

Complaint

87 F.T.C.

IN THE MATTER OF
FORD MOTOR COMPANY

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

Docket 9001. Complaint, Dec. 10, 1974—Remand Order, April 13, 1976

Opinion and order affirming a ruling of the administrative law judge that advertisements of Ford Motor Company, a Dearborn, Mich., manufacturer of automobiles, represented that the gasoline-consumption rates specified in the ads approximate or equal the performance an ordinary driver can typically obtain from standard production model cars when taking long or cross-country trips, and that Ford lacked a reasonable basis for the representation. The order adopted the initial decision's findings of facts 1-10 and 13 as findings of the Commission, set aside the remainder of the initial decision, and remanded the complaint to the administrative law judge to conduct hearings in respect to allegations that Ford made unsubstantiated fuel economy claims for its Pinto, Capri, Mustang II, Maverick, and Comet model small cars.

Appearances

For the Commission: *Wallace S. Snyder and Heidi P. Sanchez.*

For the respondent: *Robert L. Wald, Carleton A. Harkrader, Robert A. Skitol, Thomas W. Brunner and Lewis M. Popper, Wald, Harkrader & Ross, Washington, D.C. and David R. Larrouy, Dearborn, Michigan.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ford Motor Company, a corporation, hereinafter 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 Ford Motor Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at The American Road, Dearborn, Michigan.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, distribution, sale, and advertising of various products including automobiles.

PAR. 3. Respondent causes the said products, when sold, to be transported from its place of business in various States of the United States to purchasers located in various other States of the United

States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business, respondent has disseminated and caused the dissemination of advertisements concerning its aforementioned products including automobiles in commerce by means of advertisements printed in magazines and newspapers distributed by the mail and across State lines and transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products including automobiles.

PAR. 5. Among the advertisements so disseminated or caused to be disseminated by respondent are the advertisements attached as Exhibits A and B.

PAR. 6. Said Exhibits A and B and others substantially similar thereto contain one or more false, deceptive and misleading representations and fail to disclose facts which are material in the light of the representations contained therein. Therefore, the representations contained in said advertisements were, and are, deceptive and/or unfair.

PAR. 7. Said Exhibits A and B and others substantially similar thereto (hereinafter referred to as said advertisements) represent, directly or by implication, that the gasoline consumption rates specified in the advertisements approximate or equal the performance an ordinary driver can typically obtain from standard production model cars when taking long or cross-country trips.

PAR. 8. In truth and in fact, at the time respondent made the representations as alleged in Paragraph Seven respondent did not possess and rely upon a reasonable basis for making these representations. Therefore the said advertisements were, and are unfair and/or deceptive.

PAR. 9. Said Exhibits A and B and others substantially similar thereto represent, directly or by implication, that respondent had a reasonable basis for making, at the time they were made, the representations as alleged in Paragraph Seven.

PAR. 10. In truth and in fact, at the time respondent made the representations as alleged in Paragraph Nine respondent had no reasonable basis for making the representations as alleged in Paragraph Seven. Therefore, the said advertisements were, and are deceptive and/or unfair.

PAR. 11. Respondent failed to disclose in said advertisements that it had no evidence that any or all of the conditions under which the tests described in the advertisements were conducted approximated or equalled the conditions under which an ordinary driver would operate his automobile when taking long or cross-country trips and that respondent had no evidence that would tend to show whether or not the conditions under which said tests were run were typical or atypical of conditions encountered by ordinary drivers.

PAR. 12. The facts set forth in Paragraph Eleven are material in light of the representations contained in said advertisements and their omission make these advertisements misleading in a material respect. Therefore, the said advertisements were, and are deceptive and/or unfair.

PAR. 13. In the course and conduct of the aforesaid business, and at all times mentioned herein, respondent Ford Motor Company has been and now is in substantial competition in commerce with corporations, firms, and individuals engaged in the sale and distribution of automobiles of the same general kind and nature as that sold by respondent.

PAR. 14. The use by respondent of the aforesaid unfair and/or deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of automobiles manufactured by respondent. Further, as a result thereof, substantial trade is being unfairly diverted to respondent from its competitors.

