of respondent's notification, a written agreement to be bound by the terms of this order; *Provided,* That if respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, respondent shall submit to the Commission a written statement setting forth said reasons at least sixty (60) days prior to the consumation of said succession or transfer.

It is further ordered, That respondent herein shall, within sixty (60) days after service upon 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.

The matter was argued before Commissioner Thompson was sworn in. Therefore, he elected not to participate.

IN THE MATTER OF

CORNING GLASS WORKS

Docket 8874. Interlocutory Order, July 24, 1973.

Order denying respondent's motion for reconsideration of final order, or in the alternative, for reopening of proceeding.

Appearances

For the Commission: *R. A. Bloch, S. B. Gold.*

For the respondent: *Sherman & Sterling,* New York, New York, *William C. Ughetta,* secretary and general counsel, Corning Glass Works, Corning, New York.

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION OF THE FINAL ORDER OR IN THE ALTERNATIVE FOR REOPENING OF PROCEEDING

On June 5, 1973 [82 F.T.C. 1675], the Commission issued its decision sustaining Counts I, II, and IV of the complaint and dismissing Counts III and V. Accompanying the Commission's Opinion was an order to cease and desist which was virtually identical to the proposed order which accompanied service of the complaint (the "notice order"), except for deletion of language which pertained to the two counts that were dismissed.

Respondent has now filed a motion pursuant to Section 3.55 of

the Commission's rules for reconsideration of the terms of the Commission's Order.[1] Alternatively, it requests that the Commission reopen the proceeding pursuant to Section 3.72(a) for purposes of altering the terms of the order.[2]

Complaint counsel has filed an answer opposing respondent's motion on both procedural and substantive grounds. It argues, first of all, that except for certain editorial changes made by the Commission from the original notice order, respondent had full opportunity throughout the proceeding to raise obqections to the terms of the order as they pertained to the counts that were sustained, but never raised any objection. Having failed to voice any objection, complaint counsel argues that respondent has failed to meet the requirement of Section 3.55 which limits reconsideration to "questions * * * upon which the petitioner had no opportunity to argue before the Commission."

Complaint counsel also strenuously avows that in a stipulation entered into by the parties, respondent agreed to the appropriateness of the terms of the notice order as they applied to respective counts of the complaint, should liability on any of those counts be established.[3] Complaint counsel states that this was his understanding of the stipulation and that he repeatedly referred throughout the record to the stipulation as having this meaning

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[1] Section 3.55 provides in pertinent part:

"Within twenty (20) days after completion of service of a Commission decision, any party may file with the Commission a petition for reconsideration of such decision, setting forth the relief desired and the ground in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission."

[2] Section 3.72(a) provides:

"At any time prior to the expiration of the time allowed for filing a petition for review or prior to the filing of the transcript of the record of a proceeding in a United States court of appeals pursuant to a petition for review, the Commission may upon its own initiative and without prior notice to the parties reopen the proceeding and enter a new decision modifying or setting aside the whole or any part of the findings as to the facts, conclusions, rule, order, or opinion issued by the Commission in such proceeding."

[3] The stipulation entered into by the parties during the pre-hearing stage of the proceeding reads:

"1. Relief relating to the allegations of Counts I, II, and IV of the complaint shall be entered against Respondent Corning Glass Works only in the extent that the allegations of Court II of the complaint are sustained.

"2. Relief relating to the allegations of Count III of the complaint shall be entered against Respondent Corning Glass Works only in the event that the allegations of Count III of the complaint are sustained.

"3. Relief relating to the allegations of Count V of the comlpaint shall be entered against Respondent Corning Glass Works only in the event that the allegations of Count V of the complaint are sustained. * * *"

and respondent never indicated disagreement.[4]

Although we think there is considerable merit to complaint counsel's argument that respondent should be deemed to have stipulated as to the appropriateness of the terms of the notice order and, in any case, should have raised objections to the provisions in the notice order before now, we believe that no useful purpose would be served by refusing to consider respondent's arguments.[5]

Nevertheless, having considered the objections set forth by respondent, the Commission finds no reason to disturb its June 5 order or remand for additional proceeding before an administrative law judge.[6] We will deal with its arguments *seriatim* as they are presented in respondent's motion.

(i) Respondent contends that Paragraph I(3) (b) is overbroad because it allegedly will prevent fair trade state wholesalers from soliciting contracts from fair trade state retailers. This is not a correct reading of the order. The proviso that immediately follows excepts (b)'s prohibitions with respect to "lawfully obtained" fair trade contracts. This permits respondent to continue to require fair trade state wholesalers to obtain fair trade contracts from fair trade state retailers, subject only to the prohibition, for a limited period of time, of resolicitation of contracts from

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[4] It might be noted that the Commission also was under this impression. See Opinion, p. 5. Our view was based in part on the characterization of the stipulation in the Initial Decision at p. 2 that:

"At this oral argument counsel for both sides agreed that there were no factual disputes between the parties; that Counts II, III and V raised purely legal questions which could properly be decided on a motion for summary decision; and that in line with the stipulation between the parties filed October 17, 1972, a decision on these cross-motions for summary decision *would be dispositive of the entire proceeding.*" (Emphasis added)

The quoted passage originally appeared in respondents' proposed initial decision.

[5] Technically, the Final Order issued by the Commission on June 5, 1973, was not *verbatim* the notice order served with the complaint. In addition to deletion of some paragraphs which dealt only with the two counts that were dismissed, other paragraphs necessarily had to be redrafted to some extent and some editorial changes were made. Therefore, it can be argued that the manner, at least, in which the order was redrafted to accommodate dismissal of the two counts presented a "new question" under Rule 3.55. Furthermore, the Commission always has discretion to re-examine the propriety or correctness of its orders, including stipulated orders, prior to the time the record is before a court for review. (See Rule 3.71.)

[6] The Commission takes due note of the fact that respondent prefaces its arguments with the statement that they are not intended to be "all-inclusive." However, respondent cannot expect this Commission to entertain its objections and arguments for reopening on a piecemeal basis. All grounds must be raised in the moving papers. Since, on the basis of the present motion, we find insufficient reason to revise the order or remand for further proceedings, our decision here will be final as to all matters which respondent could have raised at this time.

certain signer-only state retailers as provided in Paragrhph IV(3).

(ii) Respondent complains that the exempting proviso contained in Paragraph I(3) of the Final Order is limited to subparagraph (b), rather than to both subparagraph (a) and (b) as contained in the notice order. The order as it now reads is correct. This was a change made by the Commission simply because the proviso—which permits actions taken in states having fair trade laws—could have no application, in any event, to subparagraph (a) which pertains to certain actions (circulation of blacklists) in states which have no fair trade laws.

(iii) Respondent suggests that clarifying language added by the Commission to Paragraph I(4) to permit actions expressly sanctioned by Sections 5(a)(3) of the McGuire Act, as well as Section 5(a)(2) of that Act, needs further revision. However, we think the language as it now reads adequately indicates that this is the meaning.

(iv) Respondent questions the reference to Paragraph III(2)(b) contained in Paragraph V, which reference was added in the Final Order by the Commission. Respondent overlooks that this change was necessary in view of our change in line 6 to refer to "fair trade states" rather than just "non-signer" fair trade states as the notice order previously read. The latter change, in turn, was necessitated by our dismissal of Count III.

(v) Respondent raises a question as to the "any reseller located within" language of Paragraph I(1). It suggests the language needs qualification to make it clear that fair trade contracts can apply to resales from wholesale locations in fair trade states to retailers for resale in fair trade states, regardless of the fact that the wholesaler or retailer may have a main office or other outlets in free trade states. Respondent does not suggest what clarifying language it wants, but we think the Commission's decision of June 5 makes it clear that the locus of a "resale," as that term is used in the McGuire Act, is the location of individual wholesale outlets from which the goods are to be shipped. (See Slip Opinion at 16 n.15.) This same rule applies to resales by retailers, *i.e.*, the locus of "resales" are the stores from which the goods can be purchased by the customer—or in the case of mail-order firms, from where the goods are shipped. Thus, for purposes of our order, "reseller" will refer not to an entire corporate entity in the case of a chain reseller, but to its individual sales outlets from which the goods will be shipped. Respondent may enter into a fair trade contract with a buyer's headquarters as long as the

contract clearly will apply only to resales of goods that take place (*i.e.*, shipped) from facilities located in fair trade states.

(vi) Respondent requests that exemption of actions taken pursuant to Section 5(a)(3) of the McGuire Act be added to Paragraph II. Such a change would be superfluous since nothing in that paragraph would prevent actions taken pursuant to Section 5(a)(3).

(vii) Respondent objects to the requirement in Paragraph III 1(a) that it send copies of the order to every reseller who was under a Corning fair trade contract on or after March 1, 1971. Respondent asserts that it should not be required to send copies to wholesalers and retailers in fair trade states—and particularly retailers in the non-signer states.

The Commission believes that this requirement should not be changed. Notice of the order to *wholesalers* in fair trade states is necessary because some of these wholesalers may be multistate and have outlets in free trade states. A blanket requirement of notice to all wholesalers will not be greatly burdensome since it appears that respondent's wholesalers (free trade *and* fair trade) number only about 400 (Attachment F to Complaint).

The reason for retaining the requirement of sending copies of the order to fair trade state *retailers* is that Count I of the Complaint charged that whenever a free trade state wholesaler resold Corning Ware to a fair trade state retailer, the Corning wholesale contract fixed the resale price. While not litigated, respondent agreed to accept the relief related to that count (n.3, *supra*). As complaint counsel point out, even though respondent may lawfully regulate the price at which non-signer state retailers sell, the existence of free trade state wholesalers makes it impossible to fix always their *purchase* prices. It is quite proper, therefore, to require respondents to inform non-signer state retailers, as well as signer-only state retailers, that they are free to buy from free trade state wholesalers at a price that cannot be regulated by Corning.

(viii) Contrary to respondent's assertion, Paragraph IV(3) does not require it to amend fair trade contracts which are presently in conformity to other provisions of the order.

(ix) Paragraph VI(2) requires respondent to notify the Commission in advance of any proposed changes in its method of distribution of fair traded commodities or in its contracts or agreements relating thereto. This provision relates only to matters that affect fair trade activities of respondent and is obviously a

necessary means of assuring compliance with the order and the McGuire Act.

(x) Paragraph III(2)(b)(iv) of the order requires that respondent notify certain retailers in signer-only states (whose contracts will be cancelled by virtue of the fact they were obtained by Corning in an unlawful manner) that until they enter into new fair trade contracts they "may, and are encouraged to" sell at prices they individually determine. The quoted language is necessary to remove any doubt from such retailers' minds as to their legal rights and is a reasonable provision in our view.

(xii)–(xvi) Finally, respondent argues that the order is vague, burdensome, or impossible of fulfillment. We have examined its contentions, but disagree that any change should be made. Most of the problems raised by respondent can best be handled as a compliance matter, rather than by revising language of the order. Thus, compliance problems that may have been caused by a loss of some records due to a recent flood should be presented to the Commission after the order becomes effective. Obviously, the Commission will not insist on respondent performing acts that have been rendered impossible through no fault of its own.

Accordingly, the Commission having found no reason to modify its Final Order in this matter or to reopen for further proceeding,

It is ordered, That respondent's motion, filed July 5, 1973 for reconsideration, or in the alternative for reopening of the proceeding, be, and it hereby is, denied.

Commissioner Thompson not participating.

IN THE MATTER OF

HALL'S FURNITURE COMPANY, INC., ET AL.

CONSENT ORDER, ETC. IN REGARD TO THE ALLEGED VIOLATION OF THE TRUTH IN LENDING AND FEDERAL TRADE COMMISSION ACTS

Docket C-2426. Complaint, July 25, 1973—Decision, July 25, 1973.

Consent order requiring a Los Angeles, California seller and distributor of furniture, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *K. H. Cirlin.*

For the respondents: *Morris Kastle,* Los Angeles, California.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hall's Furniture Company, Inc., a corporation, and Harry Heller, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Hall's Furniture Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 5760 Crenshaw Boulevard, Los Angeles, California.

Respondent Harry Heller is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of furniture and other merchandise to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute a binding "Retail Installment Contract and Security Agreements," "Security Agreements and Federal Disclosure," and "Supplemental Security

Agreements and Memorandum of Add-on Sale and Federal Disclosure," hereinafter referred to as Security Agreements." Respondents do not provide these customers with any other credit cost disclosures.

By and through the use of the security agreements, respondents:

1. Fail in some instances to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

2. Fail in some instances to disclose the number of payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

3. Fail in some instances to include in the finance charge charges or premiums for credit life, accident, health, or loss of income insurance, written in connection with credit transactions when the customer has not given a specific dated and separately signed affirmative written indication of his desire for such coverage as prescribed by Section 226.4(a) (5) (ii) of Regulation Z.

4. Fail in some instances to furnish the customer with a duplicate copy of the instrument containing the disclosures required by Section 226.8 or a statement by which the required disclosures are made at the time those disclosures are made, as prescribed by Section 226.8(a) of Regulation Z.

PAR. 5. By and through the acts and practices set forth above, respondents fail to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents have violated the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admis-

sion by the respondents 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 respondents 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 respondents have 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hall's Furniture Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 5760 Crenshaw Boulevard, Los Angeles, California.

Respondent Harry Heller is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents Hall's Furniture Company, Inc., a corporation, its successors and assigns, and its officers, and Harry Heller, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

2. Failing to disclose the number of payments scheduled

to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

3. Failing to include in the finance charge any charges or premiums for credit life, accident health or loss of income insurance when the customer has not given a specific dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance as prescribed by Section 226.4(a) (5) (ii) of Regulation Z.

4. Failing to furnish the customer with a duplicate of the instrument containing the disclosures required by Section 226.8 or a statement by which the required disclosures are made at the time those disclosures are made, as prescribed by Section 226.8(a) of Regulation Z.

5. Failing in any consumer credit transaction to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form, and amount required by Sections 226.6, 226.7, and 226.8 of Regulation Z.

It is further ordered, That respondents prominently display no less than two signs on each of its premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures as required by the Trust in Lending Act, in any transaction which is financed, before the transaction is consummated.

It is further ordered, That respondents deliver a copy of this order to cease and desist to each operating division and to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order for each person.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent 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 effect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

WARNER-LAMBERT COMPANY

Docket 8850. Interlocutory Order, July 26, 1973.

Order directing complaint counsel to file supplemental brief in connection with interlocutory appeal regarding disclosure of certain government records; and granting respondent permission to file answering brief.

Appearances

For the Commission: *P. R. Teetor, R. Jacobs, D. A. Lofty,* and *T. P. Athridge.*

For the respondent: *Mudge, Rose, Guthrie & Alexander,* New York, New York, *Bergson, Borkland, Margolis & Adler,* Washington, D. C.

ORDER DIRECTING FURTHER BRIEFING

This matter is before the Commission upon petition of complaint counsel filed June 22, 1973, that the Commission entertain an interlocutory appeal from a ruling of the administrative law judge regarding disclosure of certain Government records. Respondent has filed an answer opposing the petition.

In order to aid further the Commission's consideration in this matter,

It is ordered, That a further supplemental brief be filed by complaint counsel directed to the following questions:

1. To what extent, if any, has complaint counsel actually used, or planned to use, the "Alphabetical List of IND Generics" printout in preparing evidence or testimony in its case-in-chief? This information should be put in affidavit form.

2. On the question whether a firm or group of firms should be considered potential entrants into an alleged submarket because of research activity or interest, why should not the Commission, in the interest of keeping the scope of the record within reasonable bounds and confined to evidence clearly probative, grant the appeal and limit both parties' evidence and discovery to research activity that has at least reached the stage of the filing of a New Drug Application with the Food and Drug Administration?

Complaint counsel's brief shall be filed within ten (10) days of this order. Respondent may file an answering brief within ten (10) days of receipt of complaint counsel's brief.

IN THE MATTER OF

FOREMOST-McKESSON, INC.

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

Docket C-2427. Complaint, July 26, 1973—Decision, July 26, 1973.

Consent order requiring a San Francisco, California, wholesale distributor of druggists' sundries, among other things to cease inducing or receiving discriminating payments, and offering anticompetitive inducements.

Appearances

For the Commission: *R. J. Dolan, J. E. Passarelli.*

For the respondent: *Ian R. Gilbert,* Foremost-McKesson, Inc., San Francisco, California.

COMPLAINT

The Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, having reason to believe that Foremost-McKesson, Inc., a corporation, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), 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 respect thereto as follows:

COUNT I

Foremost-McKesson, Inc.

PARAGRAPH 1. Respondent Foremost-McKesson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office located at Crocker Plaza, One Post Street, San Francisco, California.

PAR. 2. Respondent is now, and has been for many years, engaged in the wholesale distribution of, among other products, druggists' sundries with total sales of such products of $70 million for the fiscal year ended March 31, 1971.

Trade and Commerce

PAR. 3. Respondent, in the course and conduct of its business, has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases a great variety of products from a large number of suppliers located throughout the United States and causes such products to be transported from various States in the United States to the warehouses of its eighty-nine (89) sales divisions in other states for resale to retail drugstores located throughout the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent is now and has been in competition with other corporations, persons, firms and partnerships in the purchase, sale and distribution at wholesale of druggists' sundries.

Respondent's Trade Shows

PAR. 5. Respondent solicits suppliers of druggists' sundries to display their merchandise at respondent's trade shows which are held annually throughout the United States. Suppliers who wish to participate are required to rent booths from respondent for the purposes of displaying such merchandise. A substantial number of respondent's suppliers participate in one or more of these trade shows and many rent more than one booth at each show. In 1971, suppliers who participated in respondent's trade shows paid respondent in excess of $400,000 to rent booths.

PAR. 6. During respondent's trade shows, agents, employees or representatives of the participating sundries suppliers also perform valuable services, specifically, staffing the booths rented by suppliers from respondent and demonstrating and promoting the suppliers' products. In addition, some suppliers give door prizes.

PAR. 7. Respondent's trade shows are attended by many of its retail drugstore customers who purchase the displayed merchandise from or through respondent.

Violation

PAR. 8. Some of respondent's suppliers who participated in respondent's trade shows in 1971 did not offer and otherwise make available to all their customers competing with respondent in the sale and distribution of their respective products, payments, allowances, services, or other things of value, for advertising and

promoting such products on proportionally equal terms to those granted respondent in connection with its trade shows.

PAR. 9. Therefore, respondent has induced and received or received from some of its suppliers, payments, as set forth in Paragraph 5 above, and services or facilities, as set forth in Paragraph 6 above, in connection with respondent's sale, or offering for sale, of products sold to respondent by such suppliers which respondent knew or should have known were not made available by such suppliers on proportionally equal terms to all other customers of such suppliers competing with respondent, including customers who do not purchase directly from such suppliers, in the sale and distribution of such products.

Such acts and practices constitute unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45).

COUNT II

PAR. 10. The allegations of Paragraphs 1 through 7 are incorporated herein by reference.

Respondent's Inducements to Customers

PAR. 11. In connection with respondent's 1971 regional trade shows held in Acapulco, Las Vegas and Honolulu, by respectively, respondent's Northeast, South and North Pacific regions, respondent offered to pay, and paid for many of its customers, a portion of each customer's expenses for travel, accommodations and meals, the amount of such payments depending upon the customer's volume of purchases from respondent during the trade show.

PAR. 12. Respondent's offering to pay or paying the expenses of its customers as set forth in Paragraph 11 above may tend to foreclose respondent's competitors in the wholesale distribution of druggists' sundries from competing for the business of retail druggists who attend respondent's trade shows. Such acts and practices therefore constitute unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the cap-

tion hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition 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 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings.

1. Respondent Foremost-McKesson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office located at Crocker Plaza, One Post Street, San Francisco, California.

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

ORDER

It is ordered, That respondent, Foremost-McKesson, Inc., a corporation, and its officers, representatives, agents and employees, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of products for resale by the respondent, or in connection with any other transactions between respondent and its various suppliers involving or pertaining to the regular business of the respondent in purchasing, promoting, advertising, distributing and selling commodities and products in commerce, as "com-

merce" is defined in the Federal Trade Commission Act, shall cease and desist from:

1. Inducing and receiving, receiving or contracting for the receipt of anything of value from any supplier of druggists' sundries as compensation or in consideration for services and facilities furnished by or through respondent in connection with the processing, handling, sale or offering for sale of such supplier's products at respondent's trade shows, when respondent knows or has reason to know that such compensation is not affirmatively offered and otherwise made available by such supplier on proportionally equal terms to all of its other customers competing with respondent, including customers who purchase from intermediaries and compete with respondent in the resale of such supplier's products.

2. Inducing and receiving, receiving or contracting for the receipt of, the furnishing of services or facilities, including but not limited to inducing prizes or gifts awarded to retail druggist customers attending respondent's trade shows, connected with respondent's offering for sale or sale of such products so purchased, when respondent knows or has reason to know that such services or facilities are not affirmatively offered or otherwise made available by such supplier on proportionally equal terms to all of its customers competing with the respondent, including customers who purchase from intermediaries and compete with respondent in the resale of such supplier's products.

It is further ordered, That respondent shall cease and desist from offering or providing to its customers, directly or indirectly, any material inducement, monetary or otherwise, to attend its trade shows whenever such customers' receipt of the inducement depends upon their purchases or volume of purchases of merchandise from respondent.

It is further ordered, That a copy of this order shall be delivered to each person or organization invited to participate in any trade show sponsored, organized or held by respondent, at the time such invitation is extended, for a period of five (5) years from the date of service of this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating wholesale drug divisions.

It is further ordered, That respondent shall, within sixty (60) days 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 the order.

It is further ordered, That the effective date for compliance with this order shall commence September 1, 1973.

IN THE MATTER OF

EXXON CORPORATION, ET AL.

Docket 8934. Interlocutory Order, July 27, 1973.

Order quashing subpoena duces tecum directed to Standard Oil Company of California without prejudice to renewal under Part 3 of the Commission's rules.

Appearances

For the Commission: *Robert E. Liedquist* and others.

For the respondent: *Turner H. McBaine* and *Wallace L. Kaapcke* of *Pillsbury, Madison & Sutro,* San Francisco, California and *David J. McKean* of *McKean, Whitehead & Wilson,* Washington, D.C.

ORDER QUASHING INVESTIGATIONAL SUBPOENA

This matter is before the Commission on a motion filed by respondent Standard Oil Company of California ("Standard of California") to quash a subpoena *duces tecum* served upon respondent by the Bureau of Competition pursuant to Section 2.7 of the Commission's Rules of Practice (Nonadjudicative Procedures). The subpoena was issued in connection with a Commission Investigatory Resolution dated December 21, 1971.

