IN THE MATTER OF

GENERAL MOTORS CORPORATION

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

Docket C-2966. Complaint, May 18, 1979 — Decision, May 18, 1979

This consent order, among other things, requires a Detroit, Mich. motor vehicle manufacturer to cease misrepresenting the manufacturing source of engine options and the availability of standard or optional equipment. The order also requires the firm to make designated disclosures regarding the manufacturing source, ordering code, and availability of each engine option offered for the model years 1979 through 1981; notify dealers promptly of engine option substitutions; and provide them with the replacement parts and maintenance information necessary to service such equipment. Additionally, the company would be prohibited from using any wholesale order system which could prevent dealers from designating specific options requested by purchasers.

Appearances

For the Commission: *Sharon J. Devine, William W. Jacobs* and *John M. Mendenhall.*

For the respondent: *Robert C. Weinbaum,* Detroit, Mich. and *Richard W. Pogue, Jones, Day, Reavis & Pogue,* Cleveland, Ohio.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent General Motors Corporation, a corporation, has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, issues this complaint:

PARAGRAPH 1. Respondent, General Motors Corporation, 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 3044 West Grand Boulevard, Detroit, Michigan.

PAR. 2. Respondent is now and has been, engaged in the manufacture, distribution, sale, promotion and advertising of various products including passenger cars.

PAR. 3. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent has represented that certain standard and optional equipment is manufactured by the particular division of respondent that built the passenger car.

PAR. 5. In fact, the equipment set forth in Paragraph Four is manufactured by a division other than that represented.

Therefore, the representations set forth in Paragraph Four were, and are, an unfair and deceptive practice.

PAR. 6. Respondent has represented to purchasers that various standard and optional equipment is available in respondent's passenger cars.

PAR. 7. In fact:

(a) Some of the standard and optional equipment was not made available as represented by respondent;

(b) In some instances, respondent substituted other equipment for standard and optional equipment represented by respondent to be available; and

(c) In some instances, respondent delivered passenger cars which were ordered on behalf of a retail purchaser and which were equipped with standard or optional equipment different from that ordered by the retail purchaser.

Therefore, the representations set forth in Paragraph Six were, and are, an unfair and deceptive practice.

PAR. 8. Respondent has failed to disclose in advertising and has failed to provide notice and advertising to its dealers adequate to disclose to purchasers that for certain passenger cars:

(a) Certain standard and optional equipment offered for sale in certain lines of passenger cars is manufactured by a division other than the division under whose name such line is distributed or sold.

(b) Certain standard and optional equipment is not available in lines for which respondent has represented it as available.

(c) Other standard and optional equipment has been substituted for the unavailable equipment.

(d) Substituted standard and optional equipment differs from the unavailable equipment.

(e) An order by a retail purchaser for particular standard and optional equipment would not necessarily result in an order placed on behalf of the purchaser which specifies that particular equipment.

(f) An order placed on behalf of a purchaser for certain standard and optional equipment previously represented as available could result in delivery of a passenger car without such equipment or with different equipment.

PAR. 9. Respondent has failed to make available information and

parts adequate to enable its dealers to fulfill warranty obligations to purchasers of passenger cars equipped with substituted equipment (referred to in Paragraphs Seven and Eight).

PAR. 10. Respondent has failed to make available to purchasers of respondent's passenger cars equipped with substituted equipment accurate information regarding recommended maintenance intervals and regular maintenance replacement parts.

PAR. 11. The facts set forth in Paragraphs Eight, Nine, and Ten are material to consumers. Thus, respondent has failed to disclose material facts which, if known to purchasers, would be likely to affect their consideration to purchase respondent's items. Therefore, these practices were, and are, unfair and deceptive practices.

PAR. 12. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and is now, in substantial competition in or affecting commerce with corporations, firms, and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondent.

PAR. 13. The use by respondent of the aforesaid false, misleading, and deceptive statements, representations, acts and practices, directly or by implication, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of respondent's products and services by reason of said erroneous and mistaken belief.

PAR. 14. The 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 methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent General Motors Corporation (GM) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3044 West Grant Boulevard, in the City of Detroit, State of Michigan.

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

ORDER

I

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

A. The term "GM" shall mean General Motors Corporation, and all of its divisions, its successors, assigns, officers, representatives, agents, and employees, acting directly or through any subsidiary or other device.