PAR. 15. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair or deceptive acts or practices in commerce and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

February 19th: General Environments Corporation tested the highway mileage of Ford Motor Company's small cars. Today: the results.

EXHIBIT

A

All 5 Ford Motor Company small cars got OVER 28 MPG.

The test.

At 7:15 AM, February 19th, five 1974 Ford Motor Company small cars (wheelbase under 112") were driven from Phoenix to Los Angeles to learn the kind of mileage they could get. The cars were a Ford Pinto, a Ford Maverick, a Ford Mustang II, a Mercury Comet and one of Mercury's Capris.

All the cars were regular production models with standard engines

and transmissions. They weren't however, brand new. They had been broken in to simulate 6,000 miles of normal driving. All the cars used regular gas and had normal dealer preparation. The drivers were not professionals. And they did not exceed 50 MPH. In many respects, the test was similar to one run on December 28th, 1973, where five 1974 Ford LTD's delivered an average of 18.8 MPG.

The results.

These results show dramatically that these five small cars from Ford and Lincoln-Mercury did deliver economical gas mileage.

Of course, the mileage you will get depends on many factors

equipment, engine displacement, vehicle weight, local road conditions and your personal driving style. So the mileage you get may be less or even more than the figures quoted here.

Ford and Lincoln-Mercury dealers offer more types of gas-saving engines for small cars than anyone.

One of the most important factors determining small car mileage is a gas-saving engine. And Ford and Lincoln-Mercury dealers offer more types of gas-saving engines for small cars than anyone.

Two 4-cylinder engines. Some manufacturers of so-called "economy" cars don't even offer a 4-cylinder engine. Ford Motor Company makes two different sizes of 4-cylinder engines: A 2.0 liter which was used in Pinto and Capri for this test, and the 2.3 liter used in Mustang II. The 2.0 liter is the smallest displacement engine available today in an American-made car from any major American manufacturer. Ford Motor Company sells more 4-cylinder engines in American-made cars than anyone else.

Two 6-cylinder engines. Ford and Lincoln-Mercury dealers offer two sizes of 6-cylinder engines for small cars: a 200 CID which was used in Maverick and Comet for this test, and an optional 250 CID

engine for all of its car lines.

A V-4 engine. Ford Mustang II is the only car made by a major American manufacturer to offer an optional V-4. Mercury's imported Capri offers an optional 2.8 liter V-6 engine at a cost thousands of dollars less than any other V-6 powered import.

An economy V-8 engine. Ford and Lincoln-Mercury dealers offer a 302 CID V-8 engine, the smallest displacement V-8 available from any major American manufacturer. It provides extra performance while still delivering good gas mileage.

Explanation of engine designations. CID OR LITER, the total volume, in cubic inches or liters (metric system), that the pistons displace in all the engine's cylinders.



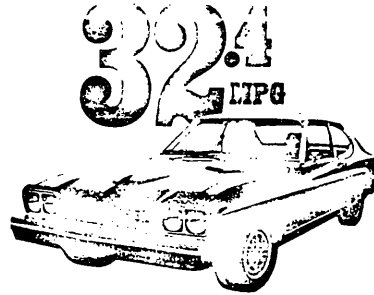
FORD MOTOR COMPANY HAS MADE MORE SMALL CARS* THAN ANYONE ELSE IN THE WORLD (THAT INCLUDES VW, AMC, TOYOTA, GM, FIAT, DAISSUN OR CHRYSLER)

*Small car: wheelbase under 112"



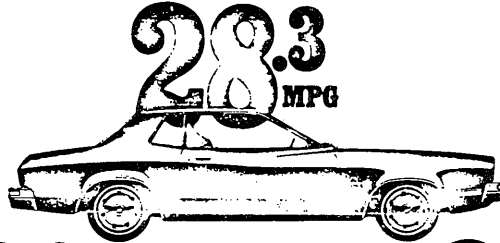
MERCURY COMET.