On July 17, 1973, the Commission issued under Part 3 of its Rules of Practice (Adjudicative Proceedings) a complaint in this matter against Standard of California and other petroleum

companies. Respondent moves that the subpoena be quashed on several grounds including (1) issuance of the adjudicative complaint precludes further proceedings under the subpoena issued pursuant to the Commission's rules pertaining to Part 2 investigations, (2) the subpoena amounts to the type of investigational demand allegedly prohibited by the Commission in *All-State Industries of North Carolina,* 72 F.T.C. 1020, and (3) the subpoena is excessively burdensome.

Without reaching the question of burdensomeness,[1] it is clear that the subpoena, having been issued under Part 2 of the rules, should be quashed without prejudice to renewal by complaint counsel before an administrative law judge under the applicable provisions of Part 3 of the Commission's Rules of Practice. Accordingly,

It is ordered, That the subpoena be, and it hereby is, quashed without prejudice to renewal before an administrative law judge under Part 3 of the Commission's Rules of Practice.

IN THE MATTER OF

RESORT CAR RENTAL SYSTEM, INC., ET AL.

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

Docket 8862. Complaint, Aug. 26, 1971—Order & Opinion, July 31, 1973.

Order requiring a Las Vegas, Nevada, automobile rental agency and several other agencies located in the Southwest, among other things to cease misrepresenting any price, fee, or amount imposed for rental of a motor vehicle; misrepresenting any method of computation of such charges; and using any misleading trade or corporate name. Order also dismisses complaint as to one corporate respondent.

Appearances

For the Commission: *G. E. Wright, R. E. Stone.*

For the respondents: *Orin G. Grossman,* Las Vegas, Nevada.

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[1] We note, however, that the *All-State* opinion is not a basis for quashing a subopena. As we explained in a later "Supplemental Clarifying Opinion" in that case, 74 F.T.C. 1591, the Commission's policy adverted to in the first *All-State* opinion—that its staff attorneys should ordinarily complete most of their evidence—gathering prior to issuance of a complaint—is an internal administrative guideline between the Commission and its staff and does not constitute grounds to be raised in opposition to a subpoena that otherwise meets the requirements for subpoenas set forth in the Commission's Rules of Practice.

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 Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., Brooks Dollar-A-Day Rent-A-Car, Inc., Metropolitan Leasing, Inc., Bell Rent-A-Car, Inc., corporations, and Irving Bell, individually and as an officer of said corporations, hereinafter referred to as respondents, have 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 Resort Car Rental System, Inc., is a Delaware corporation with its principal office at 401 South Third Street, Las Vegas, Nevada.

Respondent Brooks Rent-A-Car, Inc., is a Nevada corporation with its principal office at 3041 Las Vegas Boulevard South, Las Vegas, Nevada; it does business as Brooks Dollar-A-Day Rent-A-Car in Las Vegas.

Respondent Brooks Dollar-A-Day Rent-A-Car, Inc., is an Arizona corporation with its principal office at 102 South 24th Street, Phoenix, Arizona; it does business as Brooks Dollar-A-Day Rent-A-Car in Phoenix, Scottsdale, and Tucson, Arizona, and Albuquerque, New Mexico.

Respondent Metropolitan Leasing, Inc., is a Colorado corporation with its principal office at 7200 East Colfax Avenue, Denver, Colorado; it does business as Metro Car Rentals in Denver.

Respondent Bell Rent-A-Car, Inc., is a Virgin Islands of the United States corporation with its principal office at Charlotte Amalie, St. Thomas, U.S. Virgin Islands; it does business as Bell Rent-A-Car in St. Thomas and St. Croix.

Respondent Irving Bell is an individual and officer of each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporates respondents, including the acts and practices hereinafter set forth. His business address is the same as that of corporate respondent Resort Car Rental System, Inc.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now and have been engaged in the business of advertising for rent and rental of automobiles to the public.

PAR. 3. In the course and conduct of their business respondents are now, and have been, engaged in:

(1) publishing and disseminating, and causing to be disseminated advertisements which are circulated in brochures, newspapers, and magazines in, among, and between the several states and territories;

(2) accepting and confirming reservations for automobile rentals from prospective customers in states and territories outside the state or territory of their principal place of business;

(3) renting automobiles that are driven in, among, and between the several states, and renting automobiles in one state which are authorized to be returned to and which are returned to respondents in other states.

(4) sending advertising, contracts, letters, checks, instructions and other written instruments and communications, teletyped communications, and oral communications between one another at their places of business in the several states and territories.

Respondent Resort Car Rental System, Inc., wholly owns the other corporate respondents named in this complaint. Because of these relationships, rentals made in the several states and territories by the subsidiary respondents are rentals by Resort in, among, and between the several states and territories.

Respondent Resort, at its place of business in Nevada, derives income as a result of its ownership of the respondent subsidiaries located in other states and in territories.

As a result of the foregoing, respondents maintain, and have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing others to rent their automobiles, respondents have made, and are now making, directly or by implication, in advertisements which they cause to be placed in brochures, newspapers and magazines various statements and representations concerning the amounts charged for automobile rentals. Attachments I and II (pages 4 and 5 of this complaint) are typical and illustrative of such advertisements.

PAR. 5. Through the use of the trade name "Brooks Dollar-A-Day Rent-A-Car," the corporate name "Brooks Dollar-A-Day Rent-A-Car, Inc." and the statements and representations set out in Paragraph Four and others of similar import and meaning, but not specifically set out herein, respondents have represented, and now are representing, directly or by implication:

1. That respondents rent automobiles for one dollar per day.

2. That respondents rent automobiles for the dollar amounts set forth conspicuously in their advertisements (for example, Compacts for $5, Mustangs-Camaros for $7, Impalas-Fords for $8).

3. That respondents rent automobiles for one dollar per day, plus an unspecified charge for each mile driven.

4. That respondents rent automobiles for the dollar amounts set forth conspicuously in their advertisements (for example, Compacts for $5, Mustangs-Camaros for $7, Impalas-Fords for $8), plus a unspecified charge for each mile driven.

PAR. 6. In truth and in fact:

1. Respondents do not rent automobiles for one dollar per day, but in addition;

(a) impose a cents-per-mile charge,

(b) impose a minimum charge of 50 miles per day, at the cents-per-mile charge, whether or not the miles are actually driven.

(c) impose a daily charge for insurance which covers collision damage to the automobile in excess of $50 unless the person renting the automobile can demonstrate to the respondents' satisfaction the existence of an insurance policy which will provide full collision coverage for any damage done to respondents' vehicle.

2. Respondents do not rent automobiles for the dollar amounts set forth conspicuously in their advertisements (for example, Compacts for $5, Mustangs-Camaros for $7, Impalas-Fords for $8) ; but in addition;

(a) impose a cents-per-mile charge,

(b) impose a minimum charge of 50 miles per day, at the cents-per-mile charge, whether or not the miles are actually driven.

(c) impose a daily charge for insurance which covers collision damage to the automobile in excess of $50 unless the person renting the automobile can demonstrate to the respondents' satisfaction the existence of an insurance policy which will provide full collision coverage for any damage done to respondents' vehicle.

3. Respondents do not rent automobiles for one dollar per day, plus an unspecified charge for each mile driven, but in addition;

(a) impose a minimum charge of 50 miles per day, at the cents-per-mile charge, whether or not the miles are actually driven.

(b) impose a daily charge for insurance which covers collision damage to the automobile in excess of $50 unless the person renting the automobile can demonstrate to the respondents satisfaction the existence of an insurance policy which will provide full

Attachment I - Vegas Visitor Nov. 6, 1970 -4-

"Western World" - Oct.-Dec. 1970

RENT A CAR in VEGAS and PHOENIX and DENVER

from $1 for VOLKSWAGENS

Compacts, Auto shift $5
Novas & Dodges $7
Impalas, Mustangs $10
Cadillac, Wagons $12
AIR CONDITIONED CARS

Per 24 HR. Plus MILEAGE

BROOKS DOLLAR A-DAY RENT-A-CAR

Since 1948

PHONE FOR SPEEDY DELIVERY

LAS VEGAS (airport) 735-3344
PHOENIX (airport) 275-5705
DENVER (airport) 321-1331

Las Vegas-Phoenix-Denver Dispatch

CREDIT CARDS HONORED

"Las Vegas Showtime" - Sept. (1970)

RENT A CAR IN VEGAS... SAVE MORE! GET MORE! HAVE MORE FUN!

AS LOW AS $1 U-DRIVE

Nevada's Largest Economy Rent-A-Car!

4 LOCATIONS:
- OPPOSITE AIRPORT
- OPPOSITE STARDUST IN HAWTHORN, NEVADA
- OPPOSITE SUNDERBIRD HOTEL
- DOWNTOWN: BINION'S HORSESHOE

NEW CARS	Daily	Daily GAS Mileage
VOLKSWAGENS	$1	31
COMPACTS, AUTOSHIFT	$5	24
NOVAS, & DODGES SEDANS, AUTOSHIFT	$7	18
DELUXE IMPALAS/FORDS/MUSTANGS/CAMARO	$10	17
CADILLACS – WAGONS	$12	12

AIR CONDITIONED CARS $2 PER DAY ADDITIONAL

3¢ PER Mile & Weekly Free Mile Rate, Also 50 Miles Daily Mil.
INCLUDES OIL – LIABILITY INSURANCE – GAS

FREE GAS

MAJOR CREDIT CARDS HONORED

• PHONE FOR DELIVERY • FREE 24 HR. SERVICE •

OFFICES ALSO IN PHOENIX, FREEPORT BAHAMAS, ST. THOMAS & ST. CROIX, U.S. VIRGIN ISLANDS, DENVER, ALBUQUERQUE TUCSON, ETC.

Attachment II

collision coverage for any damage done to respondents' vehicle.

4. That respondents do not rent automobiles for the dollar amounts set forth conspicuously in their advertisements (for example, Compact for $5, Mustangs-Camaros for $7, Impalas-Fords for $8), plus an unspecified charge for each mile driven, but in addition;

(a) impose a minimum charge of 50 miles per day, at the cents-per-mile charge, whether or not the miles are actually driven.

(b) impose a daily charge for insurance which covers collision damage to the automobile in excess of $50 unless the person renting the automobile can demonstrate to the respondents' satisfaction the existence of an insurance policy which will provide full collision coverage for any damage done to respondents' vehicle.

Therefore, the representations as set forth in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. Respondents in some advertisements include statements such as "plus min. miles," or "Daily Flat Rates & Weekly Free Mile Rates. Also 50 Miles Daily Min." Respondents rental contracts state in bold type "50 MILES DAILY MINIMUM." These statements, because of their context, size, and location are inconspicuous, vague, confusing, contradictory, and misleading.

PAR. 8. In the normal course and conduct of their aforesaid business respondents' customers are required to sign a printed standard form rental agreement which is ambiguous, unclear and confusing. Such standard form rental agreements purport to obligate the customer signing it to pay the respondents a specified amount of money in return for use of an automobile. However, the format and contents of the aforesaid rental agreements are such that neither the exact amount nor the precise method for calculating the exact amount which the customer will be required to pay thereunder is clearly and conspicuously set out. Said forms, therefore, have the tendency and capacity to mislead and deceive customers signing the aforesaid rental agreements as to the amount they purportedly are thereby obligating themselves to pay respondents.

Therefore, the representations, acts and practices, as set forth in this paragraph, were and are misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporatios, firms and individuals in the renting of automobiles of the same general kind and in the same general manner as respondents.

PAR. 10 The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the renting of substantial numbers of respondents' automobiles by reason of said erroneous and mistaken belief.

PAR. 11. The acts and practices of respondents, as herein alleged were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY EDGAR A. BUTTLE, ADMINISTRATIVE LAW JUDGE OCTOBER 24, 1972

CONTENTS

PRELIMINARY COMMENT

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 issued a complaint on the 26th day of August A.D., 1971, charging respondents herein with certain deceptive practices incident to the renting and leasing of automobiles and the advertising thereof, including the terms under which such automobiles could be rented or leased.

At the request of counsel for the purpose of receiving into the record further testimony of Mr. Leonard Provenzale, the case was reopened by order on July 17, 1972.

The administrative law judge has carefully considered the proposed findings of fact, and conclusions supplemented by briefs, submitted by complaint counsel and counsel for respondents. The following findings and conclusions if not herein adopted either in the form proposed or in substance are rejected as not supported by the record or as involving immaterial matters.

FINDINGS OF FACT

1. Respondent Resort Car Rental System, Inc., is a Delaware corporation with its principal place of business at 401 South Third Street, Las Vegas, Nevada (admitted, Respondents' Answer, Paragraph One).

2. Respondent Brooks Rent-A-Car, Inc., is a Nevada corporation with its principal office located at 3041 Las Vegas Boulevard South, Las Vegas, Nevada; it does business as Brooks Dollar-A-Day Rent-A-Car in Las Vegas, Nevada (admitted, Respondents' Answer, Paragraph One).

3. Respondent Brooks Dollar-A-Day Rent-A-Car, Inc., is an Arizona corporation with its principal office formerly located at 102 South 24th Street, Phoenix, Arizona; it has done business as Brooks Dollar-A-Day Rent-A-Car in Phoenix, Scottsdale, and Tuscon, Arizona, and Albuquerque, New Mexico (admitted, Respondents' "Response -to Request for Admissions," dated December 30, 1971, Paragraphs 1 and 2).[1] Said firm is not presently doing business (Respondents' Answer, Paragraph One).

4. Respondent Metropolitan Leasing, Inc., is a Colorado corporation with its principal office formerly located at 7200 East Colfax Avenue, Denver, Colorado; it has done business as Metro Car Rentals in Denver, Colorado (First Admissions, Paragraphs 3 and 4). Said firm is not presently doing business (Respondents' Answer, Paragraph One).

5. Respondent Bell Rent-A-Car, Inc., was a wholly-owned subsidiary of respondent Resort Car Rental System, Inc. (First Ad-

[1] Hereinafter referred to as "First Admissions."

missions, Paragraph 34), but was no longer owned, in whole or in part, by any of the above respondents and/or respondent Irving Bell, as of the date of respondents' answer in this matter (Respondents' Answer, Paragraph One).

6. Respondent Irving Bell is an individual and is an officer of corporate respondent Resort Car Rental System, Inc. He became president of said firm in 1968, and has continuously occupied that position to the present time (admitted, Respondents' "Response to Second Request for Admissions," dated March 17, 1972, Paragraph 30) [2]; he became a member of the board of directors of said firm in 1969, and has continuously occupied such position to the present time (Second Admissions, Paragraph 35). Respondent Bell is and was an officer of respondent Brooks Rent-A-Car, Inc. (First Admissions, Paragraph 11 and 12); he became a member of the board of directors of said firm in or previous to 1962, and has continuously occupied such position to the present time (Second Admissions, Paragraph 27). Respondent Bell is and was an officer of Metropolitan Leasing, Inc., (First Admissions, Paragraphs 19 and 20). Respondent Bell became president of respondent Bell Rent-A-Car in 1969, and continuously occupied that position until the sale of respondent Bell Rent-A-Car, Inc, by Resort Car Rental System, Inc. (Second Admissions, Paragraph 34).

As of July 15, 1968, respondent Bell was the sole capital stockholder of respondent Brooks Rent-A-Car, Inc. Respondent Brooks Rent-A-Car, Inc., on January 20, 1969, became a wholly-owned subsidiary of respondent Resort Car Rental System, Inc., and is now a wholly-owned subsidiary of said respondent (First Admissions, Paragraphs 28 and 29). As of June 27, 1969, there were issued and outstanding 950,000 voting shares of capital stock of respondent Resort Car Rental System, Inc. (Second Admissions, Paragraph 40). Of this number, respondent Bell on said date owned 438,633 voting shares (Second Admissions, Paragraph 41), and relatives of respondent Bell on said date owned 124,000 voting shares (Second Admissions, Paragraphs 43, 44, and 45).

Thus, respondent Bell has been in a position to control the acts and practices of the respondent corporations, through his positions as an officer of said corporations, as a member of the board of directors of said corporations, and he has been in a position to control the acts and practices of respondent Brooks Rent-A-Car, Inc., through his sole ownership of said firm, from no later than

[2] Hereinafter referred to as "Second Admissions."

July 15, 1968, until the acquisition of said firm by Resort Car Rental System, Inc., on January 20, 1969, and through his substantial shareholdings of voting stock in respondent Resort Car Rental System, Inc., after that date (he held nearly a majority of such shares individually, and his holdings considered together with his relatives' holdings, constituted a majority).[3]

Additionally, respondent Bell created and has had responsibility for and control over the advertisements utilized by the corporate respondents which are challenged in this proceeding.

Witness Michael Miller designed one of the principal types of advertisements utilized by respondents (Miller, Tr. 291–292). A typical advertisement of this type is CX 27–X (see Tr. 289-292). This advertisement was originally designed by Mr. Miller under the personal instructions of respondent Bell in 1966 or 1967 (Miller, Tr. 293–295). Particularly, respondent Bell instructed Mr. Miller as to the elements which were to go into the design of the advertisement, including the box for prices (Miller, Tr. 294–295), the use of the dollar symbol (Miller, Tr. 295), and the use of the trade name "Brooks Dollar-A-Day Rent-A-Car" (Miller, Tr. 294).

Respondent Bell has on a number of occasions personally instructed Mr. Miller to make changes from the basic format (CX 17–X) of the advertisements prepared for respondent Brooks Rent-A-Car, Inc. (Miller, Tr. 295–298). Changes which respondent Bell instructed Mr. Miller to make related to matters such as price changes, new locations (Miller, Tr. 296), credit cards, "specials" (Miller, Tr. 297–298), and the size of the words "Dollar-A-Day" (Miller, Tr. 302). Other than these specific changes the basic advertisement would remain the same following these instructions for change (Miller, Tr. 298), including the dollar rate (Miller, Tr. 297). Respondent Bell thus repeatedly personally involved himself in the various versions of the advertising copy he instructed Mr. Miller to create, all of which changes continued to contain the basic deceptive elements challenged in this proceeding.

In addition, respondent Bell on numerous occasions between 1964 and 1970, personally instructed Mr. Miller to adapt the basic format (CX 27–X) of the advertising prepared by Mr. Miller, for use by firms in other localities, such as Phoenix; Los Angeles; Hawaii; Freeport, Bahamas; St. Croix and St. Thomas,

[3] See *Fred Meyer, Inc.* v. *FTC*, 359 F.2d 351 367–368 (9th Cir. 1966), *cert. denied*, 386 U.S. 908 (1967) wherein respondents were held individually responsible based primarily on their ownership of stock, and positions of authority in the corporation.

Virgin Islands; and Miami (Miller, Tr. 304–308). These adaptations for other localities contained the basic design of Brooks-Rent-A-Car, Inc. format including in some cases the large numeral one (Miller, Tr. 307–308).

Robert R. Campbell, publisher of the Vegas Visitor, testified that Mr. Bell has from time to time personally instructed him to insert advertising in said newspaper, such as that contained in CX 26–B (Campbell, Tr. 327–329, 333), and that such advertising was inserted in the Vegas Visitor pursuant to such instructions (Campbell, Tr. 326–327).[4]

7. The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth. Respondent Brooks Rent-A-Car, Inc. on January 20, 1969, became a wholly-owned subsidiary of respondent Resort Car Rental System, Inc., and is now a wholly-owned subsidiary of said respondent (First Admissions, Paragraphs 28 and 29). Respondent Brooks Dollar-A-Day Rent-A-Car, Inc., on September 20, 1969, became a wholly-owned subsidiary of respondent Resort Car Rental System, Inc. and is now a wholly-owned subsidiary of said respondent (First Admissions, Paragraphs 30 and 31). Respondent Metropolitan Leasing, Inc. on August 31, 1969, became a wholly-owned subsidiary of respondent Resort Car Rental System, Inc., and is now a wholly-owned subsidiary of said respondent (First Admissions, Paragraphs 32 and 33). Respondents have rented automobiles in one state which were authorized to and which were returned to respondents in other states (First Admissions, Paragraph 59). Respondents have sent advertising copy, contracts, letters, checks, instructions and/or other written instruments or communications, teletype communications, and oral communications between one another at their respective places of business in the several states and territories (First Admissions, Paragraph 60).

8. Respondent Brooks Rent-A-Car, Inc., has, and presently is, engaged in the business of rental of automobiles to the consuming public (Second Admissions, Paragraphs 1 and 2). In the course and conduct of its business, it has advertised and presently

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[4] Respondent Irving Bell's responsibility and personal participation are clearly sufficient to include him in his individual, as well as his representative, capacity under a Commission cease and desist order. *See* criterion enunciated in *United States* v. *Wise*, 370 U.S. 405, 416 (1962) ruled by the Commission to be applicable to cases brought under the Federal Trade Commission Act in *Coro, Inc.*, Dkt. No. 8346, 63 FTC 1164, 1204 (1963); *General Transmission Corp.*, Dkt. No. 8713, 73 FTC 399, 431–432 (1968), *aff'd*, 406 F.2d 227 (3d Cir.), *cert. denied*, 395 U.S. 936 (1969). *See also Fred Meyer, Inc.* v. *FTC*, *supra*, note 3.

advertises that it rents automobiles to the consuming public (Second Admissions, Paragraphs 3 and 4).

Corporate respondents, Brooks Dollar-A-Day Rent-A-Car, Inc., Phoenix, Arizona, and Metropolitan Leasing, Inc., Denver, Colorado, have engaged in the business of rental of automobiles to the consuming public (Second Admissions, Paragraphs 5 and 7). In the course and conduct of their businesses, they have advertised that they rent automobiles to the consuming public (Second Admissions, Paragraphs 6 and 8).

