicable. . ."]

* * *

"FORD CARS 3.9% FINANCING" (Exhibit B)

- C. Along with the statements described in Paragraph 5, Exhibit C contains the following credit terms, "6.75% A.P.R. FINANCING ON CONTOURS for 48 Mos. PLUS \$500 REBATE"

* * *

"3.9% FINANCING or \$600 REBATE . . .
1995 RANGER XLT"
(Exhibit C)

- D. "2.9% APR FINANCING FOR 48 MONTHS OR \$750 CASH BACK '95 FORD TAURUS"
(Exhibit D)

- E. "'95 BONNEVILLE SE SEDAN . . .
3.6% FINANCING Available on Bonneville . . .
\$18,995*" [A bar is superimposed over this sale price figure that states "MAKE US AN OFFER!"]

[A fine print statement at the bottom of the ad states, "***\$1000 DOWN CASH OR TRADE EQUITY. FOR QUALIFIED FIRST TIME NEW CAR OR TRUCK BUYERS & GMC REBATE."]
(Exhibit E)

TRUTH IN LENDING ACT AND REGULATION Z VIOLATIONS
Count IV: Failure to Disclose Required Information

19. In credit advertisements, including but not necessarily limited to Exhibits A through E, respondents have stated the amount of a downpayment and/or the number of payments or period of repayment as terms for financing the purchase of the advertised vehicles.

20. These advertisements have failed to disclose the following

items of information required by Regulation Z: the amount or percentage of the downpayment, the terms of repayment, and/or the "annual percentage rate," using that term and if the rate may be increased after consummation, that fact.

21. Respondents' practices have violated Section 144 of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

Count V: Failure to State Rate of Finance Charge as
an Annual Percentage Rate

22. In credit advertisements, including but not necessarily limited to Exhibits B, C, and E, respondents have stated a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR," as required by Regulation Z.

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

THEREFORE, the Federal Trade Commission this ___ day of _____, 1997, has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibits A-E attached to paper copies of complaint, but not available in electronic form.]

Analysis of Proposed Consent
Order to Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from respondents Lou Fusz Automotive Network, Inc. and Louis J. Fusz, Jr. ("respondents Lou Fusz"); Frank Bommarito Oldsmobile, Inc. and Frank J. Bommarito ("respondents Frank Bommarito"); Suntrup Ford, Inc., Suntrup Buick-Pontiac-GMC Truck, Inc., and Thomas Suntrup ("respondents Suntrup"); and Beuckman Ford, Inc. and Fred J. Beuckman, III ("respondents Beuckman").¹ The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreement or make final the agreements' proposed orders.

The complaints allege that each of the respondents' automobile lease advertisements have violated the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. The complaints also allege that respondents' credit advertisements have violated the Truth in Lending Act ("TILA") and Regulation Z, and, in the case of respondents Frank Bommarito, the FTC Act. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board ("Board") to promulgate regulations implementing such statutes -- Regulations M and Z respectively. See 15 U.S.C. §§ 1601-1667e; 12 C.F.R. Part 213; 12 C.F.R. Part 226.²

¹ These entities and persons are collectively referred to as "respondents."

² On September 18, 1996, the Board issued revisions to Regulation M. 61 Fed. Reg. 52,246 (Oct. 7, 1996) ("1996 revisions to Regulation M"). The advertising requirements of the October 1996 revisions are to be codified at Section 213.7 of Regulation M, 12 C.F.R. § 213.7. Subsequently, on September 30, 1996, Congress passed revisions to the CLA. Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) ("revised CLA"). On April 1, 1997, the Board implemented these statutory changes in another rulemaking. 62 Fed. Reg. 15,346 (Apr. 1, 1997) ("1997 revisions to Regulation M"). These changes are also to be codified at Section 213.7 of Regulation M, 12 C.F.R. § 213.7. On April 4, 1997, the Board adopted a final revised Official Staff Commentary to Regulation M, 62 Fed. Reg. 16,053 (Apr. 4, 1997) ("Commentary"). The amendments to the CLA and the revisions to Regulation M and the Commentary are optionally effective immediately and become mandatorily effective on October 1, 1997.

The complaints against respondents Lou Fusz, Bommarito, and Suntrup allege that their lease advertisements have misrepresented the true amounts consumers owe at lease inception. The complaints allege that these companies' ads represented, based on prominent statements of "0 Down," "No Money Down," and "No Payment til April/March" respectively, that consumers can lease the advertised vehicles without incurring monetary obligations at lease inception. This representation is false, according to the complaints, because consumers must pay substantial fees, such as a significant downpayment, a security deposit, first month's payment, and/or other fees to lease the advertised vehicles. The complaints also allege that all respondents (including respondents Beuckman), based on their prominent statements about inception fees and/or prominent statements about a low monthly payment, have failed to disclose adequately significant inception fees in their advertisements. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaints further allege that all respondents' lease advertisements have violated the CLA and Regulation M. The complaints allege that respondents' ads state 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 ("triggering" terms under these laws), but fail to properly state all of the "triggered" terms, as applicable and as follows: that the transaction advertised is a lease; 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; the number, amount, due dates or period of scheduled payments, and the total of such payments under the lease; 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 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. These practices, according to the complaints, violate the advertising requirements of the CLA and Regulation M.

