IN THE MATTER OF

RECKITT & COLMAN PLC

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3571. Consent Order, April 4, 1995--Set Aside Order, March 24, 1998

This order reopens and sets aside a 1995 consent order with Reckitt & Colman, (119 FTC 380), thus removing the Commission's prior approval requirement for acquiring the assets of or the rights related to any carpet deordorizer businesses in the United States.

ORDER SETTING ASIDE ORDER

On December 5, 1997, Reckitt & Colman plc ("R&C"), the respondent named in the above-referenced consent order ("order") issued by the Commission on April 4, 1995, filed its Petition to Reopen and Modify Consent Order ("Petition") in this matter. R&C asks that the Commission reopen and modify the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Concerning Prior Approval and Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement").[1] The Petition requests that the Commission reopen and modify the order to eliminate the prior approval provision set forth in paragraph VI of the order, or, in the alternative, substitute a prior notification requirement for the prior approval requirement. The thirty-day public comment period on the Petition ended on January 13, 1998. No comments were received. For the reasons discussed below, the Commission has determined to grant R&C's Petition.

The complaint in this matter alleges that R&C's agreement with Eastman Kodak Company ("Kodak"), L&F Products, Inc. ("L&F"), a wholly-owned subsidiary of Kodak, and Sterling Winthrop Inc., a wholly-owned subsidiary of L&F, to acquire the household products, professional products and personal products businesses of L&F violated Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended,

[1] 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

15 U.S.C. 18, by lessening competition and tending to create a monopoly in the carpet deodorizer products business in the United States.[2]

The order required R&C to divest the "Carpet Deodorizer Assets" and "Rug Cleaning Assets," as defined in paragraphs I.H and I.J, respectively, of the order.[3] On February 23, 1995, the Commission approved R&C's application to divest the "Rug Cleaning Assets" to Playtex Products, Inc. On August 21, 1995, the Commission approved R&C's application to divest the "Carpet Deodorizer Assets" to Block Drug Co., Inc. Under the order, R&C is prohibited for a ten-year period from acquiring without the prior approval of the Commission any stock or related assets of any concern engaged in the "Carpet Deodorizer Products" business in the United States.[4]

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement.[5] The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements."[6]

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or

[2] Complaint ¶¶ V, VI, and VII.

[3] Order ¶¶ I.H and I.J, II and III.

[4] Order ¶ VI.

[5] Prior Approval Policy Statement at 2.

[6] *Id.*

attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger."[7] As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order."[8] The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement.[9]

The presumption is that setting aside the general prior approval requirement of paragraph VI is in the public interest. There is no evidence in the record that suggests that this matter presents any of the circumstances identified by the Prior Approval Policy Statement as appropriate for retaining a narrow prior approval provision, nor is there any indication of the circumstances that would warrant the substitution of a prior notice provision for the prior approval provision. There is nothing to suggest that the respondent would attempt the same or essentially the same merger that gave rise to the original complaint. In addition, it appears likely that future mergers within the relevant market would be HSR reportable. R&C completed the divestitures required by the order. Accordingly, nothing to overcome the presumption having been presented, and because the only remaining obligation under the order is the prior approval requirement in paragraph VI and the attendant reporting requirements, the Commission has determined to reopen the proceeding in Docket No. C-3571 and set aside the order.

Accordingly, *It is hereby ordered,* That this matter be, and it hereby is, reopened, and that the Commission's order issued on April 4, 1995, be, and it hereby is, set aside as of the effective date of this order.

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[7] *Id.* at 3.

[8] *Id.* at 4.

[9] *Id.*

IN THE MATTER OF

HAROLD A. HONICKMAN, ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9233. Consent Order, July 25, 1991--Set Aside Order, March 31, 1998

This order reopens and sets aside a 1991 consent order (modified in July 1992 and March 1993) with Harold A. Honickman, (115 FTC 623), thus removing the Commission's prior approval requirement for acquiring the assets of or the rights related to any bottling operation in the New York metropolitan area.

ORDER SETTING ASIDE ORDER

On November 5, 1997, Harold A. Honickman ("Honickman") filed a Petition To Modify Consent Order ("Petition") in Docket No. 9233 ("order") pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions ("Prior Approval Policy Statement").[1] The Petition requests that the Commission reopen and modify the order to terminate the prior approval provision set forth in paragraph II of the order. The Petition was placed on the public record for thirty days and no comments were received. The Commission has determined to terminate the prior approval provision of the order by setting aside the order.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement.[2] The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter,

[1] 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

[2] Prior Approval Policy Statement at 2.

"Commission orders in such cases will not include prior approval or prior notification requirements."[3]

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger."[4] As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order."[5] The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement.[6]

There is no evidence in the record that suggests that this matter presents any of the circumstances identified by the Prior Approval Policy Statement as appropriate for retaining a narrow prior approval provision, nor is there any indication of the circumstances that would warrant the substitution of a prior notice provision for the prior approval provision. There is nothing to suggest that Honickman would attempt the same or essentially the same acquisition that gave

[3] *Id.*

[4] *Id.* at 3.

[5] *Id.* at 4.

[6] *Id.*

rise to the original complaint. In addition, it appears likely that future acquisitions that may have adverse competitive consequences within the relevant market would be HSR reportable. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order because deleting the prior approval requirement, in effect, would eliminate all of Honickman's future obligations under the order.[7]

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened, and that the order be, and it hereby is, set aside as of the effective date of this order.

Commissioner Azcuenaga recused.

[7] *See, e.g.*, S.C. Johnson & Son, Inc., Docket No. C-3418, Order Setting Aside Order (January 4, 1996).

IN THE MATTER OF

TRW INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3790. Complaint, April 6, 1998--Decision, April 6, 1998

This consent order requires, among other things, the Ohio-based corporation to divest, to an acquirer approved by the Commission and the Dept. of Defense, BDM's SETA service contract with the BMDO and all of BDM's assets associated with the performance of that contract within 120 days from the date TRW consummates its proposed acquisition of BDM. The consent order also requires TRW to provide technical assistance to the acquirer for a period of one year.

Appearances

For the Commission: *Nicholas Koberstein, Yolanda Gruendel, Ann Malester* and *William Baer.*

For the respondent: *Tom D. Smith, Jones, Day, Reavis & Pogue*, Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, TRW Inc. ("TRW"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting securities of BDM International Inc. ("BDM"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent TRW is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal executive offices located at 1900 Richmond Road, Cleveland, Ohio.

II. ACQUIRED COMPANY

2. BDM is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 1501 BDM Way, McLean, Virginia.

III. JURISDICTION

3. TRW and BDM are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

4. On November 20, 1997, TRW and BDM entered into an Agreement and Plan of Merger whereby TRW will acquire all of the issued and outstanding common shares of BDM for approximately $942 million (the "Acquisition").

V. THE RELEVANT MARKETS

5. The relevant lines of commerce in which to analyze the effects of the acquisition are: (a) the research, development, manufacture and sale of a ballistic missile defense system for the United States Department of Defense ("BMD System"); and (b) the provision of systems engineering and technical assistance services to the United States Ballistic Missile Defense Organization ("SETA Services").

6. The United States is the relevant geographic area in which to analyze the effects of the acquisition in both relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

7. The market for the research, development, manufacture and sale of a BMD System is highly concentrated whether measured by the Herfindahl-Hirschmann Index ("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios"). Respondent is a member of one of only two teams competing to supply a BMD System to the United States Department of Defense.

8. The market for SETA Services is highly concentrated whether measured by the HHI or by concentration ratios. BDM has been the only provider of SETA Services since 1994.

9. Respondent, through the Acquisition, would be engaged in both the research, development, manufacture and sale of a BMD System and the provision of SETA Services.