- Driver: Filip Roye
- Model: two-door sedan
- Engine: 200 CID six-cylinder
- Options: white sidewall tires, wheel covers, vinyl roof



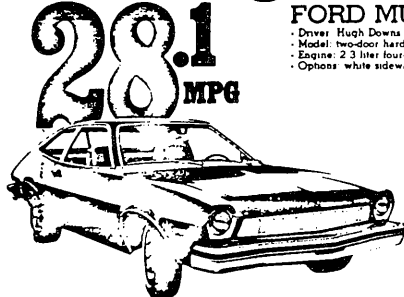
MERCURY'S CAPRI.

- Driver: Roger Rutherford
- Model: Sport Coupe
- Engine: 2.0 liter four-cylinder
- Options: none



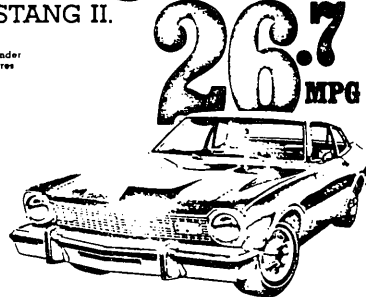
FORD MUSTANG II.

- Driver: Hugh Downs
- Model: two-door hardtop
- Engine: 2.3 liter four-cylinder
- Options: white sidewall tires



FORD PINTO.

- Driver: Mickey Sholder
- Model: two-door sedan
- Engine: 2.0 liter four-cylinder
- Options: white sidewall tires, wheel covers and Accent Group



FORD MAVERICK.

- Driver: Jane Mito
- Model: two-door sedan
- Engine: 200 CID six-cylinder
- Options: white sidewall tires, wheel covers and Exterior Decor Group

Ford and Lincoln-Mercury dealers offer 35 different small car models and engines, 20 with sticker prices under the best-selling import model.



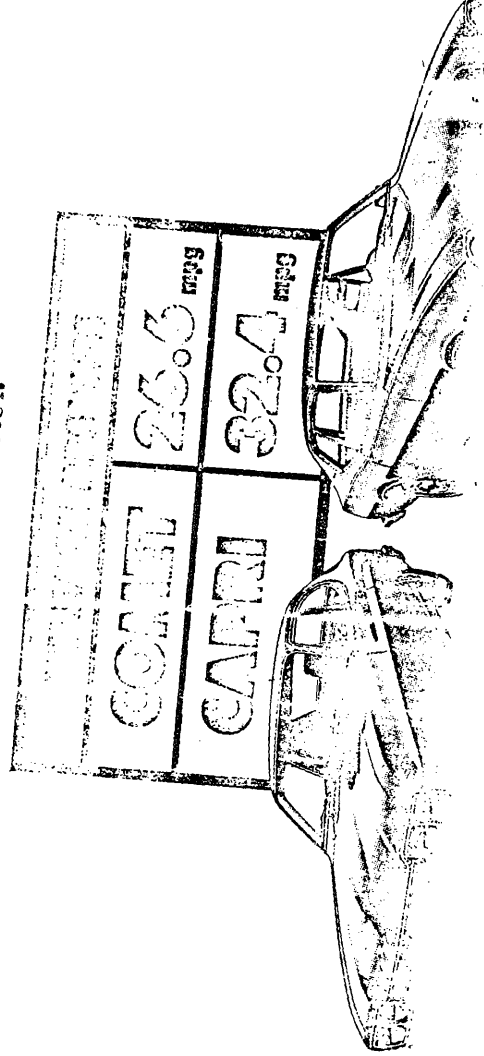
Complaint

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Two Lincoln-Mercury MILEAGE CARS

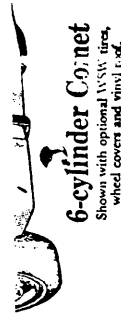
EXHIBIT

B A 6-cylinder Comet and a 4-cylinder Capri
 that to the test.

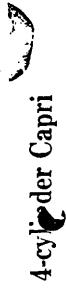


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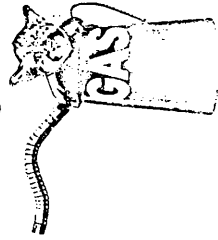
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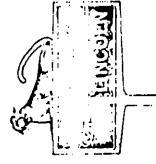
6-cylinder Comet
Shown with optional VSSW tires,
wheel covers and vinyl roof.