B. The term "franchised GM passenger car dealer" shall mean any person, partnership, or corporation which is a party to a franchise agreement with GM to purchase new GM passenger cars for resale to purchasers.

C. The term "manufacturing source" shall mean the GM division or entity by which the item referred to was produced.

D. The term "line" shall mean each make and model of passenger car manufactured by General Motors Corporation and distributed or sold under the Chevrolet, Pontiac, Buick, Oldsmobile or Cadillac name.

E. The term "engine option" shall mean any engine designated by a GM ordering code number (including the standard engine) offered by GM as factory-installed equipment. For purposes of this order, each engine option shall be assigned a single, unique ordering code designation for a given model year which does not vary across division lines.

F. The term "material difference" shall mean any difference which results in a significant difference in engine performance, including but not limited to any difference in Environmental Protection Agency (EPA) fuel economy ratings, mileage intervals in excess of 1,000 miles for recommended engine maintenance, horsepower and displacement, or which results in a difference of regular maintenance replacement parts.

G. The term "substituted engine" shall mean an engine option installed in any GM line in any area of the country as a replacement for an engine option offered for that line in the same model year, but which is unavailable in such line or area, if the replacement engine option

(1) is produced by a division other than that which produced the engine option to be replaced; or

(2) has any "material difference" from the engine option to be replaced.

H. The term "option" shall mean an item of equipment to be installed in a new GM passenger car for which GM provides purchasers a choice of alternatives.

I. The term "purchaser" shall mean a potential buyer, potential lessee, buyer and lessee of any new GM passenger car, but shall not include a franchised GM passenger car dealer.

II

It is hereby ordered, That GM is prohibited from misrepresenting as of the time the representation is made by GM:

A. The manufacturing source of any engine option; and

B. That an option or item of standard equipment offered for a new GM passenger car is available if in fact it is not.

III

It is further ordered, That GM is prohibited from displaying the ıame of any GM car division on any engine or visible attachment to he engine under the hood of a new GM passenger car, including the ir filter cover, unless the engine is manufactured by that division.

IV

It is further ordered, That if:

A. GM furnishes or has furnished, during or in preparation for any model year, any information to any franchised GM passenger car dealers regarding any engine offered for any GM line for any model year, and

B. the engine described in the information provided to such dealers is to be or has been replaced by a substituted engine for that model year,

GM shall notify such dealers in writing, with respect to the affected lines handled by them, forthwith after the decision to substitute has been made. Such written notification shall include the lines in which the substituted engine is offered, its manufacturing source, ordering code number, designation used in the vehicle identification number to identify the type of engine option, and any material differences between the substituted engine and the engine to be replaced.

V

It is further ordered, That, for the 1979, 1980, and 1981 model years, GM shall furnish to all franchised GM passenger car dealers point-of-sale literature for distribution to purchasers in dealer showrooms disclosing clearly and conspicuously the engine options available in the GM lines carried by the dealer, and, for each engine option, the lines and areas of the country in which it is or is not available, its manufacturing source, and its ordering code designation. GM shall take such steps as are reasonably necessary to furnish such information to such dealers on a current basis. GM shall request, in writing, that such dealers display such materials in a conspicuous, accessible area of the dealer showroom.

VI

It is further ordered, That GM shall clearly and conspicuously disclose the following statement in all print advertising for the 1979 model year, and in the principal new car point-of-sale catalogs for the 1979, 1980, and 1981 model years, which contain any reference to the engine (including any representation regarding EPA fuel economy) in any GM line, group or lines or division, in which an engine option produced by a division different from the division under whose name the passenger car is distributed is offered:

> *(Line, group of lines, divisional products)* is (are) equipped with GM-built engines produced by various divisions. See your dealer for details.

VII

It is further ordered, That, for the 1979, 1980, and 1981 model years:

A. GM shall clearly and conspicuously disclose, on a "window sticker" attached by GM to each new passenger car, or on the price information labels required by the Automobile Information Disclosure Act (15 U.S.C. 1232), the engine ordering code, and the manufacturing source of the engine installed in that car.

B. GM shall disclose in each owner's manual, maintenance chart or other maintenance information provided to a purchaser of a new GM passenger car, the accurate information customarily furnished regarding recommended maintenance intervals and regular maintenance replacement parts applicable to the engine installed in that car.

VIII

It is further ordered, That GM shall make available, subject to *force majeure,* labor disruptions, and other causes outside GM's control, replacement parts and repair and maintenance information to franchised GM passenger car dealers adequate to allow such dealers to provide GM warranty service to purchasers of new GM passenger cars equipped with any substituted engine to the same extent as it does in the case of new GM passenger cars equipped with non-substituted engines.

IX

It is further ordered, That this order shall be limited in its application to sales of new GM passenger cars in the United States and its territories.

X

It is further ordered, That:

A. GM is prohibited from utilizing a wholesale ordering system whereby its franchised GM passenger car dealers may not designate the specific options, other than standard equipment, requested by the purchaser. GM shall notify its dealers in writing that purchasers should be given the opportunity to designate the specific options ordered. Provided, that GM shall indicate when an option is required to be paired with another specific option.

B. For the 1979, 1980, 1981, 1982, and 1983 model years, GM shall advise its franchised GM passenger car dealers in writing whenever

GM plans to build or has built a passenger car with options other than as ordered by the dealer. GM will disclose on such writing the following language:

> Notify customer promptly of any changes indicated. If unacceptable, contact zone for disposition.

C. For the 1979, 1980, 1981, 1982, and 1983 model years, GM shall clearly and conspicuously disclose in all principal new car point-of-sale catalogs the following statement:

> Some options may be unavailable when your car is built. Your dealer receives advice regarding current availability of options. You may ask the dealer for this information. GM also requests the dealer to advise you if an option you ordered is unavailable. We suggest you verify that your car includes the options that you ordered or if there are changes that they are acceptable to you.

XI

It is further ordered, That:

A. GM shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

B. GM shall, within sixty (60) days after the effective date 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.

IN THE MATTER OF

INLAND EMPIRE ROOFING CONTRACTORS ASSOCIATION

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

Docket C-2968. Complaint, May 22, 1979 — Decision, May 22, 1979

This consent order, among other things, requires a Spokane, Wash. roofing association to cease entering into agreements with others to establish and maintain terms of guarantees, prices, or other conditions of sale in connection with the sale of roofs and related services; suggesting that members adhere to any particular price, guarantee, or other condition of sale; and limiting by any means a member's right to give any guarantee, price or other term or condition of sale to its customers. The association is also prohibited from investigating and/or policing its members with regard to prices charged and guarantees imposed in the sale of their products and services.

Appearances

For the Commission: *Stevan D. Phillips.*

For the respondent: *Harold J. Triesch,* Spokane, Washington.

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 Inland Empire Roofing Contractors Association, an unincorporated association, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, as amended, as more particularly set forth herein, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Inland Empire Roofing Contractors Association is an unincorporated association organized, existing, and doing business under and by virtue of the laws of the State of Washington. Respondent's membership presently consists of nine (9) roofing contractors located in eastern Washington and western Idaho. It consisted of twelve (12) roofing contractors at the time the acts referred to herein occurred. Its office is located at East 130 Sprague Ave., Spokane, Washington.

PAR. 2. The respondent is a trade association established for the benefit of its members. It acts as the bargaining agent for and

negotiates labor contracts on behalf of its members with certain labor unions. The association handles grievances and other administrative problems under the terms and conditions of any collective bargaining contract entered into on behalf of its members. The association has gathered and disseminated information to its respective members concerning the guarantees which are available in the roofing contracting business for new and replacement roofs and which are available and used in regard to waterproofing and dampproofing contracts. As a result of the conduct and activities of respondent and its members as described above, the acts and practices herein complained of are in or affect "commerce" within the meaning of the Federal Trade Commission Act, as amended, and respondent is subject to the jurisdiction of the Federal Trade Commission.

PAR. 3. On or about February 15, 1974, the members of the Inland Empire Roofing Contractors Association decided to modify the terms of guarantees then being offered with regard to waterproofing and dampproofing contracts. Some time between March 22, 1974 and April 19, 1974, officers and directors of said association acting within the scope of their authority and at the direction of the Inland Empire Roofing Contractors Association, met with members of the Seattle-based Roofing Contractors Association and discussed the terms of guarantees that would be offered by members of each respective association for waterproofing and dampproofing contracts. Some time after April 19, 1974, the Inland Empire Roofing Contractors Association adopted or proposed adopting an arrangement whereby no guarantees would be issued by its members for waterproofing or dampproofing work and that a two-year guarantee would be issued by its members for roofing work on all new and replacement roofs. On or about May 16, 1974, an agreement was reached by the members of the Inland Empire Roofing Contractors Association to the effect that no guarantees would be offered on waterproofing or dampproofing work and further that no guarantee for damage to roofs caused by certain wind conditions would be provided to customers of said members.

PAR. 4. The effects, among others, of the acts and practices alleged in Paragraph Three are as follows:

A. Terms of guarantees for new and replacement roofs have been fixed, stabilized or otherwise interfered with;

B. Competition among member roofing contractors in providing roofing services has been restrained, hindered, frustrated and/or foreclosed;

C. Customers of roofing services have been deprived of information, options and services pertinent to the selection of a roofer and the benefits of competition; and

D. Member roofers have been restrained in their ability to compete and to make alternative guarantee terms available to customers.

PAR. 5. The aforesaid acts, practices, and methods of competition of respondent constitute unfair methods of competition and unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Chairman Pertschuk did not participate.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Inland Empire Roofing Contractors Association is an unincorporated association organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at East 130 Sprague Ave., in the City of Spokane, State of Washington.

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

ORDER

I

A. Definitions established for the purpose of the following order provisions are:

1. "Other related services" includes but is not limited to, repairing of roofs, inspecting of roofs, waterproofing and dampproofing of roofs, and estimating costs of repair or installation of roofs.
2. "Others not party hereto" means any individual, individual proprietorship, partnership, firm, corporation, association or any other form of legal or business entity.

II

A. *It is ordered,* That respondent Inland Empire Roofing Contractors Association, an unincorporated association, its successors and assigns, and its agents, representatives, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale and installation of new or replacement roofs or other related services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Entering into any contract, agreement, course of conduct, or understanding between itself and others not party hereto to fix, establish, stabilize, or maintain, the length or other term of any guarantee;
2. Entering into any contract, agreement, course of conduct, or understanding between itself and others not party hereto to fix, establish, stabilize or maintain any price or other term or condition of sale in connection with the sale and installation of new or replacement roofs or for performing other related services.

III

A. *It is further ordered,* That respondent Inland Empire Roofing Contractors Association, an unincorporated association, its successors and assigns, and its agents, representatives, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale and

installation of new or replacement roofs or other related services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Urging, recommending, or suggesting that any of its members or any other person adopt or adhere to any particular guarantee or to any price or other term or condition of sale in connection with the sale and installation of new or replacement roofs or for performing other related services;

2. Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which limits in any way a member's right to give or offer a guarantee or any price or other term or condition of sale to any customer or prospective customer in connection with the sale or installation of a new or replacement roof or for performing other related services;

3. Investigating and/or policing a price or guarantee term charged or imposed by any member of the association or any other person in connection with the installation of new or replacement roofs.

IV

A. *It is further ordered,* That respondent Inland Empire Roofing Contractors Association shall within sixty (60) days after the date of service of this order, mail a copy to each of its existing members and to each person who was a member at any time from June 30, 1973 to date of service of this order, and furnish a copy of this order to each prospective member for a period of five (5) years after the date of service of this order.

B. *It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries or any other change in the association which may affect compliance obligations arising out of the order.

C. *It is further ordered,* That the respondent herein shall within sixty (60) days after service on it 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.

Chairman Pertschuk did not participate.

IN THE MATTER OF

FORD MOTOR COMPANY

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

Docket 9001. Complaint, Dec. 10, 1974 — Decision, May 24, 1979

This consent order, among other things, requires a Dearborn, Mich. automobile manufacturer to cease, in connection with automobiles marketed by its Lincoln-Mercury Division, misrepresenting the fuel economy of any automobile or its superiority over competitive products; and the purpose, contents and results of automotive tests. Additionally, the firm is required to substantiate all claims regarding the structural strength, quietness, fuel economy and performance of its products, and maintain such substantiation for a three-year period.

Appearances

For the Commission: *Russell Hatchl, Mitchell Paul* and *Deborah Randall.*

For the respondent: *Robert L. Wald, Wald, Harkrader & Ross,* Washington, D.C. and *David R. Larrouy,* Dearborn, Mich.

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