VII. BARRIERS TO ENTRY

10. New entry into the market for the research, development, manufacture and sale of a BMD System would be difficult and unlikely. The time required to develop the necessary expertise to manufacture a BMD System would far exceed two years. The cost to develop the necessary technology to manufacture a BMD System would be prohibitively high.

11. New entry into the market for the provision of SETA Services would be untimely. The Department of Defense intends to award a BMD System procurement contract within the next six months. It would not be possible for a firm to develop the necessary expertise to provide SETA Services in that time.

VIII. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the market for a BMD System in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. Respondent may gain access to competitively sensitive non-public information concerning the other BMD System manufacturers, so that actual competition between respondent and the other BMD System manufacturers will be reduced; and

b. Respondent may be in a position to disadvantage the other BMD System manufacturers, so that actual competition between respondent and the other BMD System manufacturers will be reduced.

IX. VIOLATIONS CHARGED

13. The Acquisition described in paragraph four, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

14. The Agreement and Plan of Merger described in paragraph four constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of all of the outstanding voting common stock of BDM International Inc. ("BDM"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement to Hold Separate and an Agreement Containing Consent Order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Agreements is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Agreement Containing Consent Order and Agreement to Hold Separate and placed such Agreements on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent TRW Inc. ("TRW") is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Ohio, with its office and principal place of business located at 1900 Richmond Road, Cleveland, Ohio.

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

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. *"Respondent"* or *"TRW"* means TRW Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by TRW Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. *"BDM"* means BDM International Inc., a Delaware corporation with its principal place of business at 1501 BDM Way, McLean, VA, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by BDM International Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. *"Commission"* means the Federal Trade Commission.

D. *"Ballistic Missile Defense Organization"* means the agency of the Department of Defense that is chartered by the Secretary of Defense under Department of Defense Directive 5134.9 and mandated by Congress to develop ballistic missile defense systems.

E. *"SETA Services Operations"* means all assets, properties, business and goodwill, tangible and intangible, held by BDM and used in the provision of SETA Services to the Ballistic Missile Defense Organization under contract HQ0006-95-C-0006, including, without limitation, the following:

1. All rights, obligations and interests in contract HQ0006-95-C-0006 between the Ballistic Missile Defense Organization and BDM, or any subcontract of a contract between any entity and the Ballistic Missile Defense Organization where such subcontract is between BDM and such entity;

2. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

3. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, financial information, technical information, management information and systems, software, software licenses, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

4. All rights, title and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

5. All rights, title and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;

7. All books, records, and files;

8. All data developed, prepared, received, stored or maintained under contract HQ0006-95-C-0006, or any predecessor contract or subcontract to support the operations of the Ballistic Missile Defense Organization;

9. All items of prepaid expense; and

10. All employment contracts.

F. *"SETA Services"* means systems engineering and technical assistance services provided by BDM to the Ballistic Missile Defense Organization pursuant to HQ0006-95-C-0006 or any predecessor contract.

G. *"Proposed acquisition"* means TRW's proposed acquisition of all the voting securities of BDM pursuant to an Agreement and Plan of Merger dated November 20, 1997.

H. *"Non-public BMDO information"* means any information not in the public domain furnished by any company or the Ballistic Missile Defense Organization to BDM in its capacity as provider of SETA Services under contract HQ0006-95-C-0006 or any predecessor contract or subcontract.

II.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, within one hundred and twenty (120) days from the date the proposed acquisition is consummated, the SETA Services Operations, and shall also divest such additional ancillary assets as are necessary to assure the continued ability of the acquirer to provide SETA Services.

B. Respondent shall divest the SETA Services Operations only to an acquirer that receives the prior approval of the Commission and the Department of Defense and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continued provision of SETA Services in the same manner as provided by BDM at the time of the proposed divestiture, at no increased cost to the Ballistic Missile Defense Organization, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the SETA Services Operations, respondent shall take such actions as are necessary to ensure the continued provision of SETA Services, to maintain the viability and marketability of the assets used to provide SETA Services, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets used to provide SETA Services, except for ordinary wear and tear.

D. Upon reasonable notice from the acquirer or from the Ballistic Missile Defense Organization to respondent, respondent shall provide such technical assistance to the acquirer as is reasonably necessary to enable the acquirer to provide SETA Services in substantially the same manner and quality as provided by BDM prior to divestiture. Such assistance shall include reasonable consultation with knowledgeable employees and training at the acquirer's facility for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the skills necessary to perform the SETA Services. Respondent shall convey all know-how necessary to perform SETA Services in substantially the same manner and quality employed or achieved by BDM prior to divestiture. However, respondent shall not be required to continue providing such assistance for more than one year from the date of the divestiture. Respondent shall charge the acquirer at a rate no more than its own costs for providing such technical assistance.

E. At the time of the execution of a purchase agreement between respondent and a proposed acquirer of the SETA Services Operations, respondent shall provide the acquirer with a complete list of all current full-time, non-clerical, salaried employees of BDM engaged in the provision of SETA Services on the date of the purchase agreement. Such list shall state each such individual's name, position, address, telephone number, and a description of the duties of and work performed by the individual in connection with the SETA Services Operations.

F. Respondent shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in paragraph II.E of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, respondent shall further provide the acquirer with an opportunity to interview such individuals and negotiate employment contracts with them.

G. Respondent shall provide all current employees identified in paragraph II.E of this order with financial incentives to continue in their employment positions pending divestiture of the SETA Services Operations, and to accept employment with the acquirer at the time of the divestiture. Such incentives shall include continuation of all employee benefits offered by BDM until the date of the divestiture, and vesting of all pension benefits.

H. For a period of two (2) years commencing on the date of the individual's employment by the acquirer, respondent shall not re-hire any of the individuals identified in paragraph II.E of this order who accept employment with the acquirer.

I. Prior to divestiture, respondent shall not transfer any of the individuals identified in paragraph II.E of this order whose employment responsibilities involve access to non-public BMDO information to any other positions.

J. Respondents shall comply with all terms of the Agreement to Hold Separate, attached to this order and made part hereof as Appendix I.

III.

It is further ordered, That:

A. If respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the SETA Services Operations within one hundred and twenty (120) days from the date the proposed

acquisition is consummated, the Commission may appoint a trustee to divest the SETA Services Operations. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission and the Department of Defense, the trustee shall have the exclusive power and authority to divest the SETA Services Operations.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4.The trustee shall have nine (9) months from the date the Commission approves the trust agreement described in paragraph III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the nine-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the

divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the SETA Services Operations or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission and the Department of Defense.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the SETA Services Operations.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the SETA Services Operations.

12. The trustee shall report in writing to respondent and the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestiture.

IV.

It is further ordered, That:

A. Respondent shall not, absent the prior written consent of the proprietor of non-public BMDO information, provide, disclose, or otherwise make available to any entity any non-public BMDO information.

B. Respondent shall use any non-public BMDO information only in its capacity as provider of technical assistance to the acquirer, pursuant to paragraph II.D of this order, unless respondent obtains the prior written consent of the proprietor of the non-public BMDO information.

V.

It is further ordered, That within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondent has fully complied with the provisions of paragraphs II or III of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it

intends to comply, is complying, and has complied with paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

VI.

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

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect any facility and to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present, regarding any such matters.

VIII.

It is further ordered, That, notwithstanding any other provision of this order, this order shall terminate on April 6, 2008.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate is by and between TRW Inc.("TRW"), a corporation organized and existing under the laws of the State of Ohio, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, TRW has proposed to acquire one hundred percent of the voting securities of BDM International Inc. ("BDM"); and

Whereas, the Commission is now investigating the proposed acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, TRW has entered into an Agreement Containing Consent Order ("Consent Agreement"), which requires, among other things, TRW to divest the SETA Services Operations, as defined; and

Whereas, if the Commission accepts the Consent Agreement, the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status of the SETA Services Operations during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed acquisition might not be possible, or might be less than an effective remedy; and

Whereas, TRW entering into this Agreement to Hold Separate shall in no way be construed as an admission by TRW that the proposed acquisition constitutes a violation of any statute; and

Whereas, TRW understands that no act or transaction contemplated by this Agreement to Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement to Hold Separate.