4-cylinder Capri



February 19, 1974: In a 379 mile highway test through Arizona and California, supervised by General Environments Corporation, a Comet and a Capri with standard engines and transmissions delivered the kind of gas mileage you'd like to get. Each car was broken in the equivalent of 6,000 miles and driven by non-professional drivers, never exceeding 50 mph. You yourself might actually average less, or for that matter more! Because mileage varies according to maintenance, equipment, total weight, driving habits and road conditions. And no two drivers, or even cars, are exactly the same. Stop in at your Lincoln-Mercury dealer's Mileage Headquarters and see what kind of mileage you can get.



Lincoln-Mercury Division



WASHINGTON
LEE D. BUTLER, INC.
1121 21ST STREET, N.W.
WASHINGTON, D.C.

SUBURBAN
DAVE PTILES LINCOLN-MERCURY, INC.
6500 LITTLE RIVER TURNPIKE
ALEXANDRIA, VIRGINIA

O'BRIEN & ROHALL, INC.
3910 LEE HIGHWAY
ARLINGTON, VA.

BILL ROGLEY LINCOLN-MERCURY, INC.
7809 WISCONSIN AVENUE
BETHESDA, MARYLAND

B. M. WOODFIELD MERCURY
26501 RIDGE ROAD
DAMASCUS, MARYLAND

HERRIDON MOTOR COMPANY, INC.
93 WASHINGTON AVENUE
HERNDON, VA.

TOM CURRO LINCOLN-MERCURY, INC.
123-27 WASHINGTON BLVD.
LAUREL, MARYLAND

JIM ECKELS LINCOLN-MERCURY, INC.
8389 CENTERVILLE ROAD
MANASSAS, VIRGINIA

WILSON POWELL LINCOLN-MERCURY, INC.
4700 BRANCH AVENUE
MARLOW HEIGHTS, MARYLAND

EAST-WEST LINCOLN-MERCURY, INC.
7501 ANNAPOLIS ROAD
LANDOVER HILLS, MARYLAND

THOMASSEN LINCOLN-MERCURY, INC.
173 ROCKVILLE PIKE
ROCKVILLE, MARYLAND

SAFFORD LINCOLN-MERCURY
8507 COLESVILLE PK.
SILVER SPRING, MARYLAND

CHESTER LINCOLN-MERCURY, INC.
8550 LEBURG PIKE
TYSON'S CORNER, VIRGINIA

INITIAL DECISION* BY MILES J. BROWN, ADMINISTRATIVE LAW
JUDGE ON MOTION FOR SUMMARY DECISION AND CROSS-MOTION
FOR SUMMARY DECISION

AUGUST 1, 1975

PRELIMINARY STATEMENT

[1] The Federal Trade Commission issued its complaint in this matter on December 10, 1974 (mailed January 2, 1975), charging respondent with unfair or deceptive acts or practices in commerce and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45).

By answer duly filed respondent denied that it had violated the Federal Trade Commission Act as alleged in the complaint. In addition, respondent raised certain affirmative defenses challenging the legal theory of the complaint on numerous grounds and further alleging that the Commission's simultaneous trade regulation rule proceeding on gasoline consumption rates denies it due process of law.

[2] On March 21, 1975, counsel supporting the complaint filed their motion for summary decision ("motion"). On May 15, 1975, respondent filed its cross-motion for summary decision and its opposition to complaint counsel's motion for summary decision ("cross-motion"). On June 13, 1975, complaint counsel filed their memorandum in opposition to respondent's motion for summary decision, and in support of complaint counsel's motion for summary decision upon all issues presented in this proceeding ("Memo. Op."). On June 27, 1975, respondent filed its reply to complaint counsel's opposition ("Reply").¹

In its answer to complaint counsel's request for admissions (Motion Exh. F) respondent admitted the dissemination in commerce of four advertisements (see Motion, Exh. A, B, C, D). The advertisements designated as Exhibits A & B, which were disseminated in February and March of 1974, appeared substantially as follows (see Cross-Motion, Att. A & B).²

Order to file Special Report ("6b order")³ (Motion, Exh. I).