These aforementioned violations cite the version of both the CLA and Regulation M in effect at the time the ads ran. Respondents' alleged practices of failing to properly disclose inception fees would also violate the revised CLA, the 1996 revisions to Regulation M, and the 1997 revisions to Regulation M, all of which are currently permissibly effective and will be mandatorily effective on October 1, 1997. As described below, the relief in the proposed consent orders enjoin respondents from violating the existing CLA and Regulation M but also provide respondents the option of complying with the revised laws to satisfy this requirement.

The complaint against respondents Lou Fusz also alleges that their lease advertisements have represented that consumers can lease the advertised vehicles at advertised terms, including but not limited to the monthly payment amount and the amount stated as "down." This representation is false, according to the complaint, because respondents have not offered the advertised vehicles at such terms. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act. These practices also violate Section 213.5(a) of Regulation M, 12 C.F.R. § 213.5(a), according to the complaint, which requires that advertisers make advertised terms "usually and customarily" available to consumers.

The complaint against respondents Lou Fusz also alleges that their lease advertisements promoting a "one payment" plan have represented that consumers can lease the advertised vehicles by making equal monthly payments for a specified term. This representation is false, according to the complaint, because the "one payment" plan requires consumers to make all payments owed under the lease agreement at lease signing. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaint against respondents Beuckman also alleges that their lease advertisements have represented that consumers can purchase the advertised vehicles by financing the vehicles through credit at the advertised monthly payment and term. According to the complaint, respondents Beuckman failed to disclose adequately that the transaction advertised is a lease. Specifically, the complaint alleges that respondents Beuckman failed to disclose that the term "RCL" is an abbreviation for "Red Carpet Lease" or to otherwise disclose that the advertised monthly payment and term are components of a lease offer. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaints against all of the respondents allege that their credit advertisements have violated the TILA and Regulation Z. The complaints allege that respondents' ads state the amount or percentage of any downpayment, the number of payments or period of repayment, and/or the amount of any payment, but fail to properly state the following required terms: the amount or percentage of the downpayment, the terms of repayment, and/or the annual percentage rate, using that term or the abbreviation "APR," in violation of the advertising requirements of the TILA and Regulation Z. The complaint against respondents Suntrup also alleges that their credit advertisements have violated the TILA and Regulation Z by stating a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR," in violation of the TILA and Regulation Z.

The complaint against respondents Frank Bommarito also alleges that their credit advertisements have represented that consumers can purchase the advertised vehicles at the terms prominently stated in the ad, such as the monthly payment, annual percentage rate ("APR"), and amount stated as "down." This representation is false, according to the complaint, because consumers must also pay a final balloon payment of several thousand dollars to purchase the advertised vehicles. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, the proposed orders prohibit respondents, in any lease advertisement, from misrepresenting the costs of leasing a vehicle, including but not limited to the total amount due at lease inception. The proposed orders also prohibit respondents, in any lease advertisement, from stating any amount due at lease inception or that no such amount is required, not including a statement of the periodic payment, unless the advertisement also states with "equal prominence" the total amount due at lease inception. This "prominence" requirement for lease inception fees also is found in the Board's 1996 and 1997 revisions to Regulation M.

The proposed orders also require respondents, in any advertisement that states 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, to also state clearly and conspicuously all of the terms required by Regulation M, as applicable and as follows: that the transaction advertised is a lease; 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; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; 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 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, the proposed orders permit respondents to comply with this provision by utilizing applicable provisions of the revised CLA and the 1996 and 1997 revisions to Regulation M. The orders set out for each media which provisions of such revised laws are applicable.

The proposed order for respondents Lou Fusz also prohibits these respondents from stating specific lease terms unless respondents usually and customarily lease or will lease a vehicle at those terms. This proposed order also prohibits respondents Lou Fusz from misrepresenting the type of transaction advertised, including but not limited to the fact that the offer is for a one payment lease.

The proposed order for respondents Beuckman also prohibits these respondents from stating the term "RCL" without disclosing clearly and conspicuously that such term refers to a lease transaction.

With regard to respondents' credit advertisements, the proposed orders require that any advertisement that states the amount or percentage of any downpayment, the number of payments, the amount of any payment, or the amount of any finance charge must also state clearly and conspicuously all of the terms required by the TILA and Regulation Z, as applicable and as follows: the amount or percentage of the downpayment; the terms or repayment; and the annual percentage rate, using that term or the abbreviation "APR." If the APR may be increased after consummation of the credit transaction, that fact must also be disclosed. The proposed order for respondents Suntrup also prohibits these respondents from stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR."

The proposed order for respondents Frank Bommarito prohibits these respondents, in any credit advertisement, from misrepresenting the terms of financing a vehicle, including but not limited to the amount of any balloon payment. This proposed order also prohibits respondents Frank Bommarito from stating the amount of any payment or the amount or percentage of any downpayment or amount "down" in any advertisement unless these respondents also state the amount of any final balloon payment prominently and in close proximity to the most prominent of the above statements.

The proposed orders also prohibit all respondents from failing to comply in any other respect with the CLA and Regulation M and the TILA and Regulation Z. The proposed order permits respondents to comply with other requirements of existing Regulation M, 12 C.F.R. § 213 by utilizing the 1996 and 1997 revisions to Regulation M, as amended.

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