Now, therefore, upon the understanding that the Commission has not yet determined whether it will challenge the proposed acquisition, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, TRW agrees as follows:

1. TRW agrees to execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date TRW signs the Consent Agreement.

2. TRW agrees that from the date the proposed acquisition is consummated until the earlier of the dates listed in subparagraphs 2.a - 2.b, it will comply with the provisions of paragraph 3 of this Agreement to Hold Separate:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules;

b. The day after the divestiture required by the Consent Order has been completed.

3. To ensure the complete independence and viability of the SETA Services Operations and to assure that no competitive information is exchanged between the SETA Services Operations and TRW, TRW shall hold the SETA Services Operations separate and apart on the following terms and conditions:

a. TRW will appoint, within three (3) days of the date the proposed acquisition is consummated, an individual to manage and maintain the SETA Services Operations who will make no changes to the SETA Services Operations other than changes made in the ordinary course of business. This individual ("the Manager") shall manage the SETA Services Operations independently of the management of TRW's other businesses. The Manager shall not be involved in any way in the operations or management of any other TRW business.

b. The Manager shall have exclusive control over the SETA Services Operations, with responsibility for the management of the SETA Services Operations and for maintaining the independence of that business.

c. TRW shall not exercise direction or control over, or influence directly or indirectly the Manager relating to the operation of the SETA Services Operations; provided, however, that TRW may exercise only such direction and control over the Manager and the SETA Services Operations as is necessary to assure compliance with this Agreement to Hold Separate and with all applicable laws.

d. TRW shall maintain the marketability, viability, and competitiveness of the SETA Services Operations and shall not sell, transfer, encumber them (other than in the normal course of business or to assure compliance with the Consent Agreement), or otherwise impair their marketability, viability or competitiveness.

e. Except for the Manager and support service employees involved in the SETA Services Operations, such as Human Resources, Legal, Tax, Accounting, Insurance, and Internal Audit employees, TRW shall not permit any other TRW employee, officer, or director to be involved in the management of the SETA Services Operations. Employees of the SETA Services Operations shall not be involved in any other TRW business.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to divest assets, TRW, other than employees involved in the SETA Services Operations, or support service employees involved in the SETA Services Operations, shall not receive or have access to, or the use of, non-public BMDO information, or any material confidential information about the SETA Services Operations or the activities of the Manager or support service employees involved in the SETA Services Operations, not in the public domain.

g. TRW shall circulate to all its employees involved with the SETA Services Operations or any Ballistic Missile Defense Organization program, and appropriately display, a copy of this Agreement to Hold Separate and the Consent Agreement.

h. If the Manager ceases to act or fails to act diligently, a substitute Manager shall be appointed.

i. The Manager shall have access to and be informed about all companies who inquire about, seek or propose to buy the SETA Services Operations. TRW may require the Manager to sign a confidentiality agreement prohibiting the disclosure of any material

confidential information gained as a result of his or her role as a Manager to anyone other than the Commission.

j. The Manager shall report in writing to the Commission every thirty (30) days concerning his or her efforts to accomplish the purposes of this Agreement to Hold Separate.

4. TRW shall deliver, within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Agreement to Hold Separate to the Ballistic Missile Defense Organization.

5. TRW waives all rights to contest the validity of this Agreement to Hold Separate.

6. For the purpose of determining or securing compliance with this Agreement to Hold Separate, subject to any legally recognized privilege and applicable United States Government national security requirements, and upon written request, and on reasonable notice, to TRW made to its principal office, TRW shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of TRW and in the presence of counsel to inspect any facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of TRW relating to compliance with this Agreement to Hold Separate; and

b. Upon five (5) days' notice to TRW and without restraint or interference from it, to interview officers, directors, or employees of TRW, who may have counsel present, regarding any such matters.

7. This Agreement to Hold Separate shall not be binding until accepted by the Commission.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I agree with my colleagues that the final decision and order properly addresses the anticompetitive implications of the proposed transaction, and I concur in the Commission's decision except to the extent that the order makes the Department of Defense a participant with the Commission in giving antitrust approval to any divestiture under the order.

As I said in my concurring statement in Litton Industries, Inc./PRC, Docket No. C-3656 (May 7, 1996), with due deference to the Department of Defense and in full recognition that it has the power to decide the firms with which it will deal for goods and services vital to the national security, no persuasive argument has been presented to suggest that the Department has or should have a role in deciding the competitive implications of a particular divestiture under Section 7 of the Clayton Act. No showing has been made that this case is unique, that national security issues or concerns relating to the integrity of the Ballistic Missile Defense Organization's Lead Systems Integrator Program, to the extent they may be affected by this order, could not have been addressed, as they apparently have been in other defense-related transactions,[1] without inclusion of the Department of Defense as a necessary participant in a decision committed by statute to the Commission.

The need to obtain technical assistance in reviewing commercial transactions in sophisticated markets is not uncommon. The importance of obtaining advice and assistance is especially acute in cases involving issues of national security, a subject that is in the province of the Department of Defense and other security agencies. The Commission might well find it necessary to consult with the Department of Defense both to assess the viability of a proposed buyer of the BDM assets to be divested and to ensure that a proposed transaction is not inconsistent with national security. I would have preferred, however, to accommodate that need in this case by means other than making the Department of Defense a partner with the Commission in interpreting and applying a final order of the Commission.

[1] *See* Lockheed Corporation, C-3576 (May 9, 1995); *see also ARKLA, Inc.*, 112 FTC 509 (1989).

IN THE MATTER OF

UROLOGICAL STONE SURGEONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3791. Complaint, April 6, 1998--Decision, April 6, 1998

This consent order prohibits, among other things, the three Illinois-based firms and two doctors from agreeing or attempting to agree to fix prices, discounts, or other terms of sale or contract for lithotripsy professional services (treatment for kidney stones); requires the respondents to terminate third-party payer contracts that include the challenged fees at contract renewal time; and also requires them to notify the Commission at least 45 days before forming or participating in an integrated joint venture to provide lithotripsy professional services.

Appearances

For the Commission: *Nicholas Franczyk, Karen Dodge, John Hallerud, David Narrow, C. Steven Baker, David Pender, Robert Leibenluft, Mark Whitener* and *William Baer.*

For the respondents: *Richard Raskin, Sidley & Austin*, Chicago, IL.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Urological Stone Surgeons, Inc. ("USS"), Stone Centers of America, L.L.C. ("SCA"), Urological Services, Ltd. ("USL"), and Donald M. Norris, M.D., and Marc A. Rubenstein, M.D., individually, and as officers, directors, and shareholders of USS, as owners and officers of USL, and as shareholders of SCA, hereinafter sometimes referred to as respondents, have violated and are violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 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 that respect as follows:

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

A. *"Extracorporeal shock wave lithotripsy"* or *"lithotripsy"* means the treatment of kidney stones without surgery by projecting, against the patient's body, high-energy shock waves that pulverize the kidney stones into particles which are then eliminated through the urinary tract. *"Lithotripter"* means a machine used to generate such shock waves.

B. *"Urologist"* means a physician licensed to practice medicine who entirely or substantially limits his or her practice to the specialized practice of urology, which includes the diagnosis and treatment of diseases or medical conditions of or affecting the urogenital system.

C. *"Urologist professional services"* means any services provided by a urologist relating to the diagnosis and treatment of diseases or medical conditions of or affecting the urogenital system.