On or about April 8, 1974, shortly after Exhibit A appeared, the Commission issued its order to file special report. Referring to Exhibit A and two other advertisements

* Reported as corrected by the administrative law judge's order dated August 25, 1975.

¹ The great part of the record in this proceeding is presented as Exhibits or Attachments to the Motion and Cross-Motion for summary decision. The references herein to such documents will be to the pleading and the exhibits such as "Motion Exh. J" or "Cross-Motion, Att. H," "Memo. Op. Exh. B."

² All substantive issues in this matter may be resolved on consideration of these two advertisements although the findings and discussion and conclusions relate to all four of the challenged advertisements.

³ The order to file special report and respondent's response thereto will be referred to herein as "6b order" and "6b report."

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**February 19th: General Environments Corporation
tested the highway mileage of Ford Motor Company's small cars.
Today: the results.**

All 5 Ford Motor Company small cars got over 26 MPG.

The test.

At 7:15 AM, February 19th, five small Ford Motor Company cars (wheelbase under 112") were driven from Phoenix to Los Angeles to learn the kind of mileage they could get.

The cars were regular production models with standard engines and transmissions. They weren't brand new.

They were broken in to simulate 6,000 miles of normal driving. All the cars used regular gas and had normal dealer preparation.

The drivers were not professionals. And they did not exceed 50 MPH. In many respects, the test was similar to one in which five 1974 Ford LTD's averaged 18.8 MPG.

The results.

All five small cars from Ford and Lincoln-Mercury delivered over 26 MPG.

Of course, the mileage you get may be less or even

more depending on many factors: equipment, engine displacement, total vehicle weight, road conditions and your driving style.

Ford and Lincoln-Mercury dealers offer more types of gas-saving engines for small cars than anyone.

Two 4-cylinder engines. The 2.0 liter is the smallest displacement engine available today in an American-made car from any major American manufacturer.

It was used in Pinto and Capri for this test. And a 2.3 liter was used in Mustang II.

Two 6-cylinder engines. A 200 CID was used in Mustang and Comet for this test. There is also an optional 235 CID available.

A V-6 engine. Ford Mustang II is the only car made by a major American manufacturer to offer an optional V-6. And Mercury's imported Capri offers an optional 2.8

liter V-6 engine in a car priced thousands of dollars less than any other V-6 powered import.

The smallest V-8. The 302 CID V-8 is the smallest displacement V-8 available from any major American manufacturer.

Explanation of engine designations. CID OR LITER: The total volume, in cubic inches or liters (metric system), that the pistons displace in all the engine's cylinders.



FORD MOTOR COMPANY HAS MADE MORE SMALL CARS*
THAN ANYONE ELSE IN THE WORLD (THAT INCLUDES
VW, AMC, TOYOTA, GM, FIAT, DATSUN OR CHRYSLER)

*Small car - wheelbase under 112"

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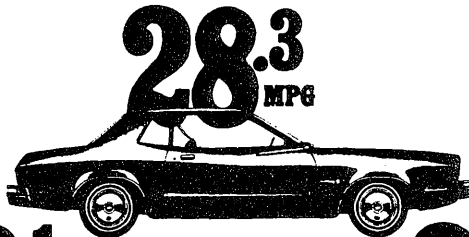
MERCURY COMET.

- Driver: Filip Rove
- Model: two-door sedan
- Engine: 200 CID six-cylinder
- Options: white sidewall tires, wheel covers, vinyl roof



MERCURY'S CAPRI.

- Driver: Roger Rutherford
- Model: Sport Coupe
- Engine: 2.0 liter four-cylinder
- Options: none



FORD MUSTANG II.

- Driver: Hugh Downs
- Model: two-door hardtop
- Engine: 2.3 liter four-cylinder
- Options: white sidewall tires



FORD PINTO.

- Driver: Mickey Sholder
- Model: two-door sedan
- Engine: 2.0 liter four-cylinder
- Options: white sidewall tires, wheel covers and
- Access: Group



FORD MAVERICK.

- Driver: Jana Mulo
- Model: two-door sedan
- Engine: 200 CID six-cylinder
- Options: white sidewall tires, wheel covers and Exterior Decor Group

Ford and Lincoln-Mercury dealers offer 35 different small car models and engines, 20 with sticker prices under the best-selling import model.

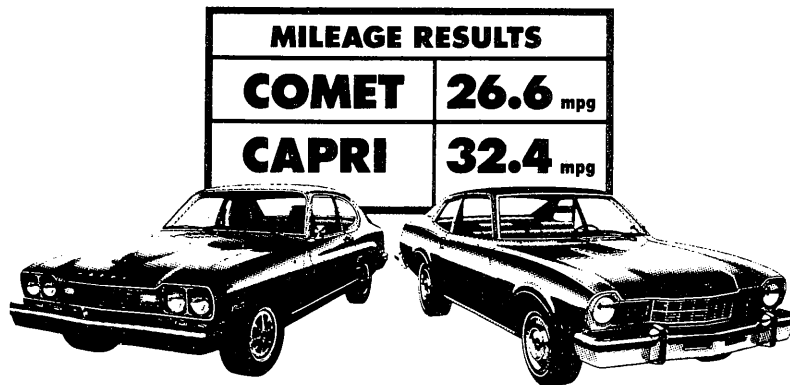


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Two Lincoln-Mercury MILEAGE CARS

A 6-cylinder Comet and a 4-cylinder Capri
put to the test.



4-cylinder Capri

6-cylinder Comet

Shown with optional WSW tires,
wheel covers and vinyl roof.



February 19, 1974: In a 379 mile highway test through Arizona and California, supervised by General Environments Corporation, a Comet and a Capri with standard engines and transmissions delivered the kind of gas mileage you'd like to get. Each car was broken in the equivalent of 6,000 miles and driven by non-professional drivers, never exceeding 50 mph. You yourself might actually average less, or for that matter, more! Because mileage varies according to maintenance, equipment, total weight, driving habits and road conditions. And no two drivers, or even cars, are exactly the same. Stop in at your Lincoln-Mercury dealer's Mileage Headquarters and see what kind of mileage you can get.

(DEALER'S NAME)



Sign of the Times

[6] *not* referred to in the complaint⁴ the order alleged that said advertisements appeared to make the following explicit or implied claims (*Id.* at Specification I).

1. That the gasoline consumption rates specified in the advertisements are representative of the performance an ordinary driver can expect routinely from standard production model cars equipped with the designated equipment when taking long or cross-country trips.

2. That the gasoline consumption rates specified in the advertisements are representative of the performance an ordinary driver can expect routinely from typical driving patterns or conditions.

3. That the gasoline consumption rates specified in the advertisements are representative of the performance an ordinary driver can expect routinely under all driving patterns or conditions.

As a preface to requesting specific detailed data relating to any substantiating tests, the 6b order stated in pertinent part:

With regard to each of these claims and without regard to whether you believe that the specified messages are contained in the attached advertisements, state whether or not the Corporation had in its possession substantiation for each of the specified claims at the time of dissemination of such advertising. For those claims which the Corporation maintains are substantiated by materials in its possession, submit copies of all documents and other substantiation involved.* * *

The order further required:

II. With regard to each of the claims set forth in Specification I [see 1., 2., and 3., *supra*], state your belief as to whether the claims are contained in the advertisements. If the Corporation is of the belief that the claims specified above are not contained in the advertisements please set [7] forth the claims which the Corporation believes are contained in the advertisements in question and submit all documents or other substantiation supporting such claims.

Response to Order to File Special Report ("6b Report") (Motion, Exh. J)

In its 6b report, respondent submitted a summary which reads in pertinent part:

The Commission's Order requires Ford to substantiate its recent highway fuel economy advertisements for five Ford LTD's and for a Pinto, Maverick, Mustang II, Capri and Comet.

These ads, based on test runs supervised by an independent testing agency, General Environments Corporation, accurately report that the vehicles were standard production units, driven over the highway from Phoenix to Los Angeles at speeds not over 50 miles-per-hour, that the LTD's averaged 18.8 miles-per-gallon, with a range of 16.3 to 20.3 miles-per-gallon, and that each of the five small cars got more than 26 miles-per-gallon.

⁴ One of these other advertisements related to the Ford LTD and the second to a TV commercial disseminated on the Bob Hope Special of January 24, 1974, featuring Hugh Downs.

The LTD's were driven by both professionals and nonprofessionals, at an average speed of 47.4 mph, while the small cars were driven by nonprofessionals only at an average speed of 48.4 miles-per-hour.

No other claims were made and the ads carefully pointed out that the mileage other drivers would get might be different depending on maintenance, driving habits, weight, equipment and driving conditions.

Each of the claims made is completely substantiated by the General Environments Corporation Reports and numerous affidavits of those participating in preparing for and conducting the test runs.

The Commission alleges that, by some implication, the ads make claims with respect to "ordinary drivers," "routine" expectations and "typical" or "all driving patterns and conditions." Such [8] claims were not made, expressly denied and cannot fairly be implied. Accordingly, Ford did not develop any substantiation for such alleged claims.
* * *

In response to Specification II of the order, respondent stated:

The Company does not believe that the ads and television commercial, * * * contain any claims, explicit or implied, that the gasoline consumption rates specified are representative of the performance an "ordinary driver" could expect "routinely" from standard production model cars equipped with the designated equipment when taking long or cross-country trips * * * or from typical driving patterns or conditions * * * or under all driving patterns or conditions * * *. Therefore, the Company has not prepared nor does it have within its possession substantiation for the information demanded in Specifications I-1, 2 and 3.

THE GASOLINE CONSUMPTION CLAIMS THAT THE COMPANY BELIEVES ARE SET FORTH IN THE ADS AND TELEVISION COMMERCIAL ARE AS FOLLOWS:

A. *1974 Ford LTD Ad and Television Commercial*

1. The Ford LTD can give you surprising gas mileage.
2. Independent test results reveal 18.8 mpg average of five production line Ford LTD 4-door pillared hardtops equiped with 351 CID V-8 engines when driven from Phoenix to Los Angeles, under highway driving conditions never exceeding 50 miles-per-hour * * *
3. Driven sensibly, the Ford LTD offers real economy and convenience on today's roads.

All three of these claims are further qualified by the express statement that mileage depends on maintenance, driving habits, total weight, road and driving conditions and *you may not get the same results*. The television commercial goes on to point out that *cars and drivers are never exactly alike*. (Underscoring added [by respondent]). [9]

B. *Small Car Test Ad: Pinto, Maverick, Mustang II, Comet and Capri*

1. All five Ford Motor Company small cars (regular production models) got over 26 mpg in highway driving between Phoenix and Los Angeles under the following conditions:
 - a. The cars were not brand new, but were broken-in to simulate 6,000 miles of normal driving;
 - b. The drivers were not professionals and did not exceed 50 miles-per-hour.

Again it was specifically stated that the mileage you get may be less or more

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depending on many factors: equipment, engine displacement, total vehicle weight, road conditions and *your driving style*. (Underscoring added[by respondent]). * * *

Following these statements, respondent submitted detailed technical data along with affidavits of the persons involved in both "mileage tests" to substantiate the claims it believed were made by the advertisements, including Exhibit A, the "small car" advertisement.

Significantly, respondent reported and submitted corroborating data, that, in connection with the small car test, each car was driven over the same, principally highway, route from Phoenix, Arizona, to Los Angeles, California, described the equipment on each of the small cars, noted the fact that no air conditioning was employed, described the highway driving conditions and the results achieved in miles-per-gallon. Also reported was how the vehicles were selected, how they were "broken-in" and pre-tested prior to the actual test including the results of that pre-test, as well as a description of the drivers and the speeds driven during the tests. In this respect respondent stated:

* * * The small car test originally started out with three each: Pintos, Mavericks, Mustang II's, Capris and Comets * * * They were broken-in and tested at our Kingman, Arizona Test Facility and the vehicle obtaining the lowest fuel economy was selected for the actual test. This assured us that the vehicles [10] finally used in the test represented the kind of performance available to most of our customers. * * * [T]he car samples used were such that approximately 80 percent of the population of similar vehicles would produce similar or better results in similar tests.

In further response, respondent stated:

The Company has no evidence that any or all of the conditions under which these tests were conducted approximate or are equal to conditions under which an ordinary driver would operate his automobile when taking long or cross-country trips, or under typical driving patterns involving both long distance and urban/suburban driving patterns or conditions, or are in fact representative of all driving patterns or conditions encountered by motorists. Neither does the Company have any documents that would tend to show whether or not the conditions under which these tests were run are typical or atypical of conditions encountered by ordinary drivers. As previously stated, our ads specifically pointed out that mileage was subject to many variables depending on individual routes, drivers and conditions. Obviously, no claim was made as to an "ordinary" driver or as to "typical" conditions.

And in specific response to the Specification I-1, respondent stated:

The Company took great pains to specifically point out that no driver could routinely expect a particular mileage performance since "mileage depends on maintenance, driving habits, total weight, road and driving condition," and "*you may not get the same results*." (Underscoring added [by respondent]). In addition, the advertised results were clearly limited to a test run which "never exceeded 50 mph, and was conducted with 6,000-mile vehicles." Clearly, the ad did not represent that these gasoline consumption rates would be obtained by an ordinary driver (though they could be). Rather, these rates

were explicitly stated to be the results obtained by individual drivers under the particular conditions outlined in the ad.

Thus the Company sees no need for and has no substantiation of the claim postulated in Commission Inquiry I-1. However, [11] as indicated in the affidavits of John VanDewater * * * if other groups of the cars involved were driven over the same course, in the same manner and under the same conditions * * * at least 80 percent of the population of similar vehicles in a similar test could be expected to obtain equivalent or better mileage as in the small car test.

Finally, in conclusion, respondent added:

The Company believes that the foregoing Responses and information referred to therein fully substantiate the mileage claims actually made in the ads in question.

* * * * *

The Company does not believe the ads in question in any way claim that the gasoline consumption rates set forth relate to any drivers, type of driving or driving conditions other than those carefully detailed therein; however, if other drivers practiced the fuel-economy conservation measures recommended in Enclosure A-14⁵ and drove over the test route in question in the same model vehicles with the same equipment and under the same conditions as the test vehicles, we are confident (Enclosures A-13 and B-15) that these drivers would obtain the gasoline mileage similar to that reported in the ads.

COMPLAINT

The heart of the Commission's complaint contains the following allegations:

PARAGRAPH SIX: Said Exhibits A and B and others substantially similar thereto contain one or more false, deceptive and misleading representations and fail to disclose facts which are material in the light of the representations contained therein. Therefore, the representations contained in said advertisements were, and are, deceptive and/or unfair.

PARAGRAPH SEVEN: Said Exhibits A and B and others [substantially] similar thereto (hereinafter referred to as said advertisements) represent, directly or by implication, that the gasoline consumption rates specified in the advertisements approximate or equal the performance an ordinary driver can typically obtain from standard production model cars when taking long or cross-country trips.

[12] PARAGRAPH EIGHT: In truth and in fact, at the time respondent made the representations as alleged in Paragraph Seven respondent did not possess and rely upon a reasonable basis for making these representations. Therefore the said advertisements were, and are unfair and/or deceptive.

PARAGRAPH NINE: Said Exhibits A and B and other substantially similar thereto represent, directly or by implication, that respondent had a reasonable basis for making, at the time they were made, the representations as alleged in Paragraph Seven.

PARAGRAPH TEN: In truth and in fact, at the time respondent made the representations as alleged in Paragraph Nine respondent had no reasonable basis for making the representations as alleged in Paragraph Seven. Therefore, the said advertisements were, and are deceptive and/or unfair.

PARAGRAPH ELEVEN: Respondent failed to disclose in said advertisements that it had no evidence that any or all of the conditions under which the tests described in the

⁵ Ford's *The Closer You Look Fuel Economy Book*.