9. Respondents maintain, and have maintained substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.[5]

In the course and conduct of their business respondents Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., and Irving Bell are now and have been engaged in disseminating, and causing to be disseminated, advertisments which are circulated in brochures, newspapers, and magazines, in, among, and between the several states. For at least the last five years, all issues of the Vegas Visitor, presently a weekly newspaper published in Las Vegas, Nevada, have carried on the back page, advertisements for respondent Brooks Rent-A-Car, Inc. (Campbell, Tr. 342–343). These advertisements have been inserted in the Vegas Visitor pursuant to instructions from respondent Bell, or representatives or agents of respondent Brooks Rent-A-Car, Inc. (Campbell, Tr. 326–329, 333, 336, 338, 341). The following issues of the Vegas Visitor were received in evidence: August 23, 1968 (CX 25–A and 25–B)[6]; June 6, 1969 (CX 26–A to 26–P) ; November 6, 1970 (CX 27–A to 27–Z) ; June 4, 1971 (CX 29–A to 29–T) ; October 8, 1971 (CX 30–A to 30–X) ; October 22, 1971 (CX 31–A to CX 31–T) ; and May 5, 1972 (CX 548–A and 548–B). Robert R. Campbell, publisher of the Vegas Visitor, testified that 6000–7000 copies of Vegas Visitor newspaper are distributed weekly

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[5] Interstate commerce is not only the sale of goods but also includes the importation from one state to another of information with a commercial purpose. *Progress Tailoring Co.* v. *FTC,* 153 F.2d 103, 105 (7th Cir. 1946). The Commission has expressly held that advertising across state lines, without proof of interstate sales, is sufficient to establish Commission jurisdiction under Section 5. *Surrey Sleep Products, Inc.,* 73 FTC 523, 554 (1968) ; *S. Klein Department Stores, Inc.,* 57 FTC 1543, 1544 (1960). Respondents' transactions with customers do involve interstate commerce. See *Safeway Stores, Inc.* v. *FTC,* 366 F.2d 795 (9th Cir. 1966) ; *Asheville Tobacco Board of Trade, Inc.* v. *FTC,* 263 F.2d 502 (4th Cir. 1959).

[6] This exhibit was currently received into evidence as CX 25–A and B (Tr. 155, 157). However, the exhibit itself has been incorrectly marked as CX 549 A–L.

to restaurants in California which are on the highway from Los Angeles to Las Vegas (Campbell, Tr. 347, 349–350). Mr. Campbell had personally distributed the Vegas Visitor to these California points, and seen them in restaurants (Campbell, Tr. 349). The record also contains an information sheet which was in use about two years prior to the trial which indicates distribution to the following California cities: Victorville, Barstow, Yermo, and Baker (CX 550; Campbell, Tr. 356–358). Mr. Campbell further testified that 5,000 copies of Vegas Visitor newspaper with special TWA covers (*e.g.*, CX 30–A to 30–X) are published and distributed to Trans World Airlines (TWA) each week (Campbell, Tr. 350). Claude M. Rand, sales manager for TWA in Las Vegas, Nevada, testified that he made arrangements with Campbell for delivery of 5,000 Vegas Visitor newspapers per week (Rand, Tr. 409). He arranged for these newspapers to be labeled with the cities of ultimate destination, *e.g.*, Chicago, New York, Pittsburgh (Rand, Tr. 409–410). Mr. Rand further testified that he had personally seen Vegas Visitor newspapers in Boston, New York, Pittsburgh, and Chicago, available to the public (Rand, Tr. 410–411). Campbell testified that 3,500 copies of Vegas Visitor newspaper with special Frontier Airlines covers (*e.g.*, CX 31–A to 31–T) are published and distributed to Frontier Airlines each week (Campbell, Tr. 350). M. L. Martin, station manager for Frontier Airlines in Las Vegas, Nevada, testified that bundles of Vegas Visitor newspapers are received by him each week (Martin, Tr. 404–405). These bundles are already labeled with the destination cities—Denver, St. Louis, Kansas City, Billings, Dallas, Omaha (Martin, Tr. 406). Martin loads the bundles on airplanes to Denver where they are reloaded onto other airplanes going to their final destination (Martin, Tr. 404–405). Martin personally has seen bundles of Vegas Visitor newspapers in Denver, Colorado (Martin, Tr. 405). A special cover issue of Vegas Visitor was until about two years prior to the hearing of this matter, distributed to Delta Airlines (Campbell, Tr. 356; *see* CX 550).

Advertisements for respondent Brooks Rent-A-Car, Inc., have been printed in a publication entitled Las Vegas Showtime (CX 23; Genuineness Admitted, Respondents' Response to Request to Admit Genuineness, dated March 17, 1972, Paragraphs 4 and 5).[7] Las Vegas Showtime has been distributed to the firms listed on the addressees which is part of the record of this proceeding (Genuineness, Paragraph 8) which are located in various loca-

[7] Hereinafter referred to as "Genuineness."

tions in the United States outside of the State of Nevada, by office personnel at the office of respondent Brooks Rent-A-Car, Inc., Fashion Square, Las Vegas, Nevada (First Admissions, Paragraph 54). A September 1970 issue of Las Vegas Showtime publication containing an advertisement for respondent Brooks Rent-A-Car, Inc., was distributed by Brooks Rent-A-Car, Inc., to the firms listed on the above-described list of addressees (First Admissions, Paragraph 57). An issue of Las Vegas Showtime purporting to be the "September" issue, and containing an advertisement identical to that printed in the above-described September 1970 issue of Las Vegas Showtime was obtained on request in San Francisco, California, from one of the addressees shown on the above-referred to list of addressees (Wright, Tr. 171–174; CX 23).

An advertisement for respondent Brooks Rent-A-Car, Inc., has been printed in a publication entitled Aloft (Brainerd, Tr. 247–248, CX 36). The Aloft publication was obtained by Andrew W. Brainerd from a passenger seat pocket of a National Airlines airplane, which Mr. Brainerd was traveling on from Los Angeles, California to Tampa, Florida in 1968 (Brainerd, Tr. 247–248). Mr. Brainerd relied on said advertisement when he subsequently arrived in Las Vegas, Nevada, in deciding to contact respondent Brooks Rent-A-Car, Inc., about a car rental (Brainerd, Tr. 253–254).

An advertisement for respondent Brooks Rent-A-Car, Inc., has been printed in a publication entitled Western's World (CX 37). The Western's World publication was obtained by Gerald E. Wright from a passenger seat pocket of a Western's Airlines airplane, which Mr. Wright was traveling on from San Francisco, California, to Las Vegas, Nevada, in 1970 (Wright, Tr. 169–170).

Respondents have accepted and confirmed reservations for automobile rentals from prospective customers who have written or telephoned respondents from states and/or territories outside the states and/or territory of respondents' respective principle places of business (First Admissions, Paragraph 58).

Respondents have rented automobiles that were driven in, among, and between the several states, and have rented automobiles in one state which were authorized to and which were returned to respondents in other states (First Admissions, Paragraph 59; *see also* Provenzale, Tr. 212–213).

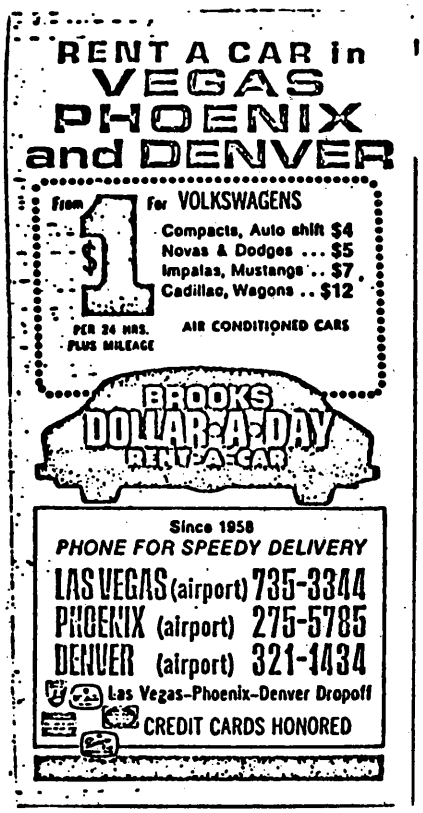
Respondents have sent advertising copy, contracts, letters, checks, instructions, teletype communications, and oral communi-

cations between one another at their respective places of business in the several states and territories (First Admissions, Paragraph 60). More particularly, Mr. Miller, who designed advertising copy under the direction of respondents Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., and Irving Bell (Miller, Tr. 293–299, 303–308), has at the direction of said respondents prepared advertising copy for local offices of respondents in the following locations: Phoenix; Los Angeles; Hawaii; Freeport, Bahamas; and St. Croix and St. Thomas, U.S. Virgin Islands (Miller, Tr. 303–309).

10. In the course and conduct of their business, and for the purpose of inducing others to rent their automobiles, respondents have made and are now making, directly or by implication, in advertisements which they cause to be placed in brochures, newspapers and magazines, various statements and representations concerning the amounts charged for automobile rentals (admitted, Respondents' Answer, Paragraph 4; *see also* CX 25–A and B, CX 26 A–P, CX 27 A–Z, CX 29 A–T, CX 548–A and B, CX 30 A–X, CX 31 A–T, CX 23, CX 36, CX 37 [advertisements by respondent Brooks Rent-A-Car, Inc.], CX 132, CX 133 and 134 [advertisements by respondent Brooks Dollar-A-Day Rent-A-Car, Inc.], CX 141, CX 142 and 143, CX 144 and 145 [advertisements by respondent Metropolitan Leasing, Inc.]). The following advertisements are typical and illustrative of such statements and representations:

11. Through the use of the trade name "Brooks Dollar-A-Day Rent-A-Car," the corporate name "Brooks Dollar-A-Day Rent-A-Car, Inc." and the statements and representations referred to in Paragraph 10, *supra,* and in others of similar import and meaning, respondents have represented, and now are representing, directly or by implication, that respondents rent automobiles for one dollar per day.

Respondents' advertising (CX 25–A to 25–B, CX 26–A to 26–P, CX 27–A to 27–Z, CX 29–A to T, CX 548–A to 548–B, CX 30–A to X, CX 31–A to T, CX 23, CX 35, CX 37, CX 132, CX 133 and 134, CX 141, CX 142 and 143, CX 144 and CX 145) creates an impression that respondents rent automobiles for one dollar per day. The symbol "$1" and the trade name "Dollar-A-Day," by virtue of their placement in the advertisements, their dominant size and their contrasting coloring has a tendency to and does create this impression. This conclusion can be sufficiently established from a reading of the advertisements without the testimony



(CX 37, p. 34)

of consumers witnesses.[8] However, the testimony of two consumer witnesses, Leonard Provenzale and Andrew W. Brainerd,[9] shows that they interpreted respondents' advertisements in this same manner. This fact was vividly demonstrated by the following testimony of Leonard Provenzale, a consumer witness, testifying about a Brooks Rent-A-Car, Inc. newspaper advertisement which attracted his attention on his arrival in Las Vegas for a vacation (Provenzale, Tr. 201–204) :

Q. How did you learn about Brooks Rent-A-Car Agency?

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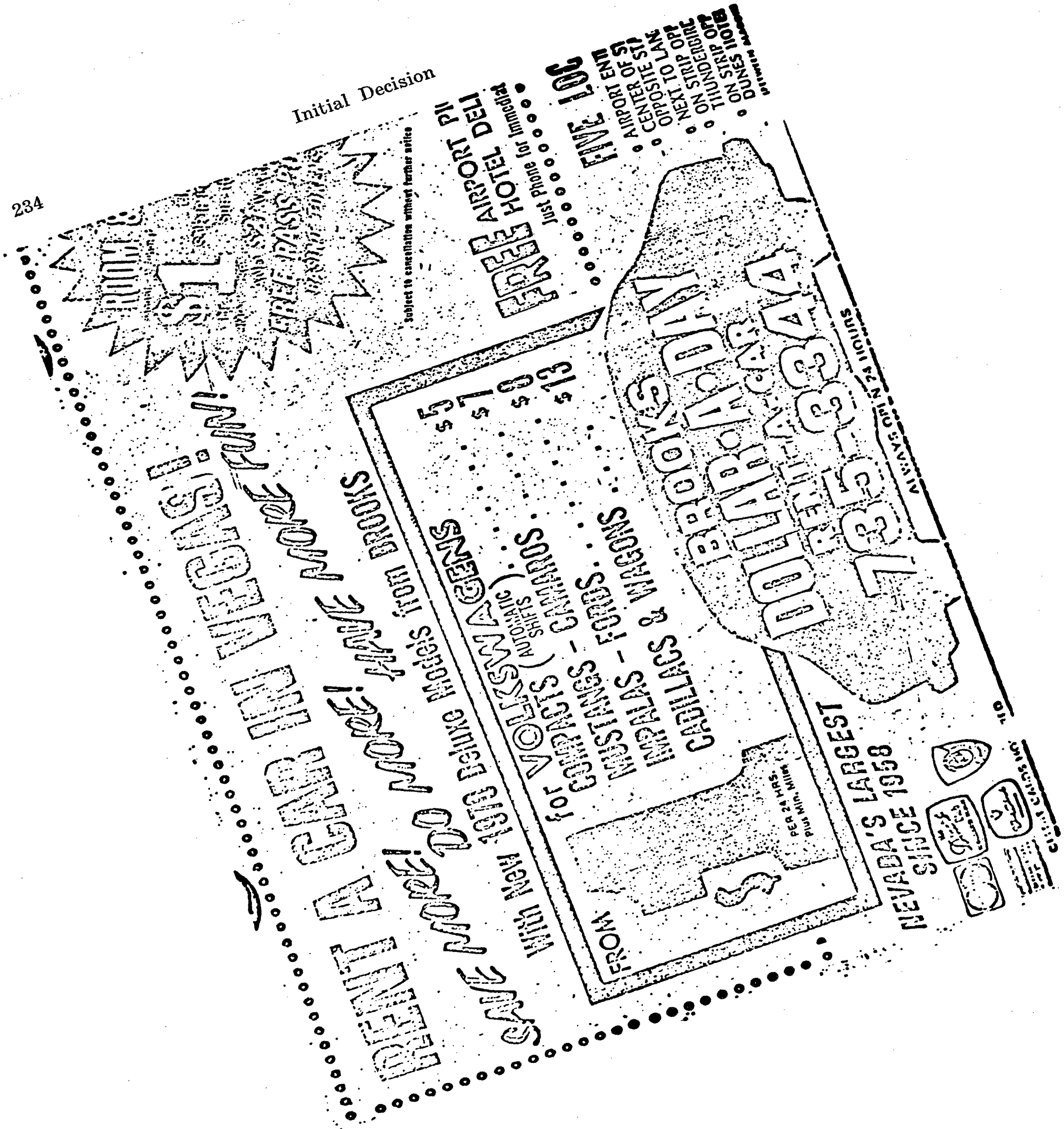
[8] See *Zenith Radio Corp.* v. *FTC,* 143 F.2d 29, at 31 (7th Cir. 1944).

[9] Provenzale is presently a police officer with a college degree plus one year of law school (Provenzale, Tr. 199). Brainerd is a practicing attorney and has been for over 20 years (Brainerd, Tr. 245–246). Therefore, even those of above average intelligence and sophistication interpret respondents' advertisements in this manner.


RENT A CAR IN VEGAS!
SAVE MORE! DO MORE! HAVE MORE FUN!
With New 1970 Deluxe Models from BROOKS
FROM $1 PER 24 HRS. Plus Min. Miles
for VOLKSWAGENS $5
COMPACTS (AUTOMATIC SHIFTS) - CAMAROS $7
MUSTANGS - FORDS $8
IMPALAS & WAGONS
CADILLACS $13
BROOKS DOLLAR-A-DAY RENT-A-CAR
735-3344
NEVADA'S LARGEST SINCE 1958
$1
FREE PASSES
Subject to cancellation without further notice
FREE AIRPORT
HOTEL
FIVE

A. Well, when I got off the plane at the airport I was given——

* * * * * * *

A. And I was given a handout—two newspapers. And I saw the ad in the newspaper.

Q. Do you recall what the names of the magazine was—the newspaper?

A. No, I don't, really. It was a free newspaper, I know that. It advertised all the shows in town.

* * * * * * *

Q. Can you describe the ad that you saw in the newspaper that you just mentioned?

A. Yes.

* * * * * * *

A. It said, "Rent an economy car for a dollar a day." And it was in old (sic) letters on the rear of the newspaper on the last page.

Q. Do you remember anything else about the ad?

A. Well, the thing that caught my eye was the big $1.00 sign.

* * * * * * *

A. Just that I remember it said in big red letters: "Rent an Economy Car For a Dollar a Day."

HEARING EXAMINER BUTTLE: Yes. And that is all you recall?

THE WITNESS: That's right.

HEARING EXAMINER BUTTLE: And is that all you recall?

THE WITNESS: That is, to that ad.

HEARING EXAMINER BUTTLE: To that particular ad; is that right?

THE WITNESS: Yes, Your Honor.

* * * * * * *

HEARING EXAMINER BUTTLE: Did it say—do you know what periodical you saw?

THE WITNESS: I think it was called "Las Vegas Visitor," or "Vegas Visitor."

Mr. Provenzale was further attracted to respondent Brooks Rent-A-Car, Inc., by a huge sign in a store front window near his hotel, which read: "Rent an Economy Car for $1.00 a day" (Tr. 205–206).

Mr. Provenzale proceeded to contact respondent Brooks Rent-A-Car, Inc. on the assumption that he could save transportation money by renting a car at $1 per day, instead of taking taxicabs (Tr. 214–215):

Q. You rented the vehicle, you testified on June 29th. And what did you do for transportation on June 28th, the first day you were there?

A. Well, the first day I was here I took cabs from one hotel to the other.

* * * * * * *

HEARING EXAMINER BUTTLE: But, you took cabs, and the cab cost you more than a dollar a day, didn't they?

THE WITNESS: That is the reason I rented the car.

Mr. Provenzale contacted respondent Brooks Rent-A-Car, Inc., from a telephone in an unoccupied office of respondent, located near his hotel. Respondent sent out a car, which picked up Mr. Provenzale and his wife and drove them to another office, where the rental was consummated. It is clear that Mr. Provenzale was transported to this office, believing that he could rent a car for a $1 per day (Tr. 209) :

Q. What transpired at the office where you were transported to?
HEARING EXAMINER BUTTLE: Well, tell us what happened. Tell us what they said to you and what you said to them, and what you did and they did; that is all.
THE WITNESS: Well, I went to this office. And I said, "I want to rent a car for a dollar a day."
So he said, "Okay."
And I said, "What is the gimmick," and the man handed me—the man at the counter said, "There is no gimmick. It is a dollar a day plus 13 cents a mile."

Andrew W. Brainerd, another consumer witness, interpreted an advertisement by respondent Brooks Rent-A-Car, Inc. in Aloft Magazine (CX 36) to indicate that a mileage charge would be included. He nevertheless gave great credence to the "dollar-a-day" representation since he believed that his rental charge would not substantially exceed $1 per day, if he drove the rented automobile a limited distance (Brainerd, Tr. 253) :

Q. When you read it what was your interpretation of what you read?
A. I read what it said there, and I believe I could rent a car for $1.00 a day plus mileage cost.

At the time he rented the automobile from respondent Brooks Rent-A-Car, Inc., he interrogated respondent's agent and learned of an additional charge for insurance of $1 per day (Brainerd, Tr. 254). Mr. Brainerd could calculate that even "Brooks Two Dollars-A-Day" was a good buy, on the assumption that he could keep charges for mileage negligible. That Mr. Brainerd made such a calculation can be inferred from his actions (Brainerd, Tr. 255–256) :

HEARING EXAMINER BUTTLE: Well, you did rent the car?
THE WITNESS: I did rent the car, yes.
HEARING EXAMINER: Yes.
THE WITNESS: I drove for four days—or a little less because I came back, I believe, in the morning.
At the time I rented the car I (sic) had asked for and received from me a deposit of $30.
When I brought the car back I figured that I had paid a dollar a day for the car and a dollar a day for the insurance.

HEARING EXAMINER BUTTLE: You assumed it was to be a dollar each day for the insurance?

THE WITNESS: Yes, sir. They told me that it was.

HEARING EXAMINER BUTTLE: All right.

THE WITNESS: And that I had driven the car 54 miles and—at 11 cents per mile.

So I figured this came to approximately $14. And I therefore waited for the bill. And the man said, "That will be —" something like 90 cents—in addition to the deposit.

And I said, "There must be a mistake here because when I rented the car I asked if there were any additions and I was told that it was 11 cents a mile plus the $2.00 a day for the car and the insurance.

He then told me—and it was the first time that I had been told that—that there was a minimum mileage charge each day of 50 miles at 11 cents a mile whether you used the car at all.

. . . So that the bill, acording to his calculation was $30.90."

On cross-examination, Brainerd further testified (Brainerd, Tr. 266):

Q. So, in other words, you felt that if you took the car and parked it somewhere for 30 days, that total amount you would be charged would be $30 plus the mileage from the office where you rented it and back again; is that correct?

A. If I wanted to drive it zero miles, yes—or minimum number, yes, that is exactly correct, sir.

This is further established by reference to the tabulation of respondents' rental agreements (see Finding No. 12). In the sampling of January 1970, Brooks Rent-A-Car, Inc. rental agreements, 95 percent of the renters were charged a 50 mile minimum per day, yet of these, 74.2 percent did not drive the 50 mile minimum per day. In fact, 39.7 percent did not drive 25 miles per day and 18.5 percent did not even drive 15 miles per day. Similarly, these high percentages appear in the May-June 1970, Brooks Rent-A-Car, Inc. tabulation. It is unlikely a renter would knowingly pay for something he is not going to use. The tabulations show a high percentage of renters were indeed charged for something they did not use. Therefore, it is proper to conclude that respondents' advertisements do not inform prospective renters of a 50 mile minimum per day charge but instead create the impression in their minds that respondents' vehicles can be rented for $1 per day.

12. In truth and in fact, respondents do not rent automobiles for one dollar per day, but in addition:

(a) impose a cents-per-mile charge,

(b) impose a minimum charge of 50 miles per day, at the cents-per-mile charge, whether or not the miles are actually driven,

(c) impose a daily charge for insurance which covers collision damage to the automobile in excess of $50 unless the person renting the automobile can demonstrate to the respondents' satisfaction the existence of an insurance policy which will provide full collision coverage for any damage done to respondents' vehicle.

Respondents admit that they impose a cents-per-mile charge in connection with their one dollar per day rentals (Respondents' Answer, par. 6(1)(a)). This was confirmed by the testimony of the two consumer witnesses. (Provenzale, Tr. 217–218; Brainerd, Tr. 255–256); in the case of Mr. Provenzale, it is further confirmed by an examination of the rental agreement Mr. Provenzale retained after completion of this rental (CX 547). An examination of the rental agreements received in the record of this proceeding (CX 46–A to 46–Z–269, CX 47–A to 47–Z–273, CX 48–A to 48–Z–26, CX 49–A to 49–Z–25, CX 51–A to 51–Z–26)[10] discloses that a cents-per-mile charge was made on all rentals involving use of the 50 mile per day minimum rate structure. The invoices also show that the vast majority of the rentals on a "fifty mile minimum per day" basis involved one dollar per day rentals.