D. *"Lithotripsy professional services"* means any urologist professional services associated with the provision of extracorporeal shock wave lithotripsy.

E. *"Lithotripsy machine services"* means the provision of extracorporeal shock wave lithotripsy, including, but not limited to, the supplying of the lithotripter, operation of the lithotripter, and providing accompanying services to the patients, but excluding lithotripsy professional services and anesthesia services associated with extracorporeal shock wave lithotripsy.

F. *"USS"* means Urological Stone Surgeons, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by USS, their successors and assigns, and their directors, officers, employees, agents, and representatives.

G. *"USL"* means Urological Services, Ltd., its predecessors, subsidiaries, divisions, groups and affiliates controlled by USL, their successors and assigns, and their directors, officers, employees, agents, and representatives.

H. *"SCA"* means Stone Centers of America, L.L.C., its predecessors, subsidiaries, divisions, groups and affiliates controlled by SCA, their successors and assigns, and their directors, officers, employees, agents, and representatives.

I. *"Respondent urologists"* means Donald M. Norris, M.D., and Marc A. Rubenstein, M.D.

J. *"Person"* means any natural person, corporate entity, partnership, association, joint venture, government entity, trust, or other entity.

K. *"Third-party payer"* means any person that purchases, reimburses for, or otherwise pays for all or part of any health care services for itself or for any other person. Third-party payer includes,

but is not limited to, any health insurance company; preferred provider organization; prepaid hospital, medical, or other health service plan; health maintenance organization; government health benefits program; and employer or other person providing or administering any self-insured health benefits program.

L. *"Contracted services"* means provision of lithotripsy to patients pursuant to a written contractual agreement with a purchaser or third-party payer of lithotripsy services, in which the amount and terms of reimbursement for such services are specified in the contractual agreement.

M. *"Global fee or bill for lithotripsy"* means a method of billing or charging for lithotripsy whereby the charges for its component services, including lithotripsy machine services, lithotripsy professional services, and anesthesia services, are billed and/or paid as a single, combined charge, whether or not the component services are separately itemized in the bill.

RESPONDENTS

PAR. 2.A. Respondent USS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1875 West Dempster Street, Park Ridge, Illinois. There are approximately 35 shareholders of USS, including respondent urologists, all of whom are urologists licensed to practice medicine in the State of Illinois and engaged in the business of providing urologist professional services, including lithotripsy professional services, to patients. USS's shareholders comprise approximately 15 percent of the urologists in the Chicago metropolitan area.

B. Respondent SCA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1875 West Dempster Street, Park Ridge, Illinois. SCA is jointly owned by USS, the respondent urologists, and approximately 66 additional urologists, all of whom are licensed to practice medicine in the State of Illinois and are engaged in the business of providing urologist professional services, including lithotripsy professional services, to patients. SCA's shareholders comprise approximately 45 percent of the urologists in the Chicago metropolitan area.

C. Respondent USL is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1875 West Dempster Street, Park Ridge, Illinois. USL is owned by respondents Donald M. Norris, M.D., and Marc A. Rubenstein, M.D.

D. Respondents Donald M. Norris, M.D., and Marc A. Rubenstein, M.D., are urologists, licensed to practice medicine in the State of Illinois, and engaged in the business of providing urologist professional services, including lithotripsy professional services, to patients. Their business address is 1875 West Dempster Street, Suite 365, Park Ridge, Illinois. The respondent urologists are officers, directors, and shareholders of USS; owners and officers of USL; and shareholders in SCA.

JURISDICTION

PAR. 3. The acts and practices of the respondents, including those alleged herein, are in or affect commerce within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

RESPONDENTS' BUSINESS ACTIVITIES

PAR. 4. USS, SCA, USL, the respondent urologists, and other unnamed urologists, are engaged in the provision of lithotripsy under the name Parkside Kidney Stone Center ("Parkside"). Parkside operates two lithotripsy facilities. Since February 1986, Parkside has operated a lithotripsy facility in Park Ridge, Illinois; USS provides lithotripsy machine services at Parkside's Park Ridge facility. Since February 1995, Parkside has operated a second lithotripsy facility in LaGrange, Illinois; SCA provides lithotripsy machine services at Parkside's LaGrange facility. The respondent urologists, and other unnamed urologists, have jointly invested in the purchase and operation of the two lithotripsy machines that Parkside operates. USL provides billing and collection services for all lithotripsy provided at Parkside's two facilities, including lithotripsy professional services. The respondent urologists and approximately 140 other unnamed urologists, including the other urologists who are shareholders in USS or SCA, each provide lithotripsy professional services to their own patients at Parkside's facilities.

PAR. 5. Except to the extent that competition has been restrained as alleged herein, the urologists who provide lithotripsy professional services at Parkside, including the respondent urologists and the other shareholders of USS and SCA, have been in competition with other urologists who provide lithotripsy professional services at Parkside.

PAR. 6. Of all lithotripsy procedures performed at the six to eight providers of lithotripsy machine services operating in the Chicago metropolitan area during the past several years, approximately two-thirds of the procedures are, and for several years have been, performed at Parkside. Currently, this amounts to more than 2500

lithotripsy procedures per year performed at the Parkside facilities. Approximately 65 percent of the urologists in the Chicago metropolitan area use Parkside to provide lithotripsy to some or all of their patients needing lithotripsy. Of those urologists using Parkside to provide lithotripsy, approximately 80 percent use Parkside exclusively.

RESPONDENTS' ACTS AND PRACTICES

PAR. 7. The respondent urologists and other unnamed urologists who are their competitors and who provide lithotripsy professional services at Parkside, including the shareholders of USS and SCA, agreed to fix the prices they would charge for such services.

PAR. 8. In furtherance of the agreement described in paragraph seven:

A. On or about March 18, 1985, USS informed its prospective investors, all of whom were urologists, that lithotripsy patients will pay or would be charged a set price, estimated at $2,000, for lithotripsy professional services, and that USS or its agents would bill and collect for such services performed at Parkside.

B. On or about April 15, 1985, USS entered into an agreement with a third party to perform the day-to-day management and operation of Parkside. The agreement provided, in part, that USS will "use its best efforts to set forth suggested fee structure for [lithotripsy professional services at Parkside, that the] fee will be suggested to be $2,000," and that such prices would be subject to annual increases to reflect the changes in the costs of medical services in the metropolitan Chicago area.

C. The respondent urologists and other unnamed urologists, including the shareholders of USS and SCA, agreed to use respondent USL as their common billing agent. Each urologist providing lithotripsy professional services at Parkside was required to sign an agreement with USL which: (1) states that it is "being signed between [USL] and all physicians providing . . . services [at Parkside];" (2) prohibits the physician from independently billing patients for any services billed by USL; and (3) requires the urologist to "accept as payment in full for such services the sum paid . . . by USL."

D. On or about the day Parkside opened its first Chicago area lithotripsy facility for business in Park Ridge, Illinois, respondent USL produced and disseminated to the urologists fee schedules that included, among other things, a $2,000 charge for lithotripsy professional services.

E. On or about April 1, 1987, and each year thereafter until 1993, Parkside's charges, including the charges for lithotripsy professional services, were increased in accordance with the April 15, 1985, agreement described above, and revised fee schedules were distributed to the urologists who provided lithotripsy professional services at Parkside.

F. In February, 1995, Parkside opened a second Chicago area lithotripsy facility, located in LaGrange, Illinois. Lithotripsy services provided at this facility were and continue to be billed for and reimbursed in the same manner and at the same prices as those provided at Parkside's Park Ridge facility. Investors in SCA are prohibited from having an ownership interest, either directly or indirectly, in any other entity that owns or operates a lithotripter within a 30-mile radius of LaGrange, Illinois, and may not compete, directly or indirectly, with SCA within such 30-mile radius.

G. Until about April 1, 1995, respondent USL always or almost always billed the amounts listed in the fee schedules for lithotripsy professional services provided at Parkside, including lithotripsy professional services performed in connection with contracted services.

H. On or about April 1, 1995, respondent USL revised the billing policy for lithotripsy services provided at Parkside by requiring each urologist providing lithotripsy professional services at Parkside to determine that charge independently. Since that date, USL has billed each individual urologist's charge for lithotripsy professional services. The individually determined charges for lithotripsy professional services by urologists using the Parkside facilities have varied greatly in amount since Parkside revised its billing policy.

I. Although USL has billed the individual urologist's charge for lithotripsy professional services since about April 1, 1995, urologists providing lithotripsy professional services at Parkside pursuant to contracted services agreements that provide for a global fee or bill for lithotripsy continue to receive a uniform amount of reimbursement from each such contracted purchaser or third-party payer. Urologists providing lithotripsy professional services at Parkside pursuant to contracted services agreements that provide for reimbursement based on percentage discounts off the urologists' fees or charges have a uniform percentage discount applied to their fees or charges for urologist professional services by each such contracted purchaser or third-party payer. Such uniform payment and discount provisions for lithotripsy professional services are negotiated jointly by, for, or on behalf of respondents, and for or on behalf of other urologists using

Parkside, with each purchaser or third-party payer that has an agreement with Parkside for contracted services.

PAR. 9. By engaging in the acts and practices alleged herein, USS, SCA, USL, the respondent urologists, and other unnamed urologists have combined or conspired to fix, and have fixed, the prices for lithotripsy professional services performed at Parkside.

PAR. 10. The individual respondents and the other unnamed urologists who invested in Parkside financially integrated for the purposes of purchasing and operating Parkside's lithotripsy machines. However, it was not reasonably necessary to achieving the benefits of this legitimate joint venture activity for respondents to fix or set the fees for urologist professional services, as described in paragraphs seven through nine of this complaint. Furthermore, the respondent urologists and other unnamed urologists who provide lithotripsy professional services at Parkside have not substantially integrated their professional practices so as to justify respondents' acts or practices in fixing or setting fees for urologist professional services, as described in paragraphs seven through nine of this complaint.

EFFECTS OF RESPONDENTS' ACTS AND PRACTICES

PAR. 11. The acts and practices of the respondents, as alleged herein, have had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to injure consumers in the following ways, among others:

A. By restraining competition among urologists in the provision of lithotripsy professional services; and

B. By fixing or increasing the prices that are paid to urologists who provide lithotripsy professional services.

VIOLATIONS OF THE FTC ACT

PAR. 12. The acts and practices of the respondents alleged herein constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The violation or the effects thereof, as herein alleged, are continuing and will continue or recur in the absence of the relief herein requested.

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 respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

The respondents, their attorneys, 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 consent agreement and placed such agreement on the public record for a period of sixty (60) days, and no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent USS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 1875 West Dempster Street, Park Ridge, Illinois.

2. Respondent SCA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 1875 West Dempster Street, Park Ridge, Illinois.

3. Respondent USL is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 1875 West Dempster Street, Park Ridge, Illinois.

4. Respondents Donald M. Norris, M.D., and Marc A. Rubenstein, M.D., are officers, directors, and shareholders of respondent USS, co-owners and officers of respondent USL, and shareholders of respondent SCA. Respondents Donald M. Norris, M.D., and Marc A. Rubenstein, M.D., are urologists engaged in the business of providing medical services to patients for a fee. Their

principal office and place of business is 1875 West Dempster Street, Suite 365, Park Ridge, Illinois.

5. The acts and practices of the respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

ORDER

I.

It is ordered, That, for purposes of this order, the following definitions shall apply:

A. *"Extracorporeal shock wave lithotripsy"* or *"lithotripsy"* means the treatment of kidney stones without surgery by projecting, against the patient's body, high-energy shock waves that pulverize the kidney stones into particles which are then eliminated through the urinary tract. *"Lithotripter"* means a machine used to generate such shock waves.

B. *"Urologist"* means a physician licensed to practice medicine who entirely or substantially limits his or her practice to the specialized practice of urology, which includes the diagnosis and treatment of diseases or medical conditions of or affecting the urogenital system.

C. *"Lithotripsy professional services"* means any urologist professional services associated with the provision of extracorporeal shock wave lithotripsy.

D. *"Lithotripsy machine services"* means the provision of extracorporeal shock wave lithotripsy, including, but not limited to, the supplying of the lithotripter, operation of the lithotripter, and providing accompanying services to the patients, but excluding lithotripsy professional services and anesthesia services associated with extracorporeal shock wave lithotripsy.

E. *"USS"* means Urological Stone Surgeons, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by USS, their successors and assigns, and their directors, officers, employees, agents, and representatives.

F. *"USL"* means Urological Services, Ltd., its predecessors, subsidiaries, divisions, groups and affiliates controlled by USL, their successors and assigns, and their directors, officers, employees, agents, and representatives.

G. *"SCA"* means Stone Centers of America, L.L.C., its predecessors, subsidiaries, divisions, groups and affiliates controlled

by SCA, their successors and assigns, and their directors, officers, employees, agents, and representatives.

H. *"Respondent urologists"* means Donald M. Norris, M.D., and Marc A. Rubenstein, M.D.

I. *"Person"* means any natural person, corporate entity, partnership, association, joint venture, government entity, trust, or other entity.

J. *"Third-party payer"* means any person that purchases, reimburses for, or otherwise pays for all or part of any health care services for itself or for any other person. Third-party payer includes, but is not limited to, any health insurance company; preferred provider organization; prepaid hospital, medical, or other health service plan; health maintenance organization; government health benefits program; and employer or other person providing or administering self-insured health benefits programs.

K. *"Global fee or bill for lithotripsy"* means a method of billing or charging for lithotripsy whereby the charges for its component services, including lithotripsy machine services, lithotripsy professional services, and anesthesia services, are billed and/or paid as a single, combined charge, whether or not the component services are separately itemized in the bill.

L. *"Integrated joint venture"* means a joint venture where the participants either: (a) share substantial financial risk that provides incentives for the participants to cooperate in controlling costs and improving quality by managing the provision of services by network participants; (b) implement an active and ongoing program to evaluate and modify practice patterns by the network's participants and create a high degree of interdependence and cooperation among the participants to control costs and ensure quality, so that the joint venture involves sufficient integration with the potential to achieve significant efficiencies; or (c) otherwise sufficiently integrate so that the joint venture has the potential to achieve significant efficiencies.

II.

A. *It is further ordered*, That each respondent, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, forthwith cease and desist from agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination with any other respondent or any other urologist: (1) to fix, establish, stabilize, set, tamper with, or negotiate the prices, discounts, or any other aspect or term relating to prices charged or billed to, or to be charged or billed to, or paid or reimbursed by, or to be paid or reimbursed by, any patient, purchaser, or third-party payer for

lithotripsy professional services (including prices established through the use of any global fee or bill for lithotripsy); and (2) concerning any other term of sale or contract for lithotripsy professional services to or with any patient, purchaser, or third-party payer.

B. *It is further ordered*, That respondents USS, SCA, and USL shall terminate any agreement or contract with any third-party payer for the provision of lithotripsy professional services that does not comply with paragraph II.A of this order at the earlier of: (1) the termination or renewal date (including any automatic renewal date) of such agreement or contract; or (2) receipt of a written request from a third-party payer to terminate such agreement or contract.

Provided that nothing in this order shall be construed to prohibit any respondent from performing pursuant to any existing agreement or contract with any third-party payer for the provision of lithotripsy professional services until the earlier of: (1) the termination or renewal date (including any automatic renewal date) of such agreement or contract; or (2) receipt of a written request from a third-party payer to terminate such agreement or contract.

Provided further that nothing in this order shall be construed to prohibit either respondent urologist from entering into an agreement or combination with any other physician with whom the respondent urologist practices in partnership or in a professional corporation, or who is employed by the same person as the respondent urologist, to deal with any patient, purchaser, or third-party payer on collectively determined terms.

Provided further that nothing in this order shall be construed to prohibit respondents USS, SCA, USL or respondent urologists from forming, facilitating the formation of, or participating in an integrated joint venture and dealing through such integrated joint venture with any patient, purchaser, or third-party payer on collectively determined terms regarding the provision of, or contracts or arrangements for the provision of, lithotripsy professional services, or of urology services including lithotripsy professional services.

III.

It is further ordered, That respondents USS, SCA, and USL shall:

A. Within thirty (30) days from the date this order becomes final, distribute a copy of the complaint and order in this matter to each of their current shareholders, officers, and directors, and to each other agent, representative, or employee of USS, SCA, or USL whose activities are affected by this order, or who have responsibilities with respect to the subject matter of this order;

B. For a period of four (4) years from the date this order becomes final, and within thirty (30) days of the date the person assumes such position, distribute a copy of the complaint and order in this matter to each new shareholder, officer, and director of USS, SCA, or USL, and to each other agent, representative, or employee of USS, SCA, or USL whose activities are affected by this order, or who have responsibilities with respect to the subject matter of this order;

C. For a period of four (4) years from the date this order becomes final, distribute a copy of the complaint and order in this matter to each urologist who provides lithotripsy professional services in connection with USS, SCA, or USL within thirty (30) days from the date such urologist commences providing lithotripsy professional services in connection with USS, SCA, or USL; and

D. Within thirty (30) days from the date this order becomes final, distribute a copy of the complaint and order in this matter, together with the NOTICE in the Attachment to this order, to each third-party payer with whom respondent USS, SCA, or USL has an agreement or contract for the provision of lithotripsy professional services that does not comply with paragraph II.A of this order.

IV.

It is further ordered, That each respondent shall file a verified written report with the Commission within sixty (60) days after the date this order becomes final, annually thereafter for four (4) years on the anniversary of the date the order becomes final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which the respondent has complied and is complying with paragraphs II and III of this order.

V.

It is further ordered, That:

A. Respondents USS, SCA, and USL shall notify the Commission at least thirty (30) days prior to any proposed change in any corporate respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution

of subsidiaries or any other change in the corporation that may affect compliance obligations arising under this order; and

B. For ten years after the date this order becomes final, respondents USS, SCA, USL, and respondent urologists shall notify the Commission in writing at least forty-five (45) days prior to forming or participating in an integrated joint venture and dealing through such integrated joint venture with any patient, purchaser or third-party payer on collectively determined terms regarding the provision of, or contracts or arrangements for the provision of, lithotripsy professional services or of urology services including lithotripsy professional services.

VI.

It is further ordered, That each respondent shall, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, permit duly authorized Commission representatives:

A. Access during respondent's office hours, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in respondent's possession or control that relate to any matter contained in this order; and

B. An opportunity, subject to respondent's reasonable convenience, to interview respondent, and officers, directors, employees, agents, or other representatives of respondent, who may have counsel present, regarding such matters.

VII.

It is further ordered, That this order shall terminate on April 6, 2018.

Commissioner Thompson and Commissioner Swindle not participating. Commissioner Azcuenaga concurring in part and dissenting in part.

ATTACHMENT TO ORDER

NOTICE

Urological Stone Surgeons, Inc. ("USS"), Stone Centers of America, L.L.C. ("SCA"), and Urological Services, Ltd. ("USL"), doing business as Parkside Kidney Stone Center ("Parkside"), are prohibited by an order issued by the Federal Trade Commission from entering into any arrangement, including any agreement or contract with purchasers or third-party payers of lithotripsy services, whereby competing urologists agree among themselves concerning any aspect

of the prices, discounts, or other terms of sale or reimbursement of their professional services related to the provision of lithotripsy.

Purchasers and third-party payers who have entered into such contracts with Parkside have not engaged in any improper or unlawful conduct by signing such contracts, and are not covered by the order issued by the Federal Trade Commission. However, this order may affect such contracts with Parkside. If you currently have an agreement or contract with Parkside for the provision of lithotripsy services that includes any provisions establishing uniform prices, discounts, or other terms of sale or reimbursement for the professional services of urologists related to the provision of lithotripsy, the order permits you, at your discretion, to immediately terminate the agreement or contract by notifying the contracting party (USS, SCA, or USL) in writing. If you choose not to terminate the agreement or contract by this procedure, Parkside is required by the order to terminate the agreement or contract upon its stated termination or renewal date (including any date set therein for automatic renewal). However, the order does not prohibit Parkside from negotiating new agreements or contracts with you, so long as they do not involve the joint setting of any aspect of the prices, discounts, or other terms of sale or reimbursement of urologists' professional services related to the provision of lithotripsy.

Thus, the order does not prohibit Parkside from negotiating or entering into new contracts with you for the provision of lithotripsy machine services and anesthesia services related to lithotripsy, where you independently arrange with urologists for provision of their professional services for lithotripsy. In addition, Parkside is not prohibited from conveying information, offers, and responses between purchasers or payers and individual urologists providing their professional services related to the provision of lithotripsy, so long as these activities do not involve any explicit or implicit agreements among urologists regarding the prices, discounts, or other terms of sale or reimbursement of their professional services. This may be done, for example, by using a "messenger model" arrangement as discussed in the August 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and the U.S. Department of Justice.

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

I agree that an order requiring the respondents to cease and desist from fixing the price of professional lithotripsy services is warranted, but the requirement that the respondents, for ten years, give the Commission 45 days notice before "forming or participating in an integrated joint venture" that sets prices for lithotripsy services is unjustified and unnecessary.[1] The prior notice requirement departs from the Commission's policy adopting a presumption against prior approval and prior notice provisions in merger and joint venture orders.[2] An exception to the policy may be appropriate, if there is a credible risk that prior notice is necessary to prevent repetition of the unlawful conduct. Given the express prohibition in the order of the allegedly unlawful conduct, the potential liability for civil penalties for a violation, and the periodic reports of compliance that may be required under the order, no such necessity appears. I dissent from the prior notice requirement.

[1] The prior notice requirement is inconsistent with the weight of Commission precedent. Similar cases in the health care field typically have not imposed any notice requirements or have required notice within 30 days after certain joint venture activity. *See, e.g.*, Physician Group, Inc., Docket C-3610 (Aug. 11, 1995); Trauma Associates of North Broward, Inc., Docket C-3541 (Nov. 1, 1994); *Southbank IPA, Inc.*, 114 FTC 783 (1991); *Preferred Physicians, Inc.*, 110 FTC 157 (1988); *Medical Staff of Doctors' Hospital of Prince George's County*, 110 FTC 476 (1988). But *see* Montana Associated Physicians, Inc., Docket C-3704 (Jan. 13, 1997) (20-year prior approval); College of Physicians-Surgeons of Puerto Rico, File No. 971-0011 (filed D. Puerto Rico Oct. 2, 1997), Commissioner Azcuenaga concurring in part and dissenting from perpetual prior approval requirement.

[2] Prior Approval Policy Statement (June 1955), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,241.

IN THE MATTER OF

FOOTE, CONE & BELDING ADVERTISING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE CONSUMER LEASING ACT, REGULATION M AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3792. Complaint, April 6, 1998--Decision, April 6, 1998

This consent order prohibits, among other things, the Illinois-based advertising agency of Mazda Motor of America from misrepresenting in any motor vehicle lease advertisement the total amount due at lease signing or delivery, the amount down, and/or the down payment, capitalized cost, reduction, or other amounts that reduce the capitalized cost of the vehicle (or that no such amount is required).

Appearances

For the Commission: *Rolando Berrelez, Sally Pitofsky* and *David Medine.*

For the respondent: *Elroy H. Wolff, Sidley & Austin*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Foote, Cone & Belding Advertising, Inc., a corporation ("respondent" or "FCB"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Foote, Cone & Belding Advertising, Inc. is a Delaware corporation with its principal office or place of business at 101 East Erie Street, Chicago, Illinois.

2. Respondent, at all times relevant to this complaint, was an advertising agency of Mazda Motor of America, Inc. ("Mazda"). Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

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

4. Respondent has prepared and disseminated, or has caused to be prepared and disseminated, consumer lease advertisements ("lease advertisements") for Mazda vehicles, including but not necessarily limited to the attached FCB Exhibits A through D. FCB Exhibits A through C are television lease advertisements (attached hereto in video and storyboard format) and Exhibit D is a print lease advertisement. These advertisements contain the following statements:

A. [Audio:] "One penny down. Great leases. Very little time. On Protegé. A penny (down). And one eighty-nine. The B2300 SE. A penny down. And one ninety-nine. 626. A penny and two-o-nine. Miata. . . . A penny and two nineteen. Passion for the road. Put your penny down."
[Video:] [open on a man jumping through a rain of pennies.]
"MAZDA ONE PENNY DOWN 36 MO. LEASES [running footage of Protégé] $189 A MO. [over graphic of a penny spinning] [running footage of B2300] $199 A MO. [over graphic of a penny spinning] [running footage of 626] $209 A MO. [over graphic of a penny spinning] [running footage of Miata] $219 A MO." [over graphic of a penny spinning] [The advertisement contains the following lease disclosure at the bottom of the screen in white colored fine print superimposed on a black background and accompanied by background sounds and images: ". . . Offer on '96 Protegé DX w/Conv. Pkg., MSRP $14,720. Assumes $1325 dealer contribution. 36 mo. payments = $6,809.04. Initial fees = $439.15. Purchase option at lease end = $7,654.40 Offer on '96 B2300 SE . . . MSRP $14,605. Assumes $859 dealer contribution. 36 mo. payments = $7,198.92. Initial fees = $449.98. Purchase option at lease end = $7,594.60. Offer on '96 626 DX w/Conv. Pkg., MSRP $17,540. Assumes $1,241 dealer contribution. 36 mo. payments = $7,532.64. Initial fees = $459.25. Purchase option at lease end = $9,471.60. Offer on '96 Miata . . . MSRP $19,280. Assumes $1,198 dealer contribution. 36 monthly payments = $7,908.84. Initial fees = $469.70. Purchase option at lease end = $10,796.80. . . . $450 Acq. fee plus taxes, title, license, & registration also due at lease signing. Early termination = $200. Lessee liable for $.10/mile over 36,000, maintenance, repairs & excess wear/tear. . . ." The fine print is displayed on four screens, each containing a block of at least five lines, and each block appearing for approximately three seconds.](FCB Exhibit A).

B. [Audio:] "Lease a 626. Zero down, two-o-nine a month."
[Video:] "From $0 DOWN $209 A MO. 36 MONTHS." [The advertisement contains the following lease disclosure at the bottom of the screen in white colored fine print superimposed on a black background and accompanied by background sounds and images: ". . . 36 mo. payments = $7,551. Initial fees = $459.75 plus $450 acq. fee, taxes, title, license & registration. Early termination fee = $200. Lessee liable for $.10/mile over 36,000, maintenance, repairs & excess wear/tear. Purchase option at lease end = $9471.60. . . ." The fine print is displayed on three screens, each containing a block of at least three lines, and each block appearing for approximately two seconds.](FCB Exhibit B).

C. [Audio:] "Its Mazda Jump . . . on Summer."
[Video:] "ZERO DOWN LEASES 36 MONTHS"

[cut to Protégé badge. Mazda Protégé running footage]
[Audio:] "On Protegé. Zero and one eighty-nine."
[Video:] "$0 DOWN PYMT. $189 A MONTH WELL-EQUIPPED"
[cut to B2300 badge. Mazda B2300 running footage]
[Audio:] "B2300 SE-5. Zero and one ninety-nine."
[Video:] "$0 DOWN PYMT. $199 A MONTH FULLY LOADED SE-5."
[cut to 626 badge. . . 626 running footage]
[Audio:] "Six-two-six. . . Zero and two-o-nine."
[Video:] "$0 DOWN PYMT. $209 A MONTH WELL-EQUIPPED"
[The advertisement contains the following lease disclosure at the bottom of the screen in white colored fine print superimposed on a black background and accompanied by background sounds and images: "Closed- end leases to qualified lessees. Approval of Mazda American Credit & insurance required. Offer on '96 Protegé DX w/ Conv. Pkg., MSRP $14,720. Assumes $1,325 dealer contribution. 36 mo. pymts = $6,836.04. Initial fees = $439.89. Purchase option at lease end = $7,507.20. Offer on '96 B2300 SE Reg Cab w/ A/C & Pref. Equip. Grp., MSRP $14,605. Assumes $1,888 dealer contribution. 36 mo. pymts = $7,193.16. Initial fees = $449.81. Purchase option at lease end = $7,740.65. Offer on '96 626 DX w/ Conv. Pkg., MSRP $17,540. Assumes $1,241 dealer contribution. 36 mo. pymts = $7,558.20. Initial fees = $459.95. Purchase option at lease end = $9,647. All leases incl. freight, excl. CA/MA/NY emissions. $450 Acq. Fee plus taxes, title, license & registration also due at lease signing. Early termination = $200. Lessee liable for $.10/mile over 36,000, maintenance, repairs & excess wear/tear. Must take retail delivery by 6/3/96. SEE PARTICIPATING DEALERS FOR DETAILS AND ACTUAL TERMS." The fine print is displayed on three screens, each containing a block of at least four lines, and each block appearing for approximately three seconds.](FCB Exhibit C).

D. "MAZDA PENNY DOWN GREAT LEASES OR BUY"
[The advertisement contains lease offers for four vehicles:]
"MAZDA PROTEGÉ . . . LEASE 1¢ DOWN $189 MO. 36 MOS. . . . B2300SE SPORT TRUCK . . . LEASE 1¢ DOWN $199 MO. 36 MOS. . . . 626 SPORT SEDAN . . . LEASE 1¢ DOWN $209 MO. 36 MOS. . . MAZDA MIATA . . . LEASE 1¢ DOWN $219 MO. 36 MOS."[The advertisement contains the following lease disclosure at the bottom of the page in small print: "Offer on '96 Protegé DX (LX shown) w/Conv. Pkg., MSRP $14,720. Assumes $1,325 dealer contribution. 36 mo. payments = $6,809.04. Initial fees = $439.15. Purchase option at lease end = $7,654.40. Offer on '96 B2300 SE Reg. Cab (Cab Plus shown) w/ A/C & Pref. Equip. Grp., MSRP $14,605. Assumes $859 dealer contribution. 36 mo. payments = $7,198.92. Initial fees = $449.98. Purchase option at lease end = $7,594.60. Offer on '96 626 DX w/ Conv. Pkg., MSRP $17,540. Assumes $1,241 dealer contribution. 36 mo. payments = $7,532.64. Initial fees = $459.25. Purchase option at lease end = $9,471.60. Offer on '96 Miata w/ pwr. steering & mats, MSRP $19,280. Assumes $1,198 dealer contribution. 36 mo. payments = $7,908.84. Initial fees = $469.70. Purchase option at lease end = $10,796.80. All leases incl. freight. Protegé/626/B2300 SE excl. CA/MA/NY emissions. $450 Acq. fee + taxes, title, license, & registration also due at lease signing. Early termination = $200. Lessee liable for $.10/mile over 36,000, maintenance, repairs & excess wear/tear. Must

take retail delivery by 4/1/96. See participating dealer for details & actual terms."](FCB Exhibit D)

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT I: MISREPRESENTATION IN LEASE ADVERTISING

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that the amount stated as "down" in respondent's lease advertisements is the total amount consumers must pay at lease inception to lease the advertised vehicles.

6. In truth and in fact, the amount stated as "down" in respondent's lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers must also pay additional fees beyond the amount stated as "down," such as the first month's payment, a security deposit, and/or an acquisition fee, at lease inception. Therefore, the representation as alleged in paragraph five was, and is, false or misleading.

7. Respondent knew or should have known that the representation set forth in paragraph five was, and is, false and misleading.

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

COUNT II: FAILURE TO DISCLOSE ADEQUATELY IN LEASE ADVERTISING

9. In its lease advertisements, respondent has represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." These advertisements do not adequately disclose additional terms pertaining to the lease offer, including but not necessarily limited to a required security deposit, an acquisition fee, and/or the first month's payment due at lease inception. The existence of additional terms would be material to consumers in deciding whether to lease a Mazda vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

10. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in paragraph nine was, and is, deceptive.

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

COUNT III: CONSUMER LEASING ACT AND REGULATION M VIOLATIONS

12. Respondent's lease advertisements, including but not necessarily limited to FCB Exhibits A through D, state a monthly payment amount, the number of required payments, and/or an amount "down." The lease disclosures in these advertisements contain one or more of the following terms required by Regulation M: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the total of periodic payments due under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time or the method of determining the purchase-option price; and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term.

13. The lease disclosures in respondent's television lease advertisements, including but not necessarily limited to FCB Exhibits A through C, are not clear and conspicuous because they appear on the screen in small type for a very short duration, accompanied by background sounds or images. The lease disclosures in respondent's print lease advertisements, including but not necessarily limited to FCB Exhibit D, are not clear and conspicuous because they appear in small type.

14. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, as amended, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c), as amended.

Commissioner Thompson and Commissioner Swindle not participating.

EXHIBIT A

FCB FOOTE, CONE & BELDING
4 Hutton Centre Drive, Santa Ana, CA 92707
(714) 662-6500

CLIENT: MAZDA MOTOR OF AMERICA

As Produced: 3/10/96

JOB# : MAZD-DTP-T3626
PRODUCT: Lease/Penny Down
LENGTH: :30
TITLE: Penny Down-Protege/626/Miata/Trk-L-30
ORIGINAL ISCI:
NEW ISCI: JQDB 0832

	VIDEO		AUDIO:
1.	OPEN ON MAN JUMPING THROUGH A RAIN OF PENNIES. SUPERS: MAZDA ONE PENNY DOWN ZOOMS IN AND FADES ON.	1.	SINGERS: Mazda...One penny down.
2.	CUT TO PROTEGE RUNNING FOOTAGE. CUT TO B2300 RUNNING FOOTAGE. SUPER APPEARS AS LINE AT BOTTOM WITH PENNY SPINNING APPEARS. SUPER: 36 MO. LEASES. SUPER: ENDS APRIL 1ST DISC: Closed-end leases to qualified lessees. Approval of Mazda American Credit & insurance required. Offer on '96 Protegé DX w/ Conv. Pkg., MSRP $14,720. Assumes $1,325 dealer contribution. 36 mo. payments = $6,809.04. Initial fees = $439.15. Purchase option at lease end = $7,654.40. Offer on '96 B2300 SE Reg. Cab w/ A/C	2.	VO: One penny down. Great leases. Very little time.
3.	CUT TO PROTEGE BADGE. CUT TO PROTEGE RUNNING FOOTAGE. DISC: (cont) and Pref. Equip. Grp., MSRP $14,605. Assumes $859 dealer contribution. 36 mo. payments = $7,198.92. Initial fees = $449.98. Purchase option at lease end = $7,594.60. Offer on '96 626 DX w/ Conv. Pkg., MSRP $17,540. Assumes $1,241 dealer contribution. 36 mo. payments = $7,532.64. Initial fees	3.	VO: On Protegé.
4.	CUT TO PROTEGE RUNNING WITH GRAPHIC OF A PENNY SPINNING INTO FRAME.	4.	SINGERS: A penny (down).
5.	SUPER: $189 A MO.	5.	VO: And one eighty-nine.

EXHIBIT A

FCB FOOTE, CONE & BELDING
4 Hutton Centre Drive, Santa Ana, CA 92707
(714) 662-6500

CLIENT: MAZDA MOTOR OF AMERICA

JOB# : MAZD-DTP-T3626
PRODUCT: Lease/Penny Down
LENGTH: :30
TITLE: Penny Down-Protege/626/Miata/Trk-1 - 30
ORIGINAL ISCI:
NEW ISCI: JQDB 0832

As Produced: 3/10/96

	VIDEO:	AUDIO:
6.	CUT TO B2300 BADGE. CUT TO BOY JUMPING THROUGH RAIN OF PENNIES.	6. VO: The B2300 SE.
7.	CUT TO RUNNING FOOTAGE OF TRUCK WITH GRAPHIC OF A PENNY SPINNING INTO FRAME. DISC: (cont) = $459.25. Purchase option at lease end = $9,471.60. Offer on '96 Miata w/ pwr. steering & mats. MSRP $19,280. Assumes $1,198 dealer contribution. 36 mo payments = $7,908.84. Initial fees = $469.70. Purchase option at lease end = $10,796.80. All leases incl. freight. Protege/626/B2300 SE excl. CA/MA/NY	7. SINGERS: A penny down...
8.	SUPER: $199 A MO.	8. VO: and one ninety-nine.
9.	CUT TO 626 BADGE.	9. VO: Six-two-six.
10.	CUT TO MAN GRABBING PENNY.	10. SINGERS: A penny (down)...
11.	CUT TO 626 RUNNING WITH GRAPHIC OF A PENNY WIPING ON SUPER. DISC: (cont) emissions. $450 Acq. fee plus taxes, title, license & registration also due at lease signing. Early termination = $200. Lessee liable for $.10/mile over 36,000, maintenance, repairs & excess wear/tear. Must take retail delivery by 4/1/96. SEE PARTICIPATING DEALER FOR DETAILS AND ACTUAL TERMS. SUPER: $209 A MONTH	11. VO: and two-o-nine.
12.	RUNNING FOOTAGE OF MIATA.	12. VO: Miata.
13.	CUT TO GIRL WITH HAT.	13. SINGERS: Mazda.

EXHIBIT A

FCB FOOTE, CONE & BELDING
4 Hutton Centre Drive, Santa Ana, CA 92707
(714) 662-6500

CLIENT: MAZDA MOTOR OF AMERICA

As Produced: 3/10/96

JOB# : MAZD-DTP-T3626
PRODUCT: Lease/Penny Down
LENGTH: :30
TITLE: Penny Down-Protege/626/Miata/Trx-L-30
ORIGINAL ISCI:
NEW ISCI: JQDB 0632

	VIDEO:	AUDIO:
14.	CUT TO GIRL WITH HAT IN MIATA. CUT TO MIATA RUNNING FOOTAGE WITH GRAPHIC OF SPINNING PENNY. SUPER: $219 A MO.	14. VO: A penny and two nineteen.
15.	CUT TO PROTEGE DRIVING AWAY LOGO: MAZDA PASSION FOR THE ROAD™	15. SOLO: Passion for the road ... SINGERS: Put your penny down!
16.		16.
17.	CUT TO FALLING PENNIES WITH MAN HOLDING ON TO ONE. SUPER: ENDS APRIL 1.	17. VO: Ends April 1st.

EXHIBIT B

FCB FOOTE, CONE & BELDