

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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In The Matter of	)	
	)	
	)	
HERB GORDON AUTO WORLD, INC. dba	)	FILE NO. 942 3114
HERB GORDON AUTO WORLD,	)	
HERB GORDON DODGE,	)	AGREEMENT CONTAINING
HERB GORDON MERCEDES-BENZ,	)	CONSENT ORDER
HERB GORDON NISSAN,	)	TO CEASE AND DESIST
HERB GORDON OLDSMOBILE,	)	
HERB GORDON VOLVO, and	)	
HERB GORDON USED CARS,	)	
a corporation.	)	

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The Federal Trade Commission having initiated an investigation of certain acts and practices of Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars, a corporation, (hereinafter sometimes referred to as "proposed respondent" or "respondent") and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

IT IS HEREBY AGREED by and between proposed respondent, its attorney, and counsel for the Federal Trade Commission that:

1. Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3121-3161 Automobile Blvd., Silver Spring, Maryland 20904. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

2. Proposed respondent waives:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- d. All claims under the Equal Access to Justice Act.

3. 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 of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, 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.

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

5. 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 the proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist 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 by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's addresses as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied

with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

DEFINITIONS

"Clearly and conspicuously" as used herein shall mean:

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

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

I.

IT IS ORDERED that respondent Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote directly or indirectly any extension of consumer credit, as "advertisement" and "consumer credit" are defined in the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1667, as amended, and its

implementing Regulation Z, 12 C.F.R. § 226, as amended, do forthwith cease and desist from:

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

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

- (1) the amount or percentage of the downpayment;
- (2) the terms of repayment, including the amount of any balloon payment, or the number and amount of any second series of installment payments; and
- (3) the annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction that fact must also be disclosed.

(Section 144(d) of the TILA, 15 U.S.C. § 1664(d), as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended, as more fully set out in Section 226.24(c) of the Federal Reserve Board's Official Staff Commentary to Regulation Z (hereinafter referred to as "Commentary"), 12 C.F.R. § 226.24(c), Supp. 1, as amended).

C. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment or the amount of any finance charge, without stating, clearly and conspicuously, all of the terms required by Regulation Z, as follows, and as amended:

- (1) the amount or percentage of the downpayment;
- (2) the terms of repayment, and
- (3) the annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144(d) of the TILA, 15 U.S.C. § 1664(d), as amended, and

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

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

(Section 144(c) of the TILA, 15 U.S.C. § 1664(c), as amended, and Section 226.24(b) of Regulation Z, 12 C.F.R. § 226.24(b), as amended, as more fully set out in Section 226.24(b) of the Commentary, 12 C.F.R. § 226.24(b), Supp. 1, as amended).

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

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

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

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

## II.

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

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

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

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

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

lease advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of revised Regulation M, as amended.

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

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

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

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

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

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

### III.

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

### IV.

IT IS FURTHER ORDERED that respondent, its successors and assigns shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate entity such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

### V.

IT IS FURTHER ORDERED that for five years after the date of service of this order respondent, its successors and assigns

shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI.

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

VII.

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

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

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

FEDERAL TRADE COMMISSION

HERB GORDON AUTO WORLD, INC.  
dba Herb Gordon Auto World,  
Herb Gordon Dodge,  
Herb Gordon Mercedes-Benz,  
Herb Gordon Nissan,  
Herb Gordon Oldsmobile,  
Herb Gordon Volvo, and



Herb Gordon Used Cars

\_\_\_\_\_  
Carole L. Reynolds  
Counsel for the Federal  
Trade Commission

By: \_\_\_\_\_  
Thomas Gordon, President  
Herb Gordon Auto World, Inc.

\_\_\_\_\_  
Beverly Childs, Investigator  
Federal Trade Commission

\_\_\_\_\_  
OBER, KALER, GRIMES & SHRIVER  
Attorneys for Respondent

APPROVED:

\_\_\_\_\_  
David Medine  
Associate Director  
for Credit Practices

\_\_\_\_\_  
Joan Z. Bernstein  
Director  
Bureau of Consumer Protection

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

\_\_\_\_\_) )  
In The Matter of ) )  
 ) )  
HERB GORDON AUTO WORLD, INC. dba ) )  
HERB GORDON AUTO WORLD, ) )  
HERB GORDON DODGE, ) )  
HERB GORDON MERCEDES-BENZ, ) DOCKET NO.  
HERB GORDON NISSAN, ) )  
HERB GORDON OLDSMOBILE, ) )  
HERB GORDON VOLVO, and ) )  
HERB GORDON USED CARS, ) )  
a corporation. ) )  
\_\_\_\_\_)

COMPLAINT

The Federal Trade Commission, having reason to believe that Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars, a corporation, ("respondent") has violated the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, the Consumer Leasing Act ("CLA"), 15 U.S.C. §§ 1667-1667e, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

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

PARAGRAPH TWO: In the ordinary course and conduct of its business, and at least since January 1, 1994, respondent has been engaged in the dissemination of advertisements that promote, directly or indirectly, credit sales and other extensions of other than open end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit," are defined in the TILA and Regulation Z. In the ordinary course

and conduct of its business, and at least since January 1, 1994,

respondent has been engaged in the dissemination of advertisements that promote, directly or indirectly, consumer leases, as the terms "advertisement," and "consumer lease," are defined in the CLA and Regulation M.

PARAGRAPH THREE: The acts and practices of respondent alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

COUNT ONE

PARAGRAPH FOUR: Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibit A, has disseminated or caused to be disseminated print advertisements that state initial, low monthly payment amounts, such as "\$163" per month, and promote the "luxury of low payments" ("Gold Key Plus advertisements"). In fine print, respondent's Gold Key Plus advertisements, inter alia, state an initial number of payments, a downpayment and another amount described as a "purchase option." Respondent's Gold Key Plus advertisements misrepresent that the additional amount is optional and fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial balloon payment at the conclusion of the initial payments, which is a mandatory obligation.

PARAGRAPH FIVE: Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

PARAGRAPH SIX: Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibit A, has disseminated or caused to be disseminated Gold Key Plus advertisements that state initial, low monthly payment amounts and promote the "luxury of low payments." In fine print, respondent's Gold Key Plus advertisements, inter alia, state an initial number of payments, a downpayment and another amount described as a "purchase option." Respondent's Gold Key Plus advertisements fail to accurately state the terms of repayment, by failing to disclose that the additional amount is a final payment and by inaccurately stating that the amount is optional when, in fact, it is mandatory, based on the financing to be signed at purchase.

PARAGRAPH SEVEN: Respondent's aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. § 1664(d), and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

COUNT THREE

PARAGRAPH EIGHT: Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibit A, has disseminated or caused to be disseminated Gold Key Plus advertisements, inter alia, that state initial, low monthly payment amounts and promote the "luxury of low payments." Respondent's Gold Key Plus advertisements fail to disclose the annual percentage rate for the financing, using that term or the abbreviation "APR".

PARAGRAPH NINE: Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and a violation of Section 144(d) of the TILA, 15 U.S.C. § 1664(d) and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

COUNT FOUR

PARAGRAPH TEN: Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibit A, has disseminated or caused to be disseminated Gold Key Plus advertisements that state initial, low monthly payment amounts and boldly promote the "luxury of low payments." In fine print, respondent's Gold Key Plus advertisements, inter alia, state an initial number of payments, a downpayment and another amount described as a "purchase option" (the "disclaimer"). The disclaimer in respondent's Gold Key Plus advertisements is virtually unreadable and incomprehensible to ordinary consumers because of the extremely small typesize and is not clear and conspicuous.

PARAGRAPH ELEVEN: Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and a violation of Section 226.24 of Regulation Z, 12 C.F.R. § 226.24, as more fully set out in Section 226.24-1 of the Federal Reserve Board's Official Staff Commentary to Regulation Z ("Commentary"), 12 C.F.R. § 226.24-1, Supp. 1.

COUNT FIVE

PARAGRAPH TWELVE: Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibits B-1, B-2 and B-3, has disseminated or caused to be disseminated print advertisements that boldly state "\$95 down

with low monthly payments for the first 12 months" and radio and televised advertisements that boldly state "\$95 down and payments as low as \$155 a month for the first 12 months" ("Drive For 95 advertisements"). Respondent's Drive For 95 print, radio and televised advertisements also state various initial, low monthly payment amounts, such as "\$155" a month. Thereafter, respondent's Drive For 95 print, radio and televised advertisements, inter alia, state "balance of 48 payments will be higher than 1st 12 months" and "cost per \$1,000 borrowed \$20.52." Respondent's Drive For 95 advertisements misrepresent and fail to accurately disclose the amount of the second series of installment payments required at the conclusion of the initial payments, based on the financing to be signed at purchase.

PARAGRAPH THIRTEEN: Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### COUNT SIX

PARAGRAPH FOURTEEN: Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibits B-1, B-2 and B-3, has disseminated or caused to be disseminated Drive For 95 print advertisements that state "\$95 down with low monthly payments for the first 12 months" and Drive For 95 radio and televised advertisements that state "\$95 down and payments as low as \$155 a month for the 1st 12 months." Respondent's Drive For 95 print, radio and televised advertisements also state various initial, low monthly payment amounts, such as "\$155" a month. Thereafter, respondent's Drive For 95 print, radio and televised advertisements, inter alia, state "balance of 48 payments will be higher than 1st 12 months" and "cost per \$1,000 borrowed \$20.52." Respondent's Drive For 95 advertisements fail to accurately disclose the terms of repayment, by failing to accurately state the amount of the second series of installment payments required at the conclusion of the initial payments, based on the financing to be signed at purchase.

PARAGRAPH FIFTEEN: Respondent's aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. § 1664(d), and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

#### COUNT SEVEN

PARAGRAPH SIXTEEN: Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibits B-1, B-2 and B-3, has disseminated or caused to be disseminated Drive For 95 print advertisements that state "\$95 down with low monthly payments for the first 12 months" and Drive

For 95 radio and televised advertisements that state "\$95 down and \$155 a month for the 1st 12 months." Respondent's Drive For 95 print, radio and televised advertisements also state various initial, low monthly payment amounts. In fine print in the print advertisements, in fine print for a short duration in the televised advertisements, and orally for a short duration in the radio advertisements, respondent's Drive For 95 advertisements, inter alia, state "balance of 48 payments will be higher than 1st 12 months," "cost per \$1,000 borrowed \$20.52," and an annual percentage rate (the "disclaimer"). The disclaimer in respondent's Drive For 95 advertisements is virtually incomprehensible to ordinary consumers and is not clear and conspicuous because of the small typesize in the print and televised advertisements and because of the short duration in the radio and televised advertisements.

PARAGRAPH SEVENTEEN: Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and a violation of Section 226.24 of Regulation Z, 12 C.F.R. § 226.24, as more fully set out in Section 226.24-1 of the Commentary, 12 C.F.R. § 226.24-1, Supp. 1.

#### COUNT EIGHT

PARAGRAPH EIGHTEEN: Respondent, in the course and conduct of its business, in numerous instances has disseminated or caused to be disseminated advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, or the amount of any payment, but fail to state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR."

PARAGRAPH NINETEEN: Respondent's aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. § 1664(d), and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

#### COUNT NINE

PARAGRAPH TWENTY: Respondent, in the course and conduct of its business, in numerous instances has disseminated or caused to be disseminated advertisements that 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, but fail to state 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, amount, 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.

PARAGRAPH TWENTY-ONE: Respondent's aforesaid practice violates Section 184 of the CLA, 15 U.S.C. § 1667c, and Section 213.5(c) of Regulation M, 12 C.F.R. § 213.5(c).

For these reasons, the Federal Trade Commission this ----- day of -----, 1997, has issued this complaint against respondent.

By the Commission.

SEAL

Donald S. Clark  
Secretary

[Exhibits A and B1 are attached to paper copies of the complaint, but are not available in electronic form, while Exhibit B2 is an audio tape and Exhibit B3 is a videotape.]



Analysis of Proposed Consent  
Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Herb Gordon Auto, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo and Herb Gordon Used Cars.<sup>1</sup>

The proposed consent order has 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 agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that state initial low monthly payment amounts and promote the "luxury of low payments" and in fine print, inter alia, state an initial number of payments, a downpayment and another amount described as a "purchase option" ("Gold Key Plus" advertisements). The complaint alleges that the Gold Key Plus advertisements misrepresent that the additional amount is optional and fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial balloon payment at the conclusion of the initial payments, which is a mandatory obligation, and that respondent, therefore, has engaged in a deceptive act or practice in violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"). The complaint also alleges that the Gold Key Plus advertisements fail to accurately state the terms of repayment, by failing to disclose that the additional amount is a final payment and by inaccurately stating that the amount is optional when, in fact, it is mandatory based on the financing to be signed at purchase, in violation of the Truth in Lending Act ("TILA") and Section 226.24(c) of Regulation Z. The complaint also alleges that the Gold Key Plus advertisements fail to disclose the annual percentage rate for the financing, using that term or the abbreviation "APR," in violation of the TILA and Section 226.24(c) of Regulation Z, and that this is a deceptive act or practice in violation of Section 5(a) of the FTC Act.

The complaint also alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements

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<sup>1</sup> In this Analysis to Aid Public Comment, Herb Gordon Auto, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo and Herb Gordon Used Cars are referred to collectively as "respondent Herb Gordon Auto" or "respondent."

that state a low downpayment and initial low monthly payment amounts and thereafter, inter alia, state that the "balance of 48 payments will be higher than 1st 12 months" and "cost per \$1,000 borrowed \$20.52" ("Drive for 95" advertisements). The complaint alleges that the Drive for 95 advertisements misrepresent and fail to accurately disclose the amount of the second series of installment payments required at conclusion of the initial payments, based on the financing to be signed at purchase, and that respondent, therefore, has engaged in a deceptive act or practice, in violation of Section 5(a) of the FTC Act. The complaint also alleges that the Drive for 95 advertisements, inter alia, fail to accurately state the terms of repayment, by failing to accurately disclose the amount of the second series of installment payments required at conclusion of the initial payments, based on the financing to be signed at purchase, in violation of the TILA and Section 226.24(c) of Regulation Z.

The complaint also alleges that in fine print in the Gold Key Plus advertisements, respondent's advertisements state an initial number of payments, a downpayment and another amount described as a "purchase option" (the "disclaimer"). The complaint also alleges that in fine print (print), in fine print for a short duration (television) and orally for a short duration (radio) in the Drive for 95 advertisements, respondent's advertisements, inter alia, state "balance of 48 payments will be higher than 1st 12 months," and "cost per \$1,000 borrowed \$20.52," and an annual percentage rate (the "disclaimer"). The complaint also alleges that the disclaimer in respondent's Gold Key Plus advertisements is virtually unreadable and incomprehensible to ordinary consumers and is not clear and conspicuous because of the small typesize. The complaint also alleges that the disclaimer in respondent's Drive for 95 advertisements is virtually incomprehensible to ordinary consumers and is not clear and conspicuous because of the small typesize in the print and televised advertisements and because of the short duration in the radio and televised advertisements. The complaint further alleges that respondent's aforesaid practices in connection with the disclaimers in its Gold Key Plus and Drive for 95 advertisements constitute deceptive practices in violation of Section 5(a) of the FTC Act and violations of the TILA and Section 226.24(c) of Regulation Z, as more fully set out in Section 226.24-1 of the Official Staff Commentary to Regulation Z.

The complaint also alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, or the amount of any payment, but fail to state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, and the annual percentage

rate, using that term or the abbreviation "APR," in violation of the TILA and Section 226.24(c) of Regulation Z.

The complaint also alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that 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, but fail to state 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, amount, 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, in violation of the Consumer Leasing Act ("CLA") and Section 213.5(c) of Regulation M.

The proposed order prohibits respondent Herb Gordon Auto, in connection with any advertisement to promote any extension of consumer credit, from misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to whether there may be a balloon payment or second series of installment payments, and the amount of any balloon payment or second series of installment payments.

The proposed order also requires respondent Herb Gordon Auto, in any advertisement to promote any extension of consumer credit, whenever the number or amount of payments required to repay the debt are stated, to accurately, clearly and conspicuously, state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment, including the amount of any balloon payment, or the number and amount of any second series of installment payments, and the annual percentage rate, using that term or the abbreviation "APR."

The proposed order further requires respondent Herb Gordon Auto, in any advertisement to promote any extension of consumer credit, whenever 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 is stated, to clearly and conspicuously state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR."

The proposed order also prohibits respondent Herb Gordon Auto, in any advertisement to promote any extension of consumer credit, from stating a rate of finance charge without stating the rate as an "annual percentage rate," using that term or the abbreviation "APR," and from failing to calculate the rate in accordance with Regulation Z. The proposed order also requires respondent Herb Gordon Auto to state only those terms that actually are or will be arranged or offered by the creditor, in any credit advertisement, as required by Regulation Z.

The proposed order prohibits respondent Herb Gordon Auto, in connection with any advertisement to aid, promote or assist any consumer lease, from misrepresenting the costs or terms of leasing a vehicle.

The proposed order also requires respondent Herb Gordon Auto, in any advertisement to aid, promote or assist any consumer lease, whenever 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 is stated, to 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. <sup>2</sup> The proposed order also requires

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<sup>2</sup> The Federal Reserve Board ("Board"), which implements the CLA, recently issued revised Regulation M, 61 Fed. Reg. 52246 (Oct. 7, 1996) (to be codified at 12 C.F.R. § 213). Revised Regulation M is not mandatorily effective until Oct. 1, 1997; compliance with revised Regulation M is optional starting Oct. 1, 1996. 61 Fed. Red. at 52246. In addition, President Clinton recently signed the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 ("Omnibus Act"), Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Title II, Section 2605 of the Omnibus Act amends certain provisions of the CLA ("revised CLA") (to be codified at 15 U.S.C. § 1667 et seq.); in the future, the Board will implement the revised CLA. The revised CLA is mandatorily effective on the first October 1 that follows the

respondent in any lease advertisement to state that a specific lease of any property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease such property at those amounts or terms, as required by Regulation M.

The proposed order also prohibits respondent Herb Gordon Auto from failing to comply in any other respect with the TILA and Regulation Z and the CLA and Regulation M.<sup>3</sup>

The proposed order defines the term "clearly and conspicuously" for respondent's advertisements in all media. In a television or videotaped advertisement, the required disclosures made in the audio portion of the advertisement must be in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer. The required disclosures made in the video portion of the advertisement must appear on the screen in a size, shade, contrast, prominence and location, and for a duration, as to be  
(..continued)

Board's promulgation of implementing regulations, amendments or interpretations by not less than six months; compliance with the revised CLA is optional at any time before the mandatory effective date. See Title II, Section 2605(b)(2) of the Omnibus Act.

Accordingly, the proposed order permits respondent to comply with the lease advertising "triggering term" rules of existing Regulation M, 12 C.F.R. § 213.5(c), as amended, and the CLA, 15 U.S.C. § 1667c(a)-(b), by utilizing applicable provisions of the revised CLA and revised Regulation M. For all lease advertisements, respondent may utilize Section 184(a) of the revised CLA (to be codified at 15 U.S.C. § 1667c(a)), as amended, or utilize Section 213.7(d) of revised Regulation M (to be codified at 12 C.F.R. § 213.7(d)), as amended. For radio lease advertisements, respondent may also utilize Section 184(b) of the CLA, 15 U.S.C. § 1667c(b), as amended by Title II, Section 2605 of the Omnibus Act (to be codified at 15 U.S.C. § 1667c(c)) ("Section 184(c) of the revised CLA"), as amended, or utilize Section 213.7(f) of revised Regulation M (to be codified at 12 C.F.R. § 213.7(f)), as amended. For television lease advertisements, respondent may also utilize Section 213.7(f) of revised Regulation M, as amended.

<sup>3</sup> The proposed order permits respondent to comply with other requirements of existing Regulation M, 12 C.F.R. § 213, as amended, and the CLA, 15 U.S.C. § 1667-1667e, as amended, by utilizing revised Regulation M, as amended.

readily noticeable, readable and comprehensible to an ordinary consumer. In a radio advertisement, the required disclosures must be delivered in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer. In a print advertisement (including but not limited to mail solicitations), the required disclosures must appear in a size, shade, contrast, prominence and location as to be readily noticeable, readable and comprehensible to an ordinary consumer. Additionally, nothing contrary to, inconsistent with or in mitigation of the required disclosures can be used in any advertisement.

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