That the "fifty mile minimum per day" rate structure is applied by respondent Brooks Rent-A-Car, Inc. to consumers who answer said respondents "dollar-a-day" advertising is established by the testimony of consumer witnesses Provenzale (Tr. 217–218) and Brainerd (Tr. 255–256). This is further established by reference to the following tabulations:[11]

Tabulation of Extent of Use of "50 Mile Minimum Per Day" Rate Structure; Extent of Overpayment by Consumers Who Paid Pursuant to "50 Mile Minimum Per Day" Rate Structure

BROOKS RENT-A-CAR, INC.
LAS VEGAS, NEVADA
IN JANUARY, 1970

(Tabulation based upon rental agreements (CX 46–A to 46–Z–269))

	NUMBER	PERCENTAGE
1. Total number of rental agreements	278	—
2. Consumers charged 50 mile minimum per day	264	95.0

[10] Excluded from this evaluation are the Metropolitan Leasing, Inc. invoices for January 1970 (CX 50–A to 50–Z–26), which are in a different format, and appear to involve a different type of rental arrangement.

[11] The methodology used by complaint counsel in compiling this tabulation is referred to in the conclusions.

	NUMBER	PERCENTAGE
3. Consumers charged 50 mile minimum per day, who did not drive 50 miles per day	196	74.2
4. Consumers charged 50 mile minimum per day, who did not drive 25 miles per day	105	39.7
5. Consumers charged 50 mile minimum per day, who did not drive 15 miles per day	49	18.5
6. Consumers charged 50 mile minimum per day, who did not drive 10 miles per day	16	6.0

* * * * * * *

BROOKS RENT-A-CAR, INC.
LAS VEGAS, NEVADA
MAY–JUNE, 1970

(Tabulation based upon rental agreements CX 47–A to 47–Z–273)

	NUMBER	PERCENTAGE
1. Total number of rental agreements	286	—
2. Consumers charged 50 mile minimum per day	264	92.3
3. Consumers charged 50 mile minimum per day, who did not drive 50 miles per day	184	69.6
4. Consumers charged 50 mile minimum per day, who did not drive 25 miles per day	115	43.5
5. Consumers charged 50 mile minimum per day, who did not drive 15 miles per day	49	18.5
6. Consumers charged 50 mile minimum per day, who did not drive 10 miles per day	18	6.8

* * * * * * *

BROOKS DOLLAR-A-DAY RENT-A-CAR, INC.
PHOENIX, ARIZONA
IN JANUARY, 1970

(Tabulation based upon rental agreements CX 48–A to 48–Z–26)

	NUMBER	PERCENTAGE
1. Total number of rental agreements	44	—
2. Consumers charged 50 mile minimum per day	31	70.5
3. Consumers charged 50 mile minimum per day, who did not drive 50 miles per day	12	38.7
4. Consumers charged 50 mile minimum per day, who did not drive 25 miles per day	2	6.4
5. Consumers charged 50 mile minimum per day, who did not drive 15 miles per day	0	0
6. Consumers charged 50 mile minimum per day, who did not drive 10 miles per day	0	0

* * * * * * *

BROOKS DOLLAR-A-DAY RENT-A-CAR, INC.
PHOENIX, ARIZONA
IN JUNE, 1970

(Tabulation based upon rental agreement CX 49–A to 49–Z–25)

	NUMBER	PERCENTAGE
1. Total number of rental agreements	49	—
2. Consumers charged 50 mile minimum per day	48	98.0
3. Consumers charged 50 mile minimum per day, who did not drive 50 miles per day	17	35.4
4. Consumers charged 50 mile minimum per day, who did not drive 25 miles per day	2	4.1
5. Consumers charged 50 mile minimum per day, who did not drive 15 miles per day	0	0
6. Consumers charged 50 mile minimum per day, who did not drive 10 miles per day	0	0

* * * * * * *

METROPOLITAN LEASING, INC
DENVER, COLORADO
IN JUNE, 1970

(Tabulation based upon rental agreements CX 51–A to 51–Z–26)

	NUMBER	PERCENTAGE
1. Total number of rental agreements	48	—
2. Consumers charged 50 mile minimum per day	41	85.4
3. Consumers charged 50 mile minimum per day who did not drive 50 miles per day	6	14.6
4. Consumers charged 50 mile minimum per day, who did not drive 25 miles per day	2	4.8
5. Consumers charged 50 mile minimum per day, who did not drive 15 miles per day	1	2.4
6. Consumers charged 50 mile minimum per day, who did not drive 10 miles per day	1	2.4

* * * * * * *

These tabulations, based upon the sampling of respondents' invoices referred to in the previous finding, demonstrate the extent to which the "fifty mile minimum per day" rate structure is applied to customers. In the sampling of January 1970, Brooks Rent-A-Car, Inc. rental agreements, 95 percent of the agreements utilized the "50 mile minimum per day" rate structure. In the sampling of May–June 1970, Brooks Rent-A-Car, Inc. rental agreements, 92.3 percent of the agreements utilized the "50 mile minimum per day" rate structure. Similarly, high percentages appear in the other tabulations. The tabulations represent a valid

sampling of respondents' contracts, it is proper to conclude therefrom that the vast majority of respondents' contracts, involve rentals pursuant to the "50 mile minimum per day" rate structure. Since the evidence indicates that the predominant rate structure advertised by respondent is its "dollar-a-day" rate, it is also proper to conclude that the "fifty mile minimum per day" rate structure must be applied to contracts executed by persons responding to such advertising. The invoices show that the vast majority of the rentals on a "fifty mile minimum per day" basis involved one dollar per day rentals.

A sampling of respondents' rental agreements were introduced into evidence (CX 46–A, CX 51–Z–26). A tabulation [12] of these rental agreements illustrates that consumers purchased collision damage insurance in a very high percentage of cases. This is particularly true with respect to respondent Brooks Rent-A-Car, Inc. These statistics further support their evidence that the purchase of collision insurance from respondents is virtually mandatory for protective purposes.

Extent of Purchase by Consumers of Collision Damage Insurance

Brooks Rent-A-Car, Inc., Las Vegas, Nevada, in Jaunary, 1970
(Tabulation based upon rental agreements CX 46–A to 46–Z–269)

	NUMBER	PERCENTAGE
1. Total number of rental agreements	278	—
2. Consumers charged for collision damage insurance	271	97.5

* * * * * * *

Brooks Rent-A-Car, Inc., Las Vegas, Nevada, in May and June, 1970
(Tabulation based upon rental agreements CX 47–A to 47–Z–273)

	NUMBER	PERCENTAGE
1. Total number of rental agreements	286	—
2. Consumers charged for collision damage insurance	272	95.1

* * * * * * *

Brooks Dollar-A-Day Rent-A-Car, Inc., Phoenix, Arizona, in January, 1970
(Tabulation based upon rental agreements CX 48–Z to 48–Z–26)

	NUMBER	PERCENTAGE
1. Total number of rental agreements	44	—
2. Consumers charged collision damage insurance	27	61.4

[12] The complaint counsel methodology used in compiling this tabulation is set forth at pages 44–48.

* * * * * * *

Brooks Dollar-A-Day Rent-A-Car, Inc., Phoenix, Arizona, in June, 1970
(Tabulation based upon rental agreements CX 49–A to 49–Z–25)

	NUMBER	PERCENTAGE
1. Total number of rental agreements	49	—
2. Consumers charged collision damage insurance	44	89.8

* * * * * * *

Metropolitan Leasing, Inc., Denver, Colorado, in June, 1970
(Tabulation based upon rental agreements CX 51–A to 51–Z–26)

	NUMBER	PERCENTAGE
1. Total number of rental agreements	48	—
2. Consumers charged collision damage insurance	25	52.1

* * * * * * *

Witness Brainerd testified that he was required to purchase respondent Brooks Rent-A-Car, Inc.'s insurance (Brainerd, Tr. 254):

> And when I got to the office I asked again—I told them that I called them up about the car and that I wished to rent a Volkswagen. And I said, "I understand it is a dollar a day." And they said, "Yes, it is a dollar a day."
>
> And I said, "Are there any other charges?" And they said, "You must also pay a dollar a day insurance." And I said—
>
> HEARING EXAMINER BUTTLE: A dollar a day insurance, not a dollar and a half?
>
> THE WITNESS: No, sir. It was a dollar a day for the car and a dollar a day for the insurance.
>
> There was no option as to whether I wished to take the insurance; I must take the insurance if I wanted to rent that car.

Another consumer witness purchased the insurance, but could not say definitely whether it was required (Tr. 210, 220). He felt impelled, however, to buy it for protection (Tr. 220).

An examination of respondents' invoices also show that the nature of the coverage is not clearly stated thereon (*e.g.* CX 47–A, 47–B). Mr. Brainerd in fact indicated that he was not aware of the nature of the insurance he was required to purchase (Brainerd, Tr. 268).

13. Through the use of the trade name "Brooks Dollar-A-Day Rent-A-Car," the corporate name "Brooks Dollar-A-Day Rent-A-Car, Inc." the statements and representations referred to in Paragraph 10, and others of similar import and meaning, respondents have represented, and now are representing, directly

or by implication that respondents rent automobiles for the dollar amounts set forth conspicuously in their advertisements (for example, Compacts for $5, Mustangs-Camaros for $7, Impalas-Fords for $8).

Through the statements and representations set out in advertisements (see Paragraph 10), respondents have represented, and now are representing, directly or by implication that respondents rent automobiles on a daily rate for the dollar amounts set forth conspicuously in their advertisements. A review of respondents' advertising (CX 25–A to 25–B, CX 26 A–P, CX 27 A–Z, CX 29 A–T, CX 548 A–B, CX 30 A–X, CX 31 A–T, CX 23, CX 36, CX 37, CX 132, CX 133 and 134, CX 141, CX 142 and 143, CX 144 and 145) clearly gives a clear impression that respondents rent automobiles for specific dollar amounts per day. For a typical example, the Vegas Visitor newspaper for June 16, 1969 (CX 26 A–P, at P) conspicuously represents, in addition to a $1 rate per day for a Volkswagen, Compacts for $4, Impalas-Fords for $7, Mustangs-Camaros for $7, Cadillacs and Wagons for $12. For another typical example, the Vegas Visitor newspaper for June 4, 1971 (CX 29 A–T, at T), conspicuously represents, in addition to a $1 rate per day for a Volkswagen, Compacts for $5, Mustangs-Camaros for $7, Impalas-Fords for $8, Cadillacs and Wagons for $15. The impression is created in the minds of the consuming public by virtue of the relevant size of the lettering, the close proximity to the $1 symbol (which dominates the advertisement) and the contrasting coloring.

14. In truth and in fact, respondents do not rent automobiles for the dollar amounts set forth conspicuously in their advertisements (for example, Compacts for $5, Mustangs-Camaros for $7, Impalas-Fords for $8) ; but in addition:

(a) impose a cents-per-mile charge,

(b) impose a minimum charge of 50 miles per day, at the cents-per-mile charge, whether or not the miles are actually driven,

(c) impose a daily charge for insurance which covers collision damage to the automobile in excess of $50 unless the person renting the automobile can demonstrate to the respondents' satisfaction, the existence of an insurance policy which will provide full collision coverage for any damage done to respondents' vehicle.

While no testimony was adduced regarding this type of rental, it differs from the dollar-a-day rental only in that a more expensive automobile is involved, and the dollar amount factor in the rate is accordingly greater than one dollar. That a rate structure

involving the same elements as found in the dollar-a-day rate structure is utilized is apparent from an examination of invoices in the record involving these types of automobiles (*e.g.*, CX 46–A, CX 46–F, and CX 46–I). See also Finding 12.

15. Through the use of the trade name "Brooks Dollar-A-Day Rent-A-Car," the corporate name "Brooks Dollar-A-Day Rent-A-Car, Inc." the statements and representations referred to in Paragraph 10, and others of similar import and meaning, respondents have represented, and now are representing, directly or by implication that respondents rent automobiles for one dollar per day, plus an unspecified charge for each mile driven. See also Findings 12 and 20.

16. In truth and in fact, respondents do not rent automobiles for one dollar per day, plus an unspecified charge for each mile driven, but in addition:

(a) impose a minimum charge of 50 miles per day, at the cents-per-mile charge, whether or not the miles are actually driven,

(b) impose a daily charge for insurance which covers collision damage to the automobile in excess of $50 unless the person renting the automobile can demonstrate to the respondents' satisfaction, the existence of an insurance policy which will provide full collision coverage for any damage done to respondents' vehicle. See also Finding 12.

17. Through the use of the trade name "Brooks Dollar-A-Day Rent-A-Car," the corporate name "Brooks Dollar-A-Day Rent-A-Car, Inc." the statements and representations referred to in Paragraph 10, and others of similar import and meaning, respondents have represented, and now are representing, directly or by implication that respondents rent automobiles for the dollar amounts set forth conspicuously in their advertisements (for example, Compacts for $5, Mustangs-Camaros for $7, Impalas-Fords for $8), plus an unspecified charge for each mile driven. See also Finding 13.

18. In truth and in fact, respondents do not rent automobiles for the dollar amounts set forth conspicuously in their advertisements (for example, Compact for $5, Mustangs-Camaros for $7, Impalas-Fords for $8), plus an unspecified charge for each mile driven, but in addition:

(a) impose a minimum charge of 50 miles per day, at the cents-per-mile charge, whether or not the miles are actually driven,

(b) impose a daily charge for insurance which covers collision damage to the automobile in excess of $50 unless the person

renting the automobile can demonstrate to the respondents' satisfaction, the existence of an insurance policy which will provide full collision coverage for any damage done to the respondents' vehicle.

See also Finding 14.

19. Respondents in some advertisements include statements such as "Plus min. miles," or "Daily Flat Rates & Weekly Free Mile rates," also "50 Miles Daily Min." These statements, because of their context, size, and location are inconspicuous, vague, confusing, contradictory, and misleading.

20. In the normal course and conduct of their aforesaid business, respondents' customers are required to sign a printed standard form rental agreement which is ambiguous, unclear and confusing. Such standard form rental agreements purport to obligate the customer signing it to pay the respondents a specified amount of money in return for use of an automobile. However, the format and contents of the aforesaid rental agreements are such that neither the exact amount nor the precise method for calculating the exact amount which the customer will be required to pay thereunder is clearly and conspicuously set out. Said forms, therefore, have the tendency and capacity to mislead and deceive customers signing the aforesaid rental agreements as to the amount they purportedly are thereby obligating themselves to pay respondents.

Consumers may be confused prior to the contract as to the costs of the rental by respondents' advertising, and by oral misrepresentations made prior to and/or at the time of contract-signing by respondents' employees. Once the contract has been signed, the consumer will act upon the beliefs he then has formed regarding the nature of the agreement, and particularly, the system of accruing costs which is the essence of the contract. Thus, any mistaken beliefs as to the nature of the costs he is accruing, which are not corrected at the time of execution of the contract can be extremely costly to the consumer. This is particularly true because the consumer is usually transient (Small Claims Court proceeding are wholly impractical), is often pressed for time at the time he returns the automobile because of an airline reservation (see Provenzale, Tr. 220; Brainerd, Tr. 258), and the respondents often obtain a prepayment sufficient to cover the costs which will accrue under their interpretation of the contract (see Brainerd, Tr. 255–256). Thus, it is extremely important that contracts such as this, involving future costs which the

consumer may incur by his actions, disclose with absolute clarity the nature of the future costs, and how they are to be computed.

Respondents partially fill out a rental contract at the time the rental is made. It is this partially-filled-out contract which is the renter's last opportunity to understand the nature of the future costs for the contract. A copy of such a partially-filled contract (termed by respondents "Standard Rental Agreement") executed by a consumer witness in this proceeding, was received in evidence as CX 546.[13] The crucial cost disclosures and cost factors are contained in a box entitled "Rental Rate" in the middle right hand side of the page.[14] The disclosures made in such a "box" are: "Rental Rate:" "13¢—per mi. inc. gas;" "1.00—(24 hrs.) per day for;" "1.50 for $50 deductible"

These disclosures can reasonably be interpreted to represent that the renter will be charged:

13¢ per mile for each mile the rented automobile is driven, which charge will include payment by the respondent for gasoline used

$1 for each twenty-four hour period during which the automobile is rented

$1.50 for "$50 deductible"

This was in fact the interpretations placed upon these disclosures by the two consumer witnesses. Mr. Provenzale testified that he had his car for five days, drove 125 miles, and that he had expected to pay $22.75 (Tr. 216–217):

$1.00 per day × 5	=	$ 5.00
13¢ per mile × 125	=	16.25
$1.50 insurance	=	1.50
Total		$22.75

Mr. Brainerd testified that he had his car for four days, drove 54 miles, and that he had expected to pay $13.94 (Tr. 254–256):

[13] Much of the fine print in such contract is not legible, due to the poor quality of the copy. The matters relevant here—the entries in the "Rental Rate" box—are plainly legible, however. Clear copies of a complete contract ("Standard Rental Agreement") are included in the record (*e.g.*, CX 47–A to 47–B).

[14] Respondents' counsel makes much of the fact that the contract contains the phrase "50 MILES DAILY MINIMUM" in bold letters in the middle left hand side of the page. The best that can be said of the phrase is that it is in bold letters. It is contained in a "box" containing spaces for information wholly unrelated to the rental rate. It is wholly unrelated to anything in the rental rate box, and more particularly, is wholly unrelated to the "¢ per mi. inc. gas" section of the "Rental Rate" box, which is the charge to which it relates. In addition, the phrase "$50 miles daily minimum" is not self-explanatory. Neither consumer witness who testified was aware of the minimum mileage requirement, in spite of executing a contract.

$1.00 per day × 4	=	$ 4.00
11¢ per mile × 54	=	5.94
$1.00 per day insurance × 4	=	4.00
Total		$13.94 [15]

These interpretations by the consumer witnesses were aided by misrepresentations by respondents' employees made at the time the contracts were prepared. Mr. Provenzale testified (Tr. 209–210):

Well, I went to this office. And I said, "I want to rent a car for a dollar a day." So he said, "Okay." And I said, "What is the gimmick," and the man handed me—the man at the counter said, "There is no gimmick. It is a dollar a day plus 13 cents a mile."

So I said, "All right." And I said I wanted to rent—it was a Volkswagen. I wanted a Volkswagen because it was an economy car.

So at that time he gave me a contract and told me that it would be a dollar a day for the car plus—

HEARING EXAMINER BUTTLE: 13 cents a mile?

THE WITNESS: 13 cents a mile plus a dollar fifty for insurance.

HEARING EXAMINER BUTTLE: All right.

THE WITNESS: And I signed the contract and I took the car.

Mr. Brainerd testified (Brainerd, Tr. 253–256):

And when I arrived in Las Vegas I went to the telephone and called up that number given there. And I asked them, "do you have a Volkswagen? I wish to rent it; I read your ad in one of the airline journals."

And they said, "Yes, I do." And I said, "The ad says I can rent the car for a dollar a day plus mileage." And he said, "That is correct."

I said, "Are there any other changes or conditions in connection with this rental?" And the voice at the other end of the telephone said, "No."

I then went to the Brooks Rent-A-Car using the facility that they suggested that I use, namely one of the small auto buses that they transport passengers to and from the airport to their office in downtown Las Vegas. And there were other people also in that bus.

And when I got to the office I asked again—I told them that I called them up about the car and that I wished to rent a Volkswagen. And I said, "I understand it is a dollar a day." And they said, "Yes, it is a dollar a day."

And I said, "Are there any other charges?" And they said, "You must also pay a dollar a day insurance." And I said—

HEARING EXAMINER BUTTLE: A dollar a day insurance?

THE WITNESS: A dollar a day insurance.

HEARING EXAMINER BUTTLE: A dollar a day insurance, not a dollar and a half?

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[15] Mr. Brainerd's precise testimony was "* * * I figured this came to approximately $14.00." (Brainerd, Tr. 256).

THE WITNESS: No, sir. It was a dollar a day for the car and a dollar a day for the insurance.

There was no option as to whether I wished to take the insurance; I must take the insurance if I wanted to rent that car.

Q. Yes.

A. And then I asked "Are there any other charges or conditions in connection with the rental?"

And the man behind the desk said, "No, there are not."

He said that the mileage charge was 11 cents a mile. I then took the car and came back four days later, and I had driven 54 miles.

(Mr. Brainerd subsequently testified regarding his return of the car (Tr. 256):

And I said, "There must be some mistake here because when I rented the car I asked if there were any additions and I was told that it was 11 cents a mile plus the $2.00 a day for the car and the insurance. He then told me—and it was the first time that I had been told that—there was a minimum mileage charge each day of 50 miles at 11 cents a mile whether you used the car at all.

So that the bill, according to his calculation was $30.90.

21. In truth and in fact, customers executing such contracts are required to pay for 50 miles per day at the cents per mile rate, whether or not the miles are actually driven (See Finding 12, *supra*), and respondents' printed form rental agreements therefore fail to adequately disclose to customers at the time an automobile is rented that there is a 50 mile daily minimum charge, at the cents-per-mile rate, whether or not these miles are actually driven (Paragraph 20).

Further, the respondents' printed form rental agreements fail to adequately disclose the type and extent of the insurance provided (See Finding 12, *supra*).

22. The aforesaid statements, representations, contracts, acts, and practices, were and are unfair, false, misleading, and deceptive.

23. In the course and conduct of their aforesaid business, and at all time mentioned herein, respondents Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., Brooks Dollar-A-Day Rent-A-Car, Inc., Metropolitan Leasing, Inc., Bell Rent-A-Car, Inc., and Irving Bell have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the rental of automobiles of the same general kind and in the same general manner as respondents.

Respondents compete with other businesses engaged in the rental of automobiles to the public. Las Vegas, Nevada, Phoenix, Arizona, Denver, Colorado, and the Virgin Islands attract thou-

sands of tourists each year. Automobile rental firms vigorously vie with each other to supply these tourists with automobiles. This competition is reflected in advertisements in the same publications in which respondents advertise (CX 26–E, National Car Rental; CX26–G, CX 29–B, Thrifty Rent-A-Car; CX 26–I, Nevada Car Corp.; CX 26–K, Bonanza Rent-A-Car; CX 27–F, Wonderworld Rent-A-Car; CX 27–I, CX 29–E, Driveaway Rent-A-Car; CX 27 at p. 40, Hertz). The testimony of consumer witnesses indicate that respondents are also, to some extent, in competition with taxicab companies for the transportation of personnel (Provenzale, Tr. 214–215; Brainerd, Tr. 258).

24. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, contracts, acts and practices has the tendency and capacity to mislead and deceive members of the purchasing public into the renting of substantial numbers of respondents' automobiles. See Findings Nos. 1 through 23, and CX 46–A to CX 51–Z–26, CX 547, for substantiation of this factual statement.

25. Since respondent Bell Rent-A-Car, Inc., is not owned in whole or in part by any of the other respondents to this proceeding as of the date of said other respondents' answer in this proceeding [16] no further proceedings in this matter are warranted with respect to Bell Rent-A-Car, Inc.

CONCLUSIONS

A. The Sustained Charges

The crux of the charges sustained by the evidence is that respondents have failed in their representations, advertising and contracts to give equal emphasis to the cost disadvantages of their car rental offers comparable to the lower cost advantages. Above all the advertised day rental bargain is accentuated in the size of the print and advertising placement in contrast to the de-emphasis of required payment for minimum mileage and necessary insurance or other rental charges as elements of the total rental cost. There is an obligation upon respondents in renting or leasing cars to accentuate in the same degree every term of a car rental offer or contract, so that all conditions of rental may not be reasonably overlooked.

[16] See Finding 5, *supra*.

B. Rejected Evidence Adduced at Investigational Hearings

Complaint counsel inadvertently presiding as a hearing examiner at an investigational hearing apparently because of incorrect reporting, sought the admission of the following investigational evidence as party admissions, although the respondent Bell was available to give testimony at the adjudicative proceedings if he had been subpoenaed. In this connection, complaint counsel as set forth in the proposed findings offered the following rejected investigational testimony of Mr. Bell:

Q. Let's look at Commission's Investigational Exhibit 22–0 which is the Lowery Airman. That ad states, for example, "Rent-A-Car in Denver from $1 Per 25 Hours plus Mileage for Volkswagens". Is there any minimum mileage requirement when a person is going to rent a Volkswagen for $1 for 24 hours?

A. Yes.

Q. What is the minimum mileage requirement on it?

A. I believe it's 50 miles.

Q. Do all your companies have a 50-mile minimum requirement?

A. On all companies that feature the $1 per 24-hour rental.

Q. There is a minimum charge of 50 miles?

A. A minimum guarantee.

Q. Regardless of how many miles the person may actually use the car each day?

A. Yes.

Q. Can you tell me how that is computed, for example, with $1 for a Volkswagen in Denver, are they then charged 50 times the mileage amount in addition to $1?

A. Yes.

Q. Do you know what that mileage charge is, for example, in Denver, on a Volkswagen?

A. It can vary between eight to thirteen cents depending upon whether gas is included or not.

Q. If gas is included, what would be the charge?

A. I would say it would be between 10 and 13 cents.

Q. So if it were 10 cents a mile, then a person would be charged for 50 miles each day times 10 cents, or $5 plus the $1 for 24 hours. Are there any other charges? Is insurance included?

A. There is a collision deductible waiver or a collision deductible fee that is charged.

MR. GROSSMAN: This is optional, isn't it?

THE WITNESS: I believe its optional.

By Mr. Bernstein:

Q. What is that cost for insurance coverage?

A. It is not insurance; it is a collision damage waiver to our car, which would vary between $1 to $1.50 a day.

Q. Let's look at Commission's Investigational Exhibit 22–B which is the current advertisement in "Vegas Visitor" for renting cars in Las Vegas. What is the charge per mile for a Volkswagen?

A. It would be $1 for 24 hours plus minimum miles.

Q. How many are those minimum miles in Las Vegas?

A. Fifty.

Q. And how much per mile is the charge in Las Vegas?

A. Currently it is 13 cents with gas.

Q. You mean 13 cents with gas included?

A. Yes.

Q. So to make sure I understand this correctly, Mr. Bell, a person renting a Volkswagen in Las Vegas today on the basis of the—strike that—renting an automobile in Las Vegas would pay $1 for 24 hours plus 50 miles per day regardless of the number of miles driven times 13 cents per mile, or $6.50, so there would be a charge of $7.50?

MR. GROSSMAN: Assuming it's a daily rental.

By Mr. Bernstein:

Q. Assuming it is a daily rental?

HEARING EXAMINER WRIGHT: Would you respond to the last question?

MR. GROSSMAN: Would you repeat the question, please.

MR. BERNSTEIN: I will repeat it.

By Mr. Bernstein:

Q. In the advertisement in "Vegas Visitor," as I understand your discription of the charges, the person renting an automobile for one 24-hour day would be charged $1, and in addition, would be charged $6.50, which covers 50 miles at 13 cents per mile regardless of the number of miles driven?

A. Yes.

Q. Is that correct?

A. That is correct.

MR. GROSSMAN: Assuming a daily rental?

THE WITNESS: On a day-to-day rental basis, yes.

By Mr. Bernstein:

Q. Am I correct then in stating the charge would then be $7.50 per day under this arrangement?

A. On the rental basis, that is correct, yes.

Q. Are there any additional charges to the $7.50?

A. Yes.

Q. What are those?

A. We have an option, I think it is adding $1.50 a day, per day, on a day-to-day rental for a $50 collision deductible in the event the renter cannot present bona fide evidence of his insurance, that it would, in effect, give the same coverage to the rental of our vehicle.

Q. The person pays $1.50 per day unless they can give you bona fide evidence of what?

A. That they have insurance coverage available for any other cars that they rent on a physical damage $50 deductible basis.

Q. In other words, they would have to show you evidence the car you were renting to them would be covered under their insurance for any damage in excess of $50?

A. No; it would have a zero deductible on physical damage.

Q. Zero deductible?

A. Zero deductible.

Q. So the person would have to have in his possessin evidence he had an insurance policy which would completely cover any damage at all that may occur to the automobile you were renting to him, is that correct?

A. Yes.

HEARING EXAMINER WRIGHT: In other words, if I have a personal insurance policy on my own car, $50 deductible collision policy, this would not qualify for the waiver as far as rental from you is concerned? I'd have to buy the insurance.

THE WITNESS: No; this is not insurance we are selling. This is payment to waive the deductible features above $50. We don't have no zero deductible. We allow the customer either to present evidence as Mr. Bernstein has indicated or pay the $1.50. It maximizes their responsibility to any damage to our car to $50.

HEARING EXAMINER WRIGHT: Is that up to $50 or over $50.

THE WITNESS: Up to $50. In other words, the first $50 is their responsibility.

HEARING EXAMINER WRIGHT: Suppose my personal insurance is the common variety that says fifty or a hundred dollar deductible collision. I take it that would not be satisfactory?

THE WITNESS: No, that would not.

By Mr. Bernstein:

Q. The person would then in order to rent a car from you would have to pay an additional amount of $1.50 per day?

A. Yes.

HEARING EXAMINER WRIGHT: Suppose I had this coverage, what would be the minimum evidence you would require in order to rent your car without my payment of insurance?

THE WITNESS: Prima facie evidence, a policy, as you would present a driver's license, or if you would make representation you have Diner's or American Express, prima facie evidence, the fact that it exists.

HEARING EXAMINER WRIGHT: But the fact the insurance is concerned—

THE WITNESS (interposing): This is not insurance.

HEARING EXAMINER WRIGHT: But I cannot present an American Express card and say I have insurance in the case of this as waiver. I would virtually have to have my policy?

THE WITNESS: I merely use that as an example. In other words, if you said you have an American Express card, you would show it. If you said you had a policy that had these provisions, we would ask for that to be presented.

HEARING EXAMINER WRIGHT: So if I came to Las Vegas without my auto policy in my pocket, I would probably have to pay the waiver?

Mr. GROSSMAN: Or identification from your insurance company which are issued with all policies so far as I know.

HEARING EXAMINER WRIGHT: A credit card or some sort of a card?

MR. BERNSTEIN: I think Mr. Grossman is referring to an identification card.

MR. GROSSMAN: That would verify you with a local representative.

HEARING EXAMINER WRIGHT: Would something like that be acceptable?

THE WITNESS: If it's subject to easy verification.

HEARING EXAMINER WRIGHT: What verification in addition to the card would be required?

THE WITNESS: If they say they are with Allstate and give the number, we could call the local insurance office and get the limits of their policy by the time the car comes back and then work it out.

HEARING EXAMINER WRIGHT: You would accept that and let them take the car?

THE WITNESS: Tentatively, yes.

By Mr. Bernstein:

Q. That is if they had 100 per cent collision coverage?

A. Yes.

Q. Otherwise, they'd have to pay the $1.50.

A. In the event there is collision damage, yes.

Q. If a person pays the $1.50 and they do $30 damage to your automobile, are they liable for the $30?

A. Yes.

Q. They are liable for the $30?

A. They are liable for the first $50 in all cases, yes. Our program is different than, shall we say Hertz, Avis, or National, who charge $2.50 a day for what they call a complete collision damage waiver; that is, with no responsibility. We have amended ours to hold to a $50 responsibility in all cases.

Q. Let me make sure I understand this. If the person is able to show you a policy or show you an insurance identification card where you can, by the time they return the car, verify what the coverage is, and in either one of those two instances the coverage of the policy would have to be for 100 per cent collision coverage, if they can satisfy you they are covered 100 per cent, they would not have to pay the $1.50 per day?

A. Yes.

Q. But if they did $30 damage to your vehicle, they would have to pay $30.

A. Yes.

Q. If they are unable to produce evidence satisfactory to you, they have 100 percent collision coverage on the automobile they are renting from you, they must pay $1.50 per day before they rent the vehicle?

A. Yes.

Q. And once they obligate themselves to pay that $1.50 per day, they are covered for any damage in excess of $50 but have to pay for any damage up to $50?

A. Yes.

MR. GROSSMAN: To the vehicle.

By Mr. Bernstein:

Q. To the vehicle?

A. Right.

Q. Then as I understand what you are saying, the person renting a Volkswagen in Las Vegas today would, unless they could show they have 100 per cent collision coverage, would be obligated to pay $9 a day for each 24-hour period for the Volkswagen?

A. Yes; that would include all mileage, gas, and coverage.

Q. Is the insurance system you have just described basically the same, or is it exactly the same—strike the word basically—for all your companies?

MR. GROSSMAN: I believe Mr. Bell stated it was not an insurance program.

MR. BERNSTEIN: I'm sorry.

By Mr. Bernstein:

Q. Is the program you just described the same for all your companies?

A. Collision damage waiver?

Q. Yes.

A. I would say yes.

A sampling of respondents' rental agreements herein before referred to were introduced into evidence (CX 46–A–CX 51–Z–26). A tabulation [17] of these rental agreements vividly illustrates that consumers purchased collision damage insurance in a very high percentage of cases. This is particularly true with respect to respondent Brooks Rent-A-Car, Inc. These statistics further support other evidence that the purchase of collision insurance from respondents is virtually mandatory as least for protective purposes.

The cases cited by complaint counsel in support of the admissibility of such evidence taken at the investigational hearing are clearly and obviously not in point for the following reasons:

1. The statements of the witness Bell were not voluntary but under interrogation and opportunity to clarify his statements appear to be questionable.

2. The cited testimony sought to be offered as admissions may not be within the context of Bell's other testimony.

3. The reporter was not called for purposes of cross-examination at the adjudicative hearing as to the accuracy of his transcript despite his certification to this effect on the transcript.

4. There are no prescribed procedures in investigational hearings for correcting the record in the event of inaccuracies.

5. It is apparent that in any event Mr. Bell's testimony would be cumulative and at best would corroborate other evidence adduced through third-party witnesses and documents. Under these circumstances, Mr. Bell's testimony would be immaterial even assuming that it could be considered technically admissible.

6. Furthermore, the Bell investigational evidence cited as offered is obscure in identifying the publications in which the deceptive advertising is charged to have been placed at least without the receipt of a substantial part of the total investigational transcript. Under these circumstances, investigational hearings

[17] The complaint counsel methodology used in compiling this tabulation is hereinafter discussed.

would serve as a substitute for adjudicative hearings required by the Administrative Procedure Act.

The law is indeed considerably unsettled even with regard to admitting judicial admissions adduced at a prior trial involving the same issues and the authorities express no precise opinion as to admissions made during investigational hearings. You can cross-examine a reporter or anyone hearing admissions under the extra-judicial theory of receiving such evidence but one cannot cross-examine a certified transcript with regard to accuracy. Where a party or his counsel concedes accuracy by signature or otherwise, this is a different matter in considering the reliability of an extra-judicial admission.

Additionally, in the within case the attorney who heard the admissions, if they were admissions, during the course of the investigational hearing presided at that hearing and in part interrogated Mr. Bell. He was also the prosecutor in this adjudicative proceeding. Under these circumstances there is a clear conflict of interest if the investigational hearing is to receive a trustworthy status as evidence in a technical sense. The foregoing is not intended in any way to be critical of the attorneys who prosecuted the within case since the observation of the administrative law judge is that they are persons of considerable integrity as well as ability. The evidence, however, does not justify the receipt of the claimed admissions as reliable evidence to be considered in this adjudicative proceeding in the absence of the applicability of the Wigmore rule of necessity and trustworthiness.

RENTAL AGREEMENT TABULATION METHODOLOGY APPLIED BY COMPLAINT COUNSEL

I. Introduction:

This tabulation is based upon certain of respondents' rental agreements received in evidence and is divided into six groupings. These groupings represent, respectively: certain Brooks Rent-A-Car, Inc., Las Vegas, Nevada, rental agreements executed in January, 1970 (CX 46–A–CX 46–Z–269) ; certain Brooks Rent-A-Car, Inc., Las Vegas, Nevada, rental agreements executed in May and June, 1970 (CX 47–A–CX 47–Z–273) ; certain Brooks Dollar-A-Day Rent-A-Car, Inc., Phoenix, Arizona, rental agreements executed in January, 1970 (CX 48–A–CX 48–Z–26) ; certain Brooks Dollar-A-Day Rent-A-Car, Inc., Phoenix, Arizona, rental agreements executed in June 1970 (CX 49–A–CX 49–Z–25) ;

and certain Metropolitan Leasing, Inc., Denver, Colorado, rental agreements executed in June, 1970 (CX 51–A–CX 51–Z–26).

II. Tabulation of Extent of Use by Respondents of "50 MILE MINIMUM PER DAY" Rate Structure; Extent of Overcharge to Consumers who paid pursuant to "50 MILE MINIMUM PER DAY"

RATE STRUCTURE DEFINITIONS: (to be used in conjunction with tabulation, Proposed Finding Number 19).

The following definitions apply to this tabulation (footnotes appear in Section IV—Sources):

"Total number of rental agreements" (line 1): The total number of rental agreements within the Group, not including any voided rental agreements.

"Number of consumers charged 50 mile minimum per day" (line 2—Number): The total number of rental agreements within the Group which show a minimum charge of fifty miles per day, at the cents-per-mile charge.[1]

"Proportion of rentals made on 50 mile minimum per day basis" (line 2—Percentage): The proportion which compares the number of consumers charged a 50 mile minimum per day with the total number of rental agreements tabulated within the Group.[2]

"Number of consumers charged 50 mile minimum per day who didn't drive 50 miles per day" (line 3—Number): The total number of rental agreements within the Sub-Group described in line 2-Number, which show that the respective consumers who were parties to such agreements did not actually drive the rented automobiles at least an average of 50 miles per day for each day said consumers incurred a charge for 50 miles at the cents-per-mile charge.[3]

"Proportion of consumers charged 50 mile minimum per day who did not drive 50 miles per day" (line 3—Percentage): The percentage which indicates the number of rental agreements within the Sub-Group described on line 2-Number, which indicate that the consumer was charged a 50-mile minimum per day, but did not actually drive at least an average of 50 miles per day.[4]

"Number of consumers charged 50 mile minimum per day, who did not drive 25 miles per day" (line 4—Number): The total number of rental agreements within the Sub-Group described in line 2-Number, which show that the respective

consumers who were parties to such agreements did not actually drive the rented automobiles at least an average of 25 miles per day for each day said consumers incurred a charge for 50 miles at the cents-per-mile charge.[5]

"Proportion of consumers charged 50 mile minimum per day who did not drive 25 miles per day" (line 4-Percentage): The percentage which indicates the number of rental agreements within the Sub-Group described in line 2-Number, which indicate that the consumer was charged a 50 mile minimum per day, but did not actually drive at least an average of 25 miles per day.[6]

"Number of consumers charged 50 mile minimum per day who did not drive 15 miles per day" (line 5-Number): The total number of rental agreements within the Sub-Group described in line 2-Number, which show that the respective consumers who were parties to such agreements did not actually drive the rented automobile at least an average of 15 miles per day for day each said consumers incurred a charge for 50 miles at the cents-per-mile charge.[7]

"Proportion of consumers charged 50 mile minimum per day who did not drive 15 miles per day" (line 5-Percentage): The percentage which indicates the number of rental agreements within the Sub-Group described in line 2-Number, which indicate that the consumer was charged a 50 mile minimum per day, but did not actually drive at least an average of 15 miles per day.[8]

"Number of consumers charged 50 mile minimum per day, who did not drive 10 miles per day" (line 6-Number): The total number of rental agreements within the Sub-Group described in line 2-Number, which show that the respective consumers who were parties to such agreements did not actually drive the rented automobile at least an average of 10 miles per day for each day said consumers incurred a charge for 50 miles at the cents-per-mile charge.[9]

"Proportion of consumers charged 50 mile minimum per day, who did not drive 10 miles per day (line 6-Percentage): The percentage which indicates the number of rental agreements within the Sub-Group described in line 2-Number, which indicate that the consumer was charged a 50 mile minimum per day, but did not actually drive at least an average of 10 miles per day.[10]

III. Tabulation of Extent of Purchase by Consumers of Collison Damage Insurance

DEFINITIONS: (To be used in conjunction with tabulation, Proposed Finding Number 22)

The following definitions apply to this tabulation (footnotes appear in Section IV—Sources) :

"Total number of rental agreements" (line 1—Number): The total number of rental agreements within the Group, not including any voided rental agreements.

"Number of consumers who purchased collision damage insurance (line 2—Number): The number which indicates the rental agreements within the Group which show that the consumer was charged a daily charge for collision damage insurance (referred to variously on said rental agreements as "$1–$50 DEDUCTIBLE," "50 DEDUCT," "INSURANCE," etc.), said daily charge shown as $1.50 in 1970.[11]

"Proportion of consumers who purchased collision damage insurance" (line 2-Percentage): The percentage which indicates the rental agreements within the respective Groups which show that the consumer was charged a daily charge for collision damage insurance.[12]

IV. SOURCES (Numbers refer to footnote numbers, *supra*) :

[1] *Rental Agreements:* Total number of all agreements with an entry in space to left of space entitled "¢ PER MILE INC. GAS" within section entitled "RENTAL RATE," plus an entry in space to right of space entitled "MILES" within the section entitled "CHARGES" where the latter entry is: the total of 50 times the indicated cents-per-mile charge divided by the number of days used as indicated in the space to the right of the space entitled "DAYS" within the section entitled "RENTAL RATE."
Tabulation: Total number of rental agreements reflecting daily rate with 50 miles daily minimum.

[2] Line 2 divided by line 1.

[3] Rental Agreements: Miles-driven fiigures obtained from section in upper right hand portion of rental agreements entitled "MILEAGE." Number of days rented from space between spaces entitled "RENTAL RATE." Total miles-driven was divided by number of days rented to arrive at the figure for average number of miles per day the automobile was driven. *Tabulations:* Computed from "total miles driven" and "number of days driven." "Total miles driven" was divided by "Number of days driven" to arrive at figure for average number of miles per day automobile was driven.

[4] Line 3-Number divided by line 2.

[5] See Note 3, *supra.*

[6] Line 4-Number divided by line 2.

[7] See Note 3, *supra.*

[8] Line 5-Number divided by line 2.

[9] See Note 3, *supra.*

[10] Line 6-Number divided by line 2.

[11] *Rental Agreements:* All rental agreements with an entry in the space to the far right of the space entitled "$50 DEDUCTIBLE" (ETC.), the space entitled "$50 DEDUCTIBLE" (ETC.), being within the section headed "RENTAL RATE," and the space to the far right of said space being within the section headed "CHARGES." *Tabulations:* Total of number of such entries.

[12] Line 2-Number divided by line 1.

The administrative law judge concludes that the foregoing methodology applied by complaint counsel is a reasonable one for the purposes indicated in the Findings.

SUMMARY OF CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., Brooks Dollar-A-Day Rent-A-Car, Inc., Metropolitan Leasing, Inc., and Irving Bell.

2. Said respondents have been at all times relevant hereto engaged in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

3. The use by said respondents of the aforesaid unfair, false, misleading and decepitve statements, representations, contracts, acts and practices has had, and now has, the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and into the rental of substantial quantities of said respondents' automobiles by reason of said erroneous and mistaken beliefs, and of said unfair, false, misleading and deceptive contracts, acts and practices.

4. The aforesaid acts and practices of respondents, as herein found, were, and are, all to the prejudice and injury of the public, and of said respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

BASIS FOR THE ORDER

This order varies from the Notice Order in that Bell Rent-A-Car, Inc. has been eliminated from the order (see Finding 25) and in that disclosure requirements contained in the order are

made more explicit. In addition to these changes, there are minor changes in language to clarify and facilitate understanding.

The Federal Trade Commission has broad authority to create cease and desist orders as needed to cure wrongs it seeks to prevent. These orders need not be limited to the specific unlawful practices in which the respondent was found to engage. *F.T.C.* v. *National Lead Co.*, 352 U.S. 419, 427 (1957); *S.S.S. Co., Inc.* v. *F.T.C.*, 416 F.2d 226 (6th Cir. 1969). An affirmative requirement to disclose in respondents' advertising and rental agreements *all* charges and conditions imposed for rental of automobiles is not only warranted but clearly within the Commission's discretion. See *e.g., Allstate Industries of N.C., Inc.* v. *F.T.C.*, 423 F.2d 423 (4th Cir. 1970); *J. B. Williams Co.* v. *F.T.C.*, 381 F.2d 884 (6th Cir. 1967); *Keele Hair & Scalp Specialists, Inc.* v. *F.T.C.*, 275 F.2d 18 (5th Cir. 1960).

The Commission also has the power to order that a trade name be excised. This power has been exercised in past decisions. See *e.g., Bakers Franchise Corp.* v. *F.T.C.*, 302 F.2d 258 (3rd Cir. 1962) (excision of word "diet"); *Carter Products, Inc.* v. *F.T.C.*, 268 F.2d 461 (9th Cir. 1969) (excision of word "liver" from trade name "Carters Little Liver Pills"); *El Moro Cigar Co.* v. *F.T.C.*, 107 F.2d 429 (4th Cir. 1939) (excision of word "Havana" from trade name "Havana Counts"); *Masland Duraleather Co.* v. *F.T.C.*, 34 F.2d 733 (3d Cir. 1929) (excision of "Duraleather" from trade name); *Virginia Dare Stores Corp.*, 64 FTC 1220 (1964) (excision of word "Atlantic Mills" or "Mills" from trade name). Admittedly, a trade name is a valuable business asset and excision should only be ordered in cases, such as the present case, where there is no less drastic means to eliminate the deception. *Jacob Siegel Co.* v. *F.T.C.*, 327 U.S. 608 (1946). Qualifying language has been recognized, in some instances, as a means to eliminate deception short of excision. However, qualifying language which amounts to a contradiction in terms would completely confuse the consuming public and will not be considered as an alternative to excision in such case. In *Bakers Franchise Corp.* v. *F.T.C.*, *supra*, the court observed that the continued use of the trade name "Lite Diet" with the qualifying phrase "not a low calorie bread" or "not low in calories" would be a contradiction in terms and therefore not an acceptable alternative to excision. The continued use of the trade name "Dollar-A-Day" with such qualifying language as "no vehicle may be rented for a dollar a day" would be just as contradictory and confusing to

the consumer public as the qualifying language rejected in *Bakers Franchise, supra.*

The trade name "Dollar-A-Day" has the tendency and capacity to deceive or mislead the consuming public as to the price at which a vehicle can be rented from respondents. Therefore, a provision ordering excision of the trade name "Dollar-A-Day" is required in this situation. Accordingly,

ORDER

It is ordered, That the respondents Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., Brooks Dollar-A-Day Rent-A-Car, Inc. and Metropolitan Leasing, Inc., corporations, trading under the above trade or corporate names or under any other trade or corporate name or names, their respective successors and assigns, and their respective officers, and Irving Bell, individually and as an officer of said corporations (hereinafter referred to as "respondents") and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, renting, or offering for rent of motor vehicles, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, any price, fee, or amount which is imposed for rental of a motor vehicle unless such price, fee, or amount includes all charges or conditions which are imposed for or on rental of such vehicle at such price, fee, or amount.

The term "charges or conditions" means any charge or condition necessary to the rental of a motor vehicle, which is not strictly at the option of the person renting the vehicle. Examples of such charges and conditions are:

a. A daily or other periodic charge;

b. A cents per mile charge;

c. A minimum charge at the cents-per-mile charge, whether or not the miles are actually driven;

d. A charge for gasoline, oil, and repairs if such are not included in (a) or (b) above;

e. Any charge for insurance.

Provided, however, That

(i) (a) and (b) above may be stated separately from each other if there is no other charge or condition, and if (a) and (b) are in equally large type and in close proximity to each other;

(ii) any charge made for collision insurance must be included in said representation if such insurance charge is not strictly at the option of the person renting the vehicle; a charge for collision insurance shall not be deemed to be "strictly at the option of the person renting the vehicle" if any evidence of other insurance must be provided to respondents in order not to purchase said collision insurance;

(iii) the coverage of collision insurance, whether optional, mandatory, or included in the rental agreement price, shall be clearly described in the rental agreement.

2. Misrepresenting, in any manner, any method of computation of a charge, charge, or condition imposed for rental of a motor vehicle.

3. Using any title, corporate name, trade name, or other designation (including but not limited to "Dollar-A-Day") which represents, directly or by implication, any price, fee, or amount which is imposed for rental of a motor vehicle, unless such representation includes all charges or conditions which are imposed for rental of such vehicle, in conformity with the requirements of Paragraph One of this order.

4. Executing or causing to be executed, any written agreement purporting to obligate a consumer to pay at that or any future time any consideration for the rental of a motor vehicle, where the language and format of the written agreement does not conform with the requirements of Paragraphs One through Three of this order. If any minimum mileage charge is imposed at the cents-per-mile charge pursuant to said agreement, said agreement shall contain the following statement in capital letters in at least eight point bold type, next to and clearly associated with that place on said agreement which provides for entry of the cents per mile rate: "NOTICE: A MINIMUM CHARGE OF (*e.g., 50*) MILES PER (*e.g., DAY*), AT THE CENTS-PER-MILE CHARGE WILL BE IMPOSED, WHETHER OR NOT THE MILES ARE ACTUALLY DRIVEN."

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, 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.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their respective operating subsidiaries, divisions, and offices, and to each employee, present or future.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of any of his present businesses or employment and of his affiliation with a new business or employment. Such notice shall include said respondents' current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the complaint is dismissed as to the respondent Bell Rent-A-Car, Inc., pursuant to complaint counsel's Proposed Finding 25 which has been adopted herein.

OPINION OF THE COMMISSION
JULY 31, 1973

BY JONES, *Commissioner:*

In August of 1971, the Commission filed a complaint against Resort Car Rental System, Inc., a corporation, Brooks Rent-A-Car, Inc., a corporation, Brooks Dollar-A-Day Rent-A-Car, Inc., a corporation, Metropolitan Leasing, Inc., a corporation, Bell Rent-A-Car, Inc., a corporation, and Irving Bell, individually and as an officer of said corporations, charging violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1964), in the renting and leasing of automobiles and the advertising thereof, including the terms under which such automobiles could be rented or leased.[1]

The complaint charged that respondents made false and deceptive statements in representations concerning the offer and price of renting and leasing automobiles. This included misrepresentations that the price charged for automobile rental was $1 per day or some other dollar amount set forth in advertisements.

Respondents denied the essential allegations in the complaint and the matter proceeded to hearing on May 15, 1972. The case

[1] The following abbreviations will be used for citations: Transcript of proceedings, "Tr."; complaint counsel's exhibits, "CX"; and examiner's initial decision, "ID." Briefs of either the respondent (Res.) or complaint counsel (C.C.) will be cited as follows: Brief on appeal, "App. Br."; and answering brief, "Ans. Br."

was reopened by order on July 17, 1972, at the request of counsel for the purpose of receiving into the record further testimony of Mr. Leonard Provenzale.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

The administrative law judge [2] concluded that the allegations had been proved with respect to corporate respondents Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., Brooks Dollar-A-Day Rent-A-Car, Inc., Metropolitan Leasing, Inc., and Irving Bell, in his individual capacity. The administrative law judge determined, however, that with respect to corporate respondent Bell Rent-A-Car, Inc., no proceedings in this matter are warranted because as of the date of respondents' answers in this proceeding, Bell Rent-A-Car was no longer owned in whole or in part, by any of the above respondents and/or respondent Irving Bell. (Res. Ans., Paragraph 1)

The administrative law judge found that respondents disseminate advertisements in brochures, newspapers and magazines in and among the several states which contain various statements and representations concerning the amounts charged for automobile rental. (Finding 10) Respondents have used the trade name, "Brooks Dollar-A-Day Rent-A-Car" and the corporate name, "Brooks Dollar-A-Day Rent-A-Car, Inc." in these advertisements. (Finding 10) Respondents' advertisements convey the impression that respondents rent cars for $1 per day or some other dollar amount set forth conspicuously in the advertisements according to the administrative law judge. (Finding 11)

The administrative law judge concluded that in truth and in fact respondents do not rent automobiles for $1 per day or some dollar amount set forth in advertisements, but in addition impose a cents per mile charge, a minimum charge of 50 miles per day at the cents per mile charge whether or not the miles were actually driven, and a daily charge for insurance. (Finding 12)

The administrative law judge based these findings as to additional charges on the following: respondents' admission that a cents per mile charge was imposed in connection with car rental (Res. Ans. Para. 6(1)(a)) (ID. 17 [p. 255 herein]); the testimony of two consumer witnesses indicating they were charged

[2] Throughout the Opinion, whenever the term administrative law judge is used it refers to that officer who was designated "Hearing Examiner" during the adjudicative proceedings.

these extra amounts (ID. 24 [p. 259 herein]); and the fact that an examination of copies of rental agreements introduced into the records of this proceeding disclosed that a cents per mile charge was imposed on all rentals involving the use of a 50 mile per day minimum rate structure and that an insurance charge was also imposed. (ID. 18–24 [pp. 255–59 herein]) The administrative law judge also relied on tabulations made by complaint counsel of rates charged by respondents based on a sampling of the aforementioned lease agreements. These tabulations demonstrated that the vast majority of rentals included charges for "50 miles minimum per day" and charges for insurance.[3]

Respondents' advertisements sometimes contain statements such as "plus minimum miles" or "daily flat rate & weekly free mile rate." The administrative law judge found that these statements because of their content, size and location are inconspicuous, vague, confusing, contradictory and misleading. (Finding 19)

The administrative law judge also found that respondents' customers are required to sign a printed standard form rental agreement which is ambiguous, unclear and confusing. The format and contents of this rental agreement are such that neither the exact amount nor the price method for calculating the exact amount which the customer will be required to pay is clearly and conspicuously set out. The administrative law judge concluded that respondents' printed form rental agreement failed to adequately disclose to customers at the time an automobile is rented that there is a 50 mile daily minimum charge at the cents per mile rate whether these miles are actually driven. In addition, the administrative law judge found that respondents' printed form rental agreements failed to disclose the type and extent of insurance provided. (Finding 20) The administrative law judge based this finding on copies of rental agreements executed by re-

[3] These tabulations so compiled by complaint counsel and relied on by the law judge established that respondents do not rent cars for one dollar per day. Of the 278 rental agreements from Brooks Rent-A-Car, Las Vegas, Nevada, in January 1970, 95 percent of the consumers were charged for a "50 miles minimum per day" and 97.5 percent were charged for collision damage insurance (CX 47–a, 47–z, 273); of 286 rental agreements from Brooks Rent-A-Car, Inc., Las Vegas, Nevada, in May-June 1970, 92.3 percent were charged the "50 miles minimum per day" and 95.1 percent were charged for collision damage insurance (CX 48–a, 48–z, 26); of the 44 rental agreements of Brooks Dollar-A-Day Rent-A-Car, Inc., Phoenix, Arizona, in January 1970, 70.5 percent were charged the additional "50 miles minimum per day" and 61.4 percent were charged for collision damage insurance (CX 49-a, 49-z, 25); of the 48 rental agreements of Metropolitan Leasing, Inc., Denver, Colorado, in June 1970, 85.4 percent of the consumers were charged "50 miles minimum per day" and 52.1 percent were charged for collision damage insurance. (CX 51-a, 51-z, 26)

spondents,[4] a partially filled out contract (termed by respondents "standard rental agreement") executed by a consumer witness in this proceeding and received into evidence.[5]

The administrative law judge did not base his findings on testimony adduced at investigational hearings. He specifiically excluded this testimony proffered by complaint counsel. The testimony went to the issue of whether purchase of collision damage insurance was mandatory. The administrative law judge's findings that consumers purchased collision insurance in a very high percentage of cases and that the purchase of collision insurance from respondents is virtually mandatory, were not based on this rejected testimony but instead on tabulations made by complaint counsel of a sampling of respondents' rental agreements.

The administrative law judge concluded that the statements, representations, contracts, acts and practices of respondents were and are unfair, false, misleading and deceptive and that their use has the tendency and capacity to mislead and deceive members of the purchasing public into the renting of substantial numbers of respondents' automobiles. (ID. 48–49 [p. 276 herein])

APPEAL

In their appeal, respondents [6] do not challenge the findings and conclusions of the administrative law judge with respect to the factual basis underlying the allegations of violation. Rather, respondents rest their appeal principally on the contention that testimony given at the investigative hearing and the documents (copies of rental agreements) attained from respondents and proffered at the trial by complaint counsel should not have been received into evidence during the adjudicative hearing. Respondents also assert that complaint counsel Gerald Wright could not establish the authenticity of documents by testifying regarding his previous procurement of them. As to the statistical surveys based on these rental agreements, respondents contend that these were also improperly admitted into evidence. Respondents also challenge the admission of the testimony of two consumer wit-

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[4] CX 26-a-51-z-26.

[5] CX 546.

[6] Throughout this opinion whenever the term "respondents" is used it refers to the corporate respondents Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., Brooks Dollar-A-Day Rent-A-Car, Inc., Metropolitan Leasing, Inc., and Irving Bell, individually and as an officer of said coroprations.

nesses, issuance of a press release by the Commission and the "broadness" of the initial decision and order.

Complaint counsel in this proceeding has appealed the administrative law judge's rejection of certain evidence offered by complaint counsel which consisted of testimony received at an investigational hearing conducted precedent to the adjudicative hearing in this matter. Complaint counsel does not appeal any of the administrative law judge's findings or conclusions nor the order he issued.

We will deal with each of these contentions *seriatim*.

I

Admissibility in an Adjudicative Hearing of Testimony Adduced During Investigational Hearings

Complaint counsel made a request at the hearing in this matter to introduce into evidence excerpts of testimony attained at an investigational hearing, for the truth of the matters contained therein.[7] The administrative law judge rejected this evidence and subsequently denied complaint counsel's motion for reconsideration of its admission.[8]

The testimony which complaint counsel sought to introduce into evidence contained statements by respondent, Irving Bell, regarding the rate charged for car rental by respondents and the nature of insurance coverage extended by respondents. Testimony regarding these issues could not be elicited from Irving Bell at the adjudicative hearing due to the fact that complaint counsel failed to perfect service upon Mr. Bell.[9]

Respondents argue that any and all testimony received through or incidental to the investigational hearing conducted by the Federal Trade Commission in this matter should not have been admitted into evidence. (Res. App. Br. 6–15) Respondents are in error with respect to the admission of testimony adduced at the investigational hearing. No testimony obtained at the investi-

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[7] This evidence consisted of an excerpt taken from the testimony of Irving Bell at an investigational hearing held in November of 1970. It was marked at trial as Commission's Exhibit for Identification 65. *Also see* ID 32–42 [pp. 265–71 herein].

[8] *See* order of the administrative law judge of July 26, 1972.

[9] Complaint counsel did not mail the subpoena directed to Irving Bell until approximately 2 weeks before the hearing date (May 15, 1972). (Ans. Br. 8) After said subopena was mailed, complaint counsel realized that there were omissions in it. The new subpoena *ad testificandum* directed to Irving Bell was not attempted to be served until 3 working days prior to the adjudicative hearing.

gational hearing was admitted into evidence at the adjudicative hearing for the truth of its contents.[10]

The basis for complaint counsel's appeal here is that the above-mentioned testimony should have been admitted into evidence at the adjudicative hearing as a party admission, an exception to the hearsay rule. This aforementioned testimony was offered by complaint counsel to further support the conclusion reached by the administrative law judge in Finding 12 that respondent imposed additional rental charges not disclosed in advertisements. As such, the ruling of the administrative law judge rejecting this evidence does not materially affect the substantive issue of whether these additional charges were imposed; he reached the same conclusion contended for by complaint counsel. (Finding 12) This finding in the initial decision that such additional charges were imposed is based entirely on copies of rental agreements the testimony of two consumer witnesses, and admissions of respondent. Therefore, since the evidence sought to be submitted through the transcript of respondents' testimony was proven through several independent sources, that testimony was cumulative and properly excludable.[11]

Respondents make an additional argument here relating to the conduct of this investigational hearing. They urge that not only was the testimony inadmissible but also that this hearing violated respondents' procedural rights. Respondents point out that complaint counsel presided at that hearing, and in part interrogated Irving Bell.[12] The same complaint counsel was also prosecutor during the adjudicative hearing. We do not agree that any of these circumstances resulted in any infringement of respondents' rights. In the first place, no allegation has been made that the conduct of the investigative hearing in any way violated Commission's rules. In the second place, none of the

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[10] Investigational hearings regarding Resort Car Rental, Inc., were held on three occasions prior to issuance of a complaint under Part III of the Commission's rules. Transcripts of testimony received during these investigational hearings were received into evidence during the adjudicative proceedings in this case for the *limited purpose* of demonstrating the time that investigational hearings were held, the nature of the hearings that were held, and the fact that the hearings were investigative and not adjudicative. These transcripts were not received for the truth of the contents of any of the testimony or exhibits referred to in the transcript. (Tr. 110) Counsel for respondents acknowledged this fact at the oral argument. *See* transcript of oral argument before the Commission, April 26, 1973, p. 5 (hereinafter called Tr. Oral Argument).

[11] *See Jolley* v. *Immigration and Naturalization*, 441 F.2d 1245 (5th Cir. 1971).

[12] During the hearing, complaint counsel was characterized as "hearing examiner." This was apparently due to an error on the part of the reporter as complaint counsel never referred to himself as "hearing examiner."

testimony adduced at the investigational hearing was admitted in the adjudicative hearing.

We are sensitive to the responsibility of the Commission to guarantee fairness and due process of law. The Federal Trade Commission, due to its nature as an administrative agency charged with the enforcement of a number of federal statutes, combines investigational, prosecutory and adjudicative functions into one body. It is of course of fundamental importance that the Commission take extra care to ensure that these functions are clearly defined and separated from one another. A review of this record conclusively establishes that there is no basis either in law or in equity to conclude that the mere duplication of roles by complaint counsel in these proceedings in any way prejudiced the rights of respondents or was in itself in violation of due process. Accordingly, we conclude that the respondents' objection must be rejected out of hand.

II

Admissibility in an Adjudicative Hearing of Certain Documents Obtained During Investigation

Copies of lease agreements (invoices) [13] executed by respondents and procured by complaint counsel during the investigation of this case were admitted into evidence by the administrative law judge. These agreements were relied on in his findings that respondents do not rent automobiles for $1 per day or for various dollar amounts set out in respondents' advertisements. The finding by the administrative law judge that respondents' customers are required to sign agreements which are ambiguous, unclear and confusing was also based on these documents along with CX 546 [14] and testimony of consumer witnesses.

Respondents contended that these lease agreements were not admissible in the adjudicative hearing for the same reasons that testimony adduced at the investigative hearing cannot be admitted at the adjudicative hearing. Respondents also objected to the admissibility of these lease agreements because of complaint counsel's alleged failure to establish their authenticity.[15]

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[13] CX 46-a to 51-z-26.

[14] A copy of the lease agreement executed with respondent by consumer witness Leonard Provenzale.

[15] Copies of these rental agreements were offered by complaint counsel at the adjudicative hearing over the objection of respondents.

The documents at issue were obtained by counsel supporting the complaint pursuant to a subpoena *duces tecum* directed to respondents and issued on October 7, 1970. Specification 6 of this subpoena required the production of the originals or copies thereof, if the originals could not be produced, of all executed rental agreements for the months of January and June 1970.

At the adjudicative hearing in this matter a copy of this subpoena with specifications was identified and received into evidence. (Tr. 118)

At the direction of the administrative law judge, complaint counsel, Mr. Gerald Wright, testified at the adjudicative hearing as to the circumstances under which the rental agreements had been produced by respondents for the Commission.[16] He testified that pursuant to an agreement with respondents, he conducted a search of respondents' files on November 10, 1970, selected certain documents among which were the rental agreements and caused the copies to be made which were now being offered in evidence as CX 46a–51–z–26.[17]

In addition to this testimony respecting the authenticity of these documents, the record indicates that respondents admitted in their answer to complaint counsel's request for admissions that these documents were business records and in addition that counsel for respondents stipulated that these documents were procured pursuant to a subpoena. (Tr. 149) [18]

We also reject respondents' contention that the testimony of Gerald Wright as to the circumstances under which he obtained these documents was hearsay or in any way incompetent to establish a foundation for the admission of these documents. We are not convinced, however, that this testimony was essential in order

[16] Complaint counsel testified that respondent Bell and his attorney appeared at the investigational hearing on November 9, 1970, but they did not bring the lease documents requested in Specification 6 of the above-mentioned subpoena.

[17] Complaint counsel selected 300 rental agreement numbers for each of the months January and June 1970, for corporate respondent Brooks Rent-A-Car; and 50 rental agreement numbers for each month January and June 1970 for corporate respondent Brooks Dollar-A-Day Rent-A-Car and Metropolitan Leasing, Inc. They tabulated each series of numbers selected. The photocopy service copied the the numbers selected and forwarded them by mail to the San Francisco Office of the Federal Trade Commission. Mr. Wright compared the copies with the tabulations and found them to be correct. The original rental agreements never left the offices of the Resort Car Rental System Inc. Mr. Grossman was present at times during the selection process. (Tr. 99–182; 414–416)

[18] In *Response to Second Request for Admissions* dated March 17, 1972, Addendum B attached to official transcript, respondents' answer was as follows:
"53–55. These answering respondents admit that rental agreements are regular business records of Brooks Rent-A-Car, Inc., Brooks Dollar-A-Day Rent-A-Car, Inc., and Metropolitan leasing, Inc."

to establish the admissibility of these documents nor do we agree that there was anything irregular in Mr. Wright's testifying in this hearing, given the circumstances of respondents' objections which led the administrative law judge to elicit Mr. Wright's testimony.[19]

Commission rules require that evidence cannot be admitted unless it is reliable.[20] When as here, however, copies of documentary material are stipulated to be the business records of a respondent, are shown to have been obtained from an authentic source, the competence, trustworthiness and reliability of such documents are sufficiently established to allow admission of them into evidence.[21] Since respondents have not challenged the rental agreements on the basis of materiality or relevance the Commission rules which require that only "relevant, material, and reliable" evidence be admitted, have been satisfied. The documents were properly admitted into evidence pursuant both to Commission rules and as an exception to the hearsay rule as business records.[22]

Respondents further contend that Gerald Wright engaged in alleged "intentional misconduct" which had the effect of placing in serious doubt the truth or veracity of his testimony. It is our opinion that these accusations by respondents with respect to Mr. Wright's conduct and the veracity of his testimony are totally unfounded.

The instances in which complaint counsel supposedly engaged in misconduct are as follows:

Respondents assert that Attorney Wright attempted to serve respondents with defective subpoenae. Before the trial in this matter commenced on May 15, 1972, complaint counsel sought to serve the individual respondent, Irving Bell, with a subpoena *ad testificandum* and the corporate respondent, Resort Car Rental System, Inc., with a subpoena *duces tecum*. (C.C. App. Br. 7)

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[19] Complaint counsel entered into the agreement to undertake the search of respondents' files because of respondents' failure to produce any of the documents called for by the Commission's subpoena. Moreover again, it was respondents' counsel's refusal to admit the authenticity of these documents which occasioned the necessity for Mr. Wright to take the stand to testify as to the circumstances surrounding the identity of these documents.

[20] *See* Federal Trade Commission Rules, Part III, Section 3.43(b).

[21] Moreover, during the oral arguments to the Commission, counsel for respondents was asked whether or not the records were authentic and were kept in the regular course of business. The answer given by counsel for respondents was, "waived and admitted." (Tr. 64).

[22] *See* Federal Business Records Act, 28 U.S.C. § 732. *See also, U.S.* v. *New York Federal Trade Zone Operations,* 405 F.2d 792, 796 (2d Cir. 1962).

At the adjudicative hearing, the subpoenae were found to have been improperly issued in accordance with Section 3.35 of the Commission rules and were thereupon quashed by Judge Buttle. (C.C. App. Br. 8; Tr. 194) [23]

Although respondents were justified in seeking to quash the subpoenae on the grounds that they were not issued in accordance with Section 3.35 of the rules, the fact that the subpoenae were so issued in this manner is hardly grounds for concluding that complaint counsel engaged in misconduct, intentional, inadvertent, or otherwise. Nor have respondents made any showing of any possible prejudice to them flowing from this error.

The other instance with respect to which respondents charge misconduct is their claim that during the investigational hearing in this case complaint counsel, Gerald Wright, referred to himself as "Hearing Examiner." An examination of the investigational hearings transcripts establishes that at no time during the investigative hearings did Gerald Wright refer to himself as "Hearing Examiner." [24] It is apparent from these transcripts that the error occurred due to the use of the term "Hearing Examiner" instead of "Presiding Officer" and was not the result of an intention to deceive by complaint counsel or anyone else present during that hearing. Moreover, respondents have not demonstrated how the erroneous use of the term "Hearing Examiner" during that hearing has or could in any way have prejudiced respondents or affected the truth or veracity of any testimony given by Gerald Wright.

We find no basis for inferring that complaint counsel participated in any kind of misconduct. We believe the rental agreements were properly admitted into evidence and that no violation of respondents' rights took place at any time during the investigation and hearing of this case.

III

Tabulations Extracted From Copies of Rental Agreements

Respondents argue that a tabulation which consisted of compilations of figures extracted by complaint counsel from copies of original rental agreements executed by respondents and properly

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[23] The subpoena was executed by the Director for Hearing Examiners, Edward Creel, in the following manner: "Edgar A. Buttle per E.C." (Tr. 32E)

[24] *See* transcript of investigational hearing of November 9 and 10, 1970. (CX 65) *See* F.N. 10 *infra*.

received into evidence, should be excluded as "hearsay, biased, and self-serving." [25]

Contrary to respondents' contentions these tabulations themselves were never admitted into evidence at the trial. Instead the copies of respondents' contracts from which the tabulations were compiled were admitted by the administrative law judge. (Tr. 150) Therefore respondents cannot challenge the admissibility of these tabulations as evidence when they never attained that status.

The tabulations in question although not received into evidence were used as part of complaint counsel's argument in the proposed findings of fact.[26] All of the data in the tabulations were derived from respondents' lease agreements. (CX 46–a–51–z–26) The tabulations consisted of nothing more than a summary of the data contained in these lease agreements which were properly received into the record. Clearly, therefore, the summary was based entirely on properly received record evidence.[27]

Respondents never challenged the methodology nor did respondents seek to rebut during the hearing or in any of the papers filed during or after the hearing, the results which followed from the summarization of the lease agreements by complaint counsel.

Accordingly, we conclude that the administrative law judge's findings and conclusions (ID 2–44 [pp. 242–72 herein]) are accurate, wholly supported by the evidence in this case and should be adopted in full.

IV

Testimony of Consumer Witnesses

Two consumer witnesses, Leonard Provenzale and Andrew W. Brainerd, testified on behalf of the Commission concerning their rental of automobiles from respondents. Both witnesses stated that they rented cars from Brooks Rent-A-Car due to advertisements that the rate of rental would be $1 per day.[28] When they returned their cars to Brooks Rent-A-Car they were both charged amounts considerably more than the $1 per day charge represented in the advertisements and more than each witness had

[25] Such compilations were extracted from CX 46-a-51-c-26 which as previously discussed in Section I were properly received in evidence.

[26] Proposed Findings of Fact of C.C., p. 16–17, 18–24, 33–35, Dated August 25, 1972.

[27] Moreover, the methodology of complaint counsel's computation is manifestly reasonable and persuasive. (*See* ID 44–48 [pp. 272–76 herein])

[28] Brainerd 245–266, Provenzale 201–239.

estimated the cost of the rental would be.[29] This testimony and the copies of Mr. Provenzale's rental agreement were partially relied on by the administrative law judge in his findings that respondents engaged in deceptive advertising and used ambiguous printed form rental agreements (*e.g.*, ID 27–31 [pp. 262–65 herein]).

Respondents assert that the testimony of these consumer witnesses should have been excluded because it was based on documents never received into evidence and because consumer witness, Andrew Brainerd, testified that he had no independent recollection of certain lease documents. The administrative law judge denied respondents' motion to strike this testimony. He also admitted in evidence over respondents' objections two copies of the rental agreement executed by Leonard Provenzale with respondents.[30]

The testimony of Leonard Provenzale was not "based on documents never introduced into evidence" as asserted by respondents. Copies of the rental agreement entered into by Leonard Provenzale were received into evidence as Commission Exhibit 546. (Tr. 239) This case was reopened by order on July 17, 1972, to receive into the record a letter containing certain testimony of Mr. Provenzale to the effect that the originals of the rental agreement were lost.[31]

The administrative law judge did not err in admitting copies of this rental agreement into testimony. Although the production of the original documents would have been preferable if available, "the thought is here not that a certain kind of evidence was absolutely necessary but that a certain kind is to be used if available. If it is not available, then it is not insisted upon."[32] Leonard Provenzale's testimony in the form of a letter dated May 27, 1972, adequately explains the loss of the original documents.[33] These copies of the original contracts were properly identified

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[29] When Mr. Brainerd returned the car after four days rental he believed that the charge would be approximately $14 but instead he was charged $30.90 (Tr. 256); Mr. Provenzdale testified: "The dollar figures—I figured it out and it would be $1 per day for 5 days, that was $5 and 13¢ per mile for 125 miles which was $16.25 * * * The insurance was $1.50 so the grand total was $22.75. Respondent informed Mr. Provenzale that he owed them $45.00 (Tr. 217).

[30] CX 546.

[31] It was stipulated on July 13, 1972, by respondents' counsel and complaint counsel that the letter from Leonard Provenzale would be testimony of Mr. Provenzale if the above matter were reopened and Mr. Provenzale testified.

[32] 4 WIGMORE ON EVIDENCE, Section 1192 (3d Ed. 1940).

[33] The administrative law judge was satisfied with Mr. Provenzale's explanation, as is confirmed by the *Order Denying Motion to Strike* of July 26, 1972.

and authenticated. (Tr. 210–211, 218–219) Therefore the admission of the copies into evidence and the administrative law judge's reliance on them was proper.[34]

Although the rental agreement executed by respondents and consumer witness Andrew W. Brainerd were not admitted into evidence, Brainerd's testimony concerned his own perceptions and interpretation of respondents' advertisements and rental rates and his experience in renting a car from respondents. Where a witness' testimony is based on his own perceptions and not on documents such as the contracts here, and did not consist of out-of-court statements offered for the truth of the facts contained therein, admission of such testimony does not violate the hearsay rule as asserted by respondents.[35]

Accordingly we conclude that the administrative law judge did not err in refusing to strike the testimony of these two witnesses. He was fully entitled to admit the testimony for whatever weight is should be assigned.

Moreover, in making his findings and conclusions on the deceptive nature of respondents' advertisements and the ambiguity of respondents' lease agreements, it is clear that the administrative law judge took into account all the evidence and in no instance relied exclusively on the testimony of the consumer witnesses. Indeed the administrative law judge specified that his conclusion that respondents' advertising created this impression can "be sufficiently established from a reading of the advertisements *without the testimony* of consumer witnesses." (ID 12 [p. 249 herein]) In his finding that respondents' advertisements represented that respondents rented automobiles for $1 per day (ID 13–17 [pp. 250–54 herein]), the administrative law judge relied both on the testimony of Mr. Provenzale and Mr. Brainerd as well as on numerous Commission exhibits,[36] the symbol $1 per day and the trade name "dollar a day" and their placement in the advertisements (ID 12 [p. 249 herein]) as supporting his finding that respondents' advertisements were deceptive.

The administrative law judge's findings that respondents' printed form rental agreements were ambiguous and unclear were similarly based both on his conclusions with respect to the agree-

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[34] *See* 4 WIGMORE ON EVIDENCE, Section 1194, 1277–78 (3d Ed. 1940). *Cf. Rash v. Spiegel's Deposit Bank & Trust Co.*, 91 F. Supp. 825, 827 (ED Ky. 1950).

[35] *See* 2 WIGMORE ON EVIDENCE, Sections 650–659 (3d Ed. 1940).

[36] CX–25–A—25–B, CX 26–A to 26–P, CX 27–A to 27–Z, 29–A to 29–T, CX 548–A to 548–B, CX 30–A, to 30–X, CX 31–A to 31–T, CX 23, CX 35, CX 37, CX 132, CX 133 & 134, CX 141, CX 142 & 143, CX 144 & CX 145.

ments themselves as well as on the testimony of the two consumer witnesses.[37]

Therefore, even if the testimony of the two consumer witnesses had been excluded, the findings of the administrative law judge are appropriate and are sufficiently supported by the record.

The initial decision and order are fully supported by the findings and conclusions of the administrative law judge and by the record in this case and we reject the contentions of complaint counsel and respondents as to the claimed errors of the administrative law judge in his admission of evidence.

V

Issuance of a Press Release by the Commission

The Commission issued a complaint regarding Resort Car Rental and other respondents in this matter under Part II of its rules on June 1, 1970. A press release was issued in connection with that complaint on that date. (RX 2) The Commission issued a revised complaint under Part III of its rules on August 26, 1971. No other press release was issued by the Commission in connection with the Part III complaint.

Respondents assert that the publication of the press release of June 1, 1970, with regard to the Federal Trade Commission's intention to issue a complaint under the consent order procedures, had the effect of foreclosing from the respondents the availability of non-adjudicative procedures as a possible solution to the issues which had arisen between the parties. The press release allegedly forced a full adjudicative hearing "in an effort to absolve an image created by the Commission." (App. Br. 27) Respondents also assert that further information concerning this matter was given by the Federal Trade Commission in the form of a news release published in the Las Vegas Journal Review on Tuesday, January 12, 1971. These press releases, according to respondents, violated Commission rules.

The assertion by respondents that the press release of June 1,

[37] CX 26-a—51-z-26; CX 546, ID 27-31 [pp. 262-65 herein]. An examination of this evidence also indicates that even though the phrase "50 miles daily minimum" is contained in those contracts in bold letters in the middle left hand side of the page, it is contained in a "box" containing spaces for information wholly unrelated to the rental rate. This information contained on the contract is wholly unrelated to anything in the rental rate box and more particularly is wholly unrelated to the "cent per mi. inc. gas" section of the "rental rate" box, which is the charge to which it relates. In addition, on its face, the phrase "50 miles daily minimum" is not self-explanatory. (ID 28, n. 14 [p. 263 herein])

1970, foreclosed a possible nonadjudicative course of action is contrary to the facts and to the procedures expressly provided by the Commission rules.[38] Indeed in the instant matter, consent negotiations were sought by complaint counsel with respondents and were held subsequent to the press release of June 1, 1970.[39] The negotiations however, did not lead to settlement of this case.

The press release issued by the Federal Trade Commission in regard to this matter was issued in accordance with the rules and was so authorized as a factual news release.[40] In the case of *FTC* v. *Cinderella Career and Finishing School,*[41] the court ruled that the Federal Trade Commission is authorized to issue factual news releases concerning pending proceedings before it.[42]

The issuance of the press release by the Commission on July 1, 1970, was not a violation of Part II of the Commission's rules as asserted by respondents. Although Section 2.8(c) of those rules does provide that "investigational hearings shall not be public" (unless otherwise ordered by the Commisison), they do not provide as asserted by respondents, that notice of the Commission's intention to issue a complaint under its consent order procedures shall not be published. This rule protects the non-public nature of investigational hearings. This section does not in any way prohibit the Commission from notifying the public of complaints and

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[38] Pursuant to Section 2.32 of the FTC rules a proposed respondent after receiving notice that the Commission intends to issue a formal proceeding receives an opportunity to execute an appropriate agreement for consideration by the Commission. Pursuant to Section 2.35 of the Commission rules, notices and proposed forms of complaint and orders under Section 2.31 are included in the public records of the Commission and will be the subject of releases to the Commission's Office of Public Information. All negotiations and communications under Sections 2.32, 2.33 and 2.34 constitute a part of the confidential records of the Commission except to the extent otherwise provided therein.

[39] Consent negotiations were held between respondent and complaint counsel in the San Francisco Regional Office following the press release. No agreement was reached and the Commission on October 1, 1970, considered and rejected respondents offer of settlement, dated July 7, 1972. (Ans. Br. 2)

[40] *See* Federal Trade Commission rule, Section 2.35.

[41] 404 F.2d 1308 (D.C. Cir. 1968).

[42] The court stated in *Cinderella Career and Finishing Schools* that, "since the Commission is charged by the board delegation of power to it to eliminate unfair or deceptive business practices in the public interest, and since it is specifically authorized to make public information acquired by it we conclude that there is in fact and law authority in the Commission, acting in the public interest, to alert the public to suspected violations of law by factual press releases whenever the Commission should have reason to believe that a respondent is engaged in activities made unlawful by the act which has resulted in the initiation of action by the Commission. The press release predicated upon official action of the Commission, constitutes a warning of caution to the public, the welfare of which the Commission is in these matters charged." 404 F.2d at 1314.

orders.[43]

The Commission's rules which require that investigational hearings not be public were not violated with respect to an alleged "news release" published in the Las Vegas Review Journal on January 12 1971. The news release of June 1, 1970, was the only release made by the Commission in this matter. The article in the Las Vegas Review Journal, referred to by respondents, contained the same information that was printed in the Federal Trade Commission's news release of June 1, 1970. The only additional information contained in that news article was a statement by Michael Bernstein, former complaint counsel here, that the matter had gone on a long time and "we expect some kind of action in the very near future." [44] This statement of complaint counsel did not violate any Commission rules as it did not disclose any information concerning nonpublic investigational hearings. The Federal Trade Commission gave no additional announcements regarding nonadjudicative Commission procedures.

The Commission's issuance of the press release in this matter was not a violation of any Commission rules and did not create a substantial detriment or prejudice to respondents in this matter.

VI

Initial Decision and Order

Respondents made a generalized assertion that the initial decision is "unsupported by the evidence" and that the provisions of the proposed order are "overly broad, vague and unenforcable." (Res. App. Br. 8) We have carefully reviewed the findings and conclusions of the administrative law judge together with the record in this case. We conclude that contrary to respondents' contentions, the Findings of Fact and the Conclusions of Law made by the administrative law judge are fully supported by the evidence in this case.

We also conclude that the proposed order of the administrative law judge is amply supported by the record in this case and that its provisions are essential if respondents' law violations are to

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[43] Section 2.35 of the Commission's Rules of Practice specifically provides:

Notice of proposed adjudicative proceedings included in public records.—Notices and proposed forms of complaints and orders under Section 2.31 are included in the public records of the Commission and will be the subject of releases through the Commission's Office of Public Information. Ordinarily, there will be no additional release if and when a complaint is issued under the Commission's adjudicative procedures. All negotiations and communications under §§ 2.32, 2.33 and 2.34 will constitute part of the confidential records of the Commission, except to the extent otherwise specifically provided therein.

[44] RX 4.

be adequately prevented in the future. The essence of respondents' deceptions found by the administrative law judge to be violative of Section 5 were summarized by the law judge as follows:

> * * * respondents have failed in their representations, advertising and contracts to give equal emphasis to the cost disadvantages of their car rental offers comparable to the lower cost advantages. Above all, the advertised day rental bargains is accentuated in the size of the print and advertising placement in contrast to the deemphasis of required payment for minimum mileage and necessary insurance or other rental charges as elements of the total rental cost * * * (ID 34 [p. 266 herein])

The administrative law judge pointed out that among other things respondents do not clearly inform customers in advertisements or in contracts that in addition to a daily rate for use of the automobile and a cent per mile charge, there will be a daily insurance charge, and an additional minimum charge of 50 miles per day, at the cents per mile charge, whether or not the miles are actually driven. (ID 17 [p. 254 herein]) As to insurance charges, respondents' contracts do not clearly inform the purchaser of the very limited nature of coverage. (*e.g.*, CX 47–A, 47–B) [45]

The administrative law judge concluded correctly that "there was an obligation upon respondents in renting or leasing cars to accentuate in the same degree every term of a car rental offer or contract, so that all conditions of rental may not be reasonably overlooked." (ID. 34 [p. 266 herein])

In order to remedy these deceptions, the administrative law judge entered an order which requires respondents to make affirmative disclosures in advertising and rental agreements of all charges and conditions imposed for rental of automobiles. Respondents are further required to discontinue using the trade name "Dollar-A-Day" (or similar designations), unless all charges and conditions imposed for rental are represented.

Respondents objected to various provisions of this order.

First, they contend that the disclosures of rental charges which they are required to make by the order [46] are unworkable and

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[45] ID. 22–24 [pp. 258–59 herein]

[46] This section of the order requires respondents to cease and desist from: "1. Representing, directly or by implication, any price, fee, or amount which is imposed for rental of a motor vehicle unless such price, fee, or amount includes all charges or conditions which are imposed for or on rental of such vehicle at such price, fee, or amount." The order defines charges or "conditions" as: (a) a daily or other periodic charge, (b) a cents per mile charge, (c) a minimum charge of the cents per mile charge whether or not the miles are actually driven, (d) a charge for gasoline, oil and repairs if such are not included in (a) or (b) above, and (e) any charge for insurance. (Subsection 1)

could result in conceivably 625 total charges that would have to be advertised if respondents were renting five different motor vehicles. (Res. App. Br. 30)

Respondents' interpretation of the order is in error. The order does not require rates be advertised at all, or that all rates available be advertised. It requires only that if respondents advertise a vehicle rental rate, all charges and conditions which are imposed pursuant to rental of that auto also be included in the advertisement. Contrary to respondents' contentions, compliance with this section would not be impossible but would only require respondents to cease doing business in an unfair and deceptive manner.

Respondents further object to Subsection 3 of the order which requires them to cease and desist from "using any title, corporate name, trade name, or other designation (including but not limited to 'dollar-a-day') which represents, directly or by implication any price, fee, or amount which is imposed for rental of a motor vehicle, unless such representation includes all charges or conditions which are imposed for rental of such vehicle, in conformity with the requirements of paragraph 1 of this Order." Respondents assert that any attempt to implement this particular requirement would be "arbitrary, capricious and unreasonable." (Res. App. Br. 30)

In our view, respondents' argument is without merit. There is ample factual and legal precedent for excision of the trade name in this matter.

Commission power to order that a trade name be excised is well established by legal authority. Just as the administrative law judge found here, the Federal Trade Commission found in the case of *Bakers Franchise Corporation* v. *FTC,* 302 F.2d 258 (3d Cir. 1962), that a trade name used in conjunction with claims made in advertising created an impression which substantial evidence proved to be false. The court in upholding the Commission's excision of the word "diet" from the trade name "Lite Diet" bread in *Bakers Franchise,* stated:

> The matter of choice of remedy is one for the Commission, *Jacob Siegel Co.* v. *FTC, supra* at 611–12. We cannot say that its discretion was improperly exercised in this case.[47]

The Commission has excised trade names in a number of past decisions. *See e.g., Carter Products, Inc.* v. *FTC,* 268 F.2d 461

[47] 302 F.2d at 262.

(9th Cir. 1969) (excision of word "liver" from trade name "Carter's Little Liver Pills") ; *El Moro Cigar Co.* v. *FTC,* 107 F.2d 429 (4th Cir. 1939) (excision of word "Havana" from the trade name "Havana Counts") ; *Masland Duraleather Co.* v. *FTC,* 34 F.2d 733 (3d Cir. 1929) (excision of "Duraleather" from trade name) ; *Virginia Dare Stores Corp.,* 64 F.T.C. 1220 (1964) (excision of word "Atlantic Mills" or "Mills" from trade name).

As the administrative law judge points out, a trade name is a valuable business asset and excision should only be ordered in cases, such as the present one, where there are not less drastic means to eliminate the deception. *Jacob Siegel Co.* v. *FTC,* 327 U.S. 608 (1964) (ID 50). In certain cases for instance, qualifying language as a means to eliminate the deception has been used short of excision. Where qualifying language amounts to a contradiction in terms, however, it would have the effect of completely confusing the consuming public and will not be considered as an alternative to excision. *Bakers Franchise Corp.* v. *FTC, supra.* The court in *Bakers Franchise* observed that the continuing use of the trade name "Lite Diet" with the qualifying phrase "not a low calorie bread" or "not low in calories" would be a contradiction in terms and therefore not an acceptable alternative to excision. The continued use of the trade name "dollar-a-day" with such qualifying language as "no vehicle may be rented for a dollar a day" would be just as contradictory and confusing to the consuming public as the qualifying language rejected in *Bakers Franchise, supra.*

In the case of *Virginia Dare Stores, supra,* the Commission ordered the excision of the term "Mills" from respondent's trade name. It was found that this trade name falsely represented to the public in an affirmative manner that the company owned and operated a mill or factory in which at least some of the clothing and other merchandise sold by it were manufactured.[48] The Commission considered the alternative course of requiring respondent to use some words of qualification or explanation in conjunction with the trade name in order to dispel misrepresentation or deception. It was concluded by the Commission, however, that in a case such as this where the proposed words or qualification are in complete and absolute contradiction with the words which convey

[48] 64 F.T.C. 1220 (1964).

the deceptive and misleading impression, excision is the appropriate remedy.[49]

In the instant case, the essence of respondents' deception, the misleading question of respondents' rental rates, is embodied in its trade name "Brooks Dollar-A-Day Rent-A-Car" and in its corporate name "Brooks Dollar-A-Day Rent-A-Car, Inc." Respondents' trade name and corporate name were a prominent and integral part of the advertisements which respondents caused to be placed in brochures, newspapers and magazines.[50] (ID 9–12 [pp. 248–51 herein]) It would be impossible and a totally vain act to prohibit respondents from falsely advertising auto rental rates and at the same time permit them to continue to use a trade and corporate name which contain the pricing deception sought to be prohibited by the order.

Counsel for respondents offered no evidence that would rebut the conclusion that the vast majority of respondents' contracts involved rentals pursuant to the "50 miles minimum per day" rate structure or the fact that purchase of collision insurance from respondents is virtually mandatory due to its purchase in a very high percentage of cases. (ID 22 [p. 258 herein]) Respondents admitted in their answer that they impose a cents per mile charge.[51]

The facts in the instant case are directly analogous to the facts in *Bakers Franchise Corp.* and *Virginia Dare Stores Corp., supra,* where excision was authorized. In those cases the trade names were excised because they were found to be in complete contradiction to the facts found to exist.[52] Here, respondents' trade name misleads consumers into believing cars are rented for $1 per day. Since substantial additional charges are imposed by respondents, the dollar per day trade name is in complete contradiction to the actual price charged for car rental. Just as in he aforementioned cases, any words of disclaimer as opposed to the remedy of exci-

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[49] 64 F.T.C. at 1235. *See also El Moro Co.* v. *FTC, supra,* where the misuse of the word "Havana" could not be cured by the sentence, "These cigars are made in the United States entirely and only of domestic tobacco," 107 F.2d at 430.

[50] Respondents admit in their Answer, Paragraph 4, that they induce rental of automobiles through various statements and representations concerning the amounts charged for automobile rental; *see also,* CX 458 A and B, CX 30 A–X, CX 31 A–T, CX 23, CX 36, CX 37 [advertisements by respondents Brooks Rent-A-Car Inc.] CX 132, CX 133 and CX 134 [advertisements by respondent Brooks Dollar-A-Day Rent-A-Car, Inc.] CX 141, 142 and CX 143, CX 144 and 145 [advertisements by respondent Metropolitan Leasing Inc.].

[51] Respondents answer Paragraph 6(a)(1).

[52] In *Bakers Franchise, supra,* the bread sold by respondents was not low caloric though called "Lite Diet." In *Virginia Dare Stores, supra,* the word "mills" was used where no mill was owned by respondent.

sion would be insufficient to cancel the deceptive and misleading impression created by the trade name. The trade name, "dollar-a-day" by its nature has a decisive connotation for which any qualifying language would result in a contradiction in terms.

The deceptive practices found to exist in the instant case clearly call for the remedy of excision and prohibitions on the type of representations made by respondents in advertising and in contractual arrangements. The administrative law judge did not err in so including these provisions in the order.

The appeals of both parties are denied and the initial decision is adopted as the decision of the Commission. An appropriate order will be entered.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the initial decision, and upon complaint counsel's appeal from that part of the initial decision rejecting certain testimony adduced at an investigational hearing as inadmissible; and

The Commission having considered the oral arguments of counsel, their briefs and the whole record;

It is ordered:

(1) That the initial decision be, and it hereby is, adopted as the decision of the Commission;

(2) That the appeal of respondents be, and it hereby is, denied; and that the appeal of complaint counsel be, and it hereby is, denied;

(3) That the following order be and hereby is entered:

ORDER

It is ordered, That the respondents Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., Brooks Dollar-A-Day Rent-A-Car., and Metropolitan Leasing, Inc., corporations, trading under the above trade or corporate names or under any other trade or corporate name or names, their respective successors and assigns and their respective officers, and Irving Bell, individually and as an officer of said corporations (hereinafter referred to as "respondents") and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, renting, or offering for rent of motor vehicles, in commerce, as "commerce" is defined in

the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, any price, fee, or amount which is imposed for rental of a motor vehicle unless such price, fee, or amount includes all charges or conditions which are imposed for or on rental of such vehicle at such price, fee, or amount.

The term "charges or conditions" means any charge or condition necessary to the rental of a motor vehicle, which is not strictly at the option of the person renting the vehicle. Examples of such charges and conditions are:

a. a daily or other periodic charge;

b. a cents per mile charge;

c. a minimum charge at the cents-per-mile charge, whether or not the miles are actually driven;

d. a charge for gasoline, oil, and repairs if such are not included in (a) or (b) above;

e. any charge for insurance.

Provided, however, That

(i) (a) and (b) above may be stated separately from each other if there is no other charge or condition, and if (a) and (b) are in equally large type and in close proximity to each other;

(ii) any charge made for collision insurance must be included in said representation if such insurance charge is not strictly at the option of the person renting the vehicle; a charge for collision insurance shall not be deemed to be "strictly at the option of the person renting the vehicle' if any evidence of other insurance must be provided to respondents in order not to purchase said collision insurance;

(iii) the coverage of collision insurance, whether optional, mandatory, or included in the rental agreement price, shall be clearly described in the rental agreement.

2. Misrepresenting, in any manner, any method of computation of a charge, charge, or condition imposed for rental of a motor vehicle.

3. Using any title, corporate name, trade name, or other designation (including but not limited to "Dollar-A-Day") which represents, directly or by implication, any price, fee, or amount which is imposed for rental of a motor vehicle, unless such representation includes all charges or conditions

which are imposed for rental of such vehicle, in conformity with the requirements of Paragraph One of this order.

4. Executing or causing to be executed, any written agreement purporting to obligate a consumer to pay at that or any future time any consideration for the rental of a motor vehicle, where the language and format of the written agreement does not conform with the requirements of Paragraphs One through Three of this order. If any minimum mileage charge is imposed at the cents-per-mile charge pursuant to said agreement, said agreement shall contain the following statement in capital letters in at least eight point bold type, next to and clearly associated with that place on said agreement which provides for entry of the cents per mile rate:

"NOTICE: A MINIMUM CHARGE OF (*e.g., 50*) MILES PER (*e.g., DAY*), AT THE CENTS-PER-MILE CHARGE WILL BE IMPOSED, WHETHER OR NOT THE MILES ARE ACTUALLY DRIVEN."

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, 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.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their respective operating subsidiaries, divisions, and offices, and to each employee, present or future.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of any of his present businesses or employment and of his affiliation with a new business or employment. Such notice shall include said respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the complaint is dismissed as to the respondent Bell Rent-A-Car, Inc., pursuant to complaint counsels' Proposed Finding 25 which has been adopted herein.

It is further ordered, That respondents Resort Car Rental System, Inc., Brooks Rent-A-Car, Inc., Brooks Dollar-A-Day Rent-A-Car, Inc., Metropolitan Leasing, Inc., and Irving Bell shall, within sixty (60) days after service of this order upon them,

file a written report with the Commission, signed by said respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist hereby adopted by the Commission.

IN THE MATTER OF

BENEFICIAL CORPORATION, ET AL.

Docket 8922. Interlocutory Order, July 31, 1973.

Order denying respondents' motion to withdraw this matter from adjudication for the purposes of (1) entering into a consent order concerning certain issues in the case and (2) obtaining dismissal of complaint as to one respondent.

Appearances

For the Commission: *D. Fix, R. Galler, R. Friedman.*

For the respondents: *Timothy J. Bloomfield, George W. Wise, Hogan & Hartson,* Washington, D.C. and *Edgar T. Higgins,* Beneficial Management Corporation, Morristown, New Jersey.

ORDER DENYING MOTION TO WITHDRAW PROCEEDING FROM ADJUDICATION

This matter is before the Commission upon a certification by the administrative law judge, filed July 13, 1973, of a motion by respondents to withdraw this matter from adjudication.

Respondents' motion was filed July 3, 1973, pursuant to Section 2.34(d) of the Commission's Rules of Practice. Withdrawal from adjudication is sought by respondents for the purpose of entering into a consent order with respect to certain of the issues in this case, and for the purpose of obtaining dismissal of the complaint as to respondent Beneficial Corporation. Complaint counsel have opposed respondents' motion, and the administrative law judge recommends that it be denied.

Section 2.34(d) of the Commission's Rules of Practice provides that withdrawal from adjudication shall be permitted only in "exceptional and unusual circumstances" and "for good cause shown." Respondents argue that "since additional issues precluded disposition of the *entire* matter by consent, Respondents have not heretofore been afforded an opportunity to seek disposition of the previously agreed-upon issues by consent." (Motion of Respondents', page 2.) We find this contention somewhat strained, inas-

much as nearly two years elapsed between the issuance of a Proposed Complaint in this matter and its entry into adjudication. During this period respondents were surely not precluded from proposing a consent settlement with respect to less than all the issues as an alternative to proposals for a complete resolution. While withdrawal of the instant proceedings from adjudication might allow prompt settlement of certain matters at issue, it would also inevitably delay the resolution of others which may be of greater consequence. We can find no exceptional and unusual circumstances in the facts of this case to justify its withdrawal from adjudication.

For the foregoing reasons, *It is ordered,* That the motion of Beneficial Corporation and Beneficial Management Corporation to withdraw this matter from adjudication be, and it hereby is, denied.

Commissioner Dennison did not participate.

IN THE MATTER OF

GREATER KANSAS CITY GAS FURNACE & AIR CONDITIONING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE TRUTH IN LENDING AND FEDERAL TRADE COMMISSION ACTS

Docket C-2428. Complaint, August 2, 1973—Decision, August 2, 1973.

Consent order requiring a Kansas City, Missouri, retailer of furnaces, heating equipment, air conditioners, and parts therefor, among other things to cease violating the Truth in Lending Act by failing to disclose to customers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act. Respondents are further required to cease transferring any documents of indebtedness without providing that the rights or defenses of the consumer may be asserted against any subsequent holder of the documents and to include a statement to that effect on the face of any note or other instrument evidencing indebtedness. Further, the firm must recontact and offer the right of recission to all eligible consumers who purchased on or after July 1, 1969.

Appearances

For the Commission: *E. E. Harrison.*

For the respondents: *Charles A. Gallipeau,* Kansas City, Missouri.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., a corporation, and Dennis G. Svejda, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its principal office and place of business located at 3315 Troost, Kansas City, Missouri.

Respondent Dennis G. Svejda is an officer of the corporate respondent. He formulates, directs, and controls the policies, acts, and practices of the corporation, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents for some time have been engaged in the advertising, offering for sale, and sale of furnaces, heating equipment, air conditioners, and parts therefore to the purchasing public, and in the repair and servicing of the aforementioned products.

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the ordinary course of their aforesaid business, respondents have regularly extended and arranged for the extension of consumer credit, as "consumer credit" and "arrange for the extension of credit" are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of their aforesaid business and in connection with their credit sales,

as "credit sale" is defined in Regulation Z, respondents have caused their customers to enter into a credit agreement other than open end, hereinafter sometimes referred to as the transaction. Respondents provide the disclosures attendent to the transaction and required by Regulation Z on a separate statement, hereinafter sometimes referred to as the statement.

PAR. 5. By and through the use of the statement, respondents have failed to:

1. Identify on the statement the transaction to which it relates, as required by Section 226.8(a) (2) of Regulation Z.

2. Disclose the date on which the finance charge begins to accrue when different from the date of the transaction, as required by Section 226.8(b) (1) of Regulation Z.

3. Disclose the sum of all payments required, and describe that sum as the "total of payments," as required by Section 226.8(b) (3) of Regulation Z.

4. Provide a description of the type of any security interest held or to be retained or acquired by the creditor in connection with the transaction, as required by Section 226.8(b) (5) of Regulation Z.

5. Use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the transaction, as required by Section 226.8(c) (1) of Regulation Z.

6. Use the term "cash downpayment" to describe the downpayment in money made in connection with the transaction, as required by Section 226.8(c) (2) of Regulation Z.

7. Use the term "total downpayment" to describe the sum of the cash downpayment and trade-in, as required by Section 226.8 (c) (2) of Regulation Z.

8. Use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c) (3) of Regulation Z.

9. Disclose all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c) (4) of Regulation Z.

10. Disclose the sum of the unpaid balance of cash price and all other charges and describe that sum as the "unpaid balance," as required by Section 226.8(c) (5) of Regulation Z.

11. Use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c) (7) of Regulation Z.

12. Disclose the sum of the cash price, all charges which are included in the amount financed but which are not a part of the finance charge, and the finance charge, and describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

13. Disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 6. In certain instances respondents have failed to deliver to customers, the statement or any other instrument containing the disclosures required by Section 226.8 of Regulation Z prior to the consumation of the transaction, as required by Section 226.8(a) of Regulation Z.

PAR. 7. By and through the use of respondents' credit agreement, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal resident of respondents' customers. The retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind that transaction until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

Respondents have in certain instances failed to give their credit customers the right to rescind until midnight of the third business day following the consummation of the transaction or the date of delivery of all disclosures, whichever is later, and have failed to set forth the "Effect of Rescission" in the rescission notice to their customers, as required by Sections 226.9(a) and (b).

Further, respondents have made physical changes in customers' property, and performed work or services on such property before expiration of the three-day rescission period. Respondents' failure to refrain from commencing work pursuant to rescindable contracts before the rescission period has expired is in violation of Section 226.9(c) of Regulation Z.

PAR. 8. Respondents' credit agreement contains information or explanations which contradict, obscure, or detract attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

PAR. 9. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' failures to comply with the provisions of Regula-

tion Z as alleged in Paragraph Five through Eight herein constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. In the ordinary course of their aforesaid business, respondents have caused their products, when sold, to be shipped from their principal place of business in the State of Missouri to purchasers thereof located in the States of the United States other than the state in which the shipments originated, and have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 11. In the ordinary course of their aforesaid business, respondents have caused their customers' obligations to be sold or transferred to various financial institutions having the status of a holder in due course, thus cutting off various personal defenses to the payment of said obligation which would otherwise be available to the obligor against respondents, if respondents still held said obligation.

PAR. 12. The act and practice of respondents, as alleged in Paragraph Eleven herein, is prejudicial and injurious of the public, and constitutes an unfair act and practice in 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Kansas City Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Greater Kansas City Gas Furnace & Air Conditioning Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 3315 Troost, city of Kansas City, State of Missouri.

Respondent Dennis G. Svejda is an officer of said corporation. He formulates, directs, and controls the policies, acts, and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

ORDER

I

It is ordered, That respondent Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., a corporation, and its officers, and Dennis G. Svejda, individually and as an officer of said corporation, trading under said corporate name or under any trade name or names, their successors and assigns, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the

Truth in Lending Act (Pub.L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to identify on the disclosure statement required by Section 226.8(a) of Regulation Z the transaction to which the statement relates, as required by Section 226.8(a)(2) of Regulation Z.

2. Failing to disclose the date on which the finance charge begins to accrue when different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

3. Failing to disclose the sum of all payments required, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

4. Failing to describe the type of any security interest held or to be retained or acquired by the creditor in the connection with the transaction, as required by Section 226.8(b)(5) of Regulation Z.

5. Failing to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the transaction, as required by Section 226.8(c)(1) of Regulation Z.

6. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the transaction, as required by Section 226.8(c)(2) of Regulation Z.

7. Failing to use the term "total downpayment" to describe the sum of the cash downpayment and trade-in, as required by Section 226.8(c)(2) of Regulation Z.

8. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.

9. Failing to disclose all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(4) of Regulation Z.

10. Failing to disclose the sum of the unpaid balance of cash price and all other charges and describe that sum as the "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.

11. Failing to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8

(c) (7) of Regulation Z.

12. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not a part of the finance charge, and the finance charge, and describe that sum as the "deferred payment price," as required by Section 226.8(c) (8) (ii) of Regulation Z.

13. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

14. Failing to furnish the customer a statement containing the disclosures required by Section 226.8 of Regulation Z, in the manner and form as prescribed by Section 226.8(a) of Regulation Z.

15. Failing, in any transaction in which a security interest or the future right to a security interest is retained or acquired in real property which is used or expected to be used as the principal residence of the customer, to comply with all requirements regarding the right of rescission set forth in Section 226.9 of Regulation Z.

16. Making any physical changes in a customer's property or performing any work or services on such property before expiration of the three-day rescission period provided for in Section 226.9(a) of Regulation Z, in any transaction in which a security interest or the future right to a security interest is retained or acquired in real property which is used or is expected to be used as the principal residence of the customer, as provided in Section 226.9(c) of Regulation Z.

17. Supplying, orally or in writing, any information to a customer so as to mislead or confuse the customer, or contradict, obscure, or detract attention from the information required by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

18. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form, and amount required by Sections 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

II

It is ordered, That respondent Greater Kansas City Gas Furnace & Air Conditioning Company, Inc., a corporation, and its officers,

and Dennis G. Svejda, individually and as an officer of said corporation, trading under said corporate name or under any trade name or names, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the transfer of any indebtedness in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Assigning, selling, or otherwise transferring respondents' notes, contracts, or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract, or other such documents evidencing the indebtedness.

2. Failing to include the following statement clearly and conspicuously on the face of any note, contract, or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

It is further ordered, That respondents shall, within thirty (30) days after service upon them of this order, deliver notice of the right of rescission, in the number, manner and form set forth in Sections 226.9(b) and (f) of Regulation Z, to each customer in each transaction entered into by respondents on or after July 1, 1969, in which a security interest or the future right to a security interest was retained or acquired in any real proporty which, at the time of the transaction, was used or was expected to be used as the principal residence of the customer, and that respondents shall perform all obligations set forth in Section 226.9(d) of Regulation Z in any such transaction if the customer exercises the right of rescission within the time and in the manner prescribed in Section 226.9(a) of Regulation Z.

It is further ordered, That respondents shall maintain adequate records, to be furnished upon the request of the Federal Trade Commission, which disclose compliance with the paragraph above.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future

salesmen and/or other persons engaged in the sale of respondents' products and/or services, and to all present and future personnel of respondents, engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising of that consumer credit, and shall secure from each such salesman and/or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

HOFMANN CONSTRUCTION CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE TRUTH IN LENDING AND FEDERAL TRADE COMMISSION ACTS

Docket C-2429. Complaint, August 2, 1973—Decision, August 2, 1973.

Consent order requiring a Concord, California, builder-developer, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *H. G. Sodergren.*

For the respondents: *pro se.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hofmann Construction Co., a corporation doing business as Hofmann Company, and Kenneth H. Hofmann, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Hofmann Construction Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, under the name Hofmann Company, with its principal office and place of business located at 989 Detroit Avenue South, Concord, California.

Respondent Kenneth H. Hofmann is president of the corporate respondent. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the construction, development, and sale of residential real property, and in the offering for sale and retail sale and distribution of mobile homes, to the public.

PAR 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange for the extension of consumer credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in order to promote the sale of residential real estate, have caused advertisements to be published, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of residential real estate.

By and through the use of the advertisements, respondents:

1. Stated the rate of finance charge without describing that

rate as the "annual percentage rate," in violation of Section 226.10(d)(1) of Regulation Z.

2. Stated that no downpayment was required, without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

a. The cash price;

b. The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

c. The amount of the finance charge expressed as an annual percentage rate.

PAR. 5. Subsequent to July 1, 1969, respondents, in order to promote the sale of mobile homes, have caused advertisements to be published, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of mobile homes.

By and through the use of the advertisements, respondents:

1. Stated the amount of the downpayment required, or that no down payment was required, the amount of installment payments, and the period of repayment to be made if the credit is extended, without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

a. The cash price;

b. The number of payments scheduled to repay the indebtedness if the credit is extended;

c. The amount of the finance charge expressed as an annual percentage rate;

d. The deferred payment price.

2. Disclosed the add-on rate of the credit together with a rate expressing the amount of the finance charge, in violation of Section 226.10(d)(2) of Regulation Z, which requires the annual percentage rate to be disclosed, and Section 226.6(c) thereof, which prohibits additional disclosures that tend to mislead, confuse, contradict, obscure, or detract attention from disclosures required by Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Acts, 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hofmann Construction Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, under the name Hofmann Company, with its office and principal place of business located at 989 Detroit Avenue South, Concord, California.

Respondent Kenneth H. Hofmann is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents Hofmann Construction Co., a corporation, its successors and assigns, and its officers, and Kenneth H. Hofmann, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (hereinafter, in this and other paragraphs of this order, referred to as "respondents"), in connection with any extension or arrangement of consumer credit or advertisement to aid, promote, or assist directly or indirectly any arrangement or extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub.L. 90–321, 15 U.S.C. 1601 *et. seq.*), do forthwith cease and desist from:

1. Representing directly or by implication, in any advertisement to promote the sale of residential real estate, as "advertisement" is defined in Regulation Z:

a. The rate of any finance charge unless respondents state the rate of that charge, expressed as an "annual percentage rate," as required by Section 226.10(d) (1) of Regulation Z.

b. The amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are stated in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) (2) thereof:

(1) The cash price;

(2) The amount of the downpayment required or that no downpayment is required, as applicable;

(3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(4) The amount of the finance charge expressed as an annual percentage rate.

2. Representing, directly or by implication, in any advertisement to promote the sale of mobile homes, as "advertisement" is defined in Regulation Z:

a. The amount of the downpayment required or that

no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are stated in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

(1) The cash price;

(2) The amount of the downpayment required or that no downpayment is required, as applicable;

(3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(4) The amount of the finance charge expressed as an annual percentage rate;

(5) The deferred payment price.

b. The rate of any finance charge other than the annual percentage rate.

3. Failing in any consumer credit transaction or advertisement to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z, at the time and in the manner, form, and amount required by Sections 226.6, 226.8, and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to each operating division and to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, 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.

It is further ordered, That the individual respondent named herein promptly notifies the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature

of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

POSTAGE STAMP SERVICE BUREAU, INC., ET AL.

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

Docket C-2430. Complaint, August 14, 1973—Decision, August 14, 1973.

Consent order requiring a Las Vegas, Nevada, seller and distributor of postage stamp vending machines, among other things to cease misrepresenting the earnings and profits derived from a distributorship or franchise misrepresenting the opportunities in the product or business; misrepresenting dealer assistance; and misrepresenting that the firm is affiliated with the U.S. Government or U.S. Postal Service. The order further requires respondents to initiate a 10-day, cooling-off period during which purchasers may cancel their contracts and receive full refund of all monies spent.

Appearances

For the Commission: *R. F. Manifold.*

For the respondents: *Thomas Steffen* of *George, Steffen & Simmons,* Las Vegas, Nevada.

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 Postage Stamp Service Bureau, Inc., a corporation, and Carlton Lee Struble, individually and as an officer of said corporation, hereinafter referred to as respondents, have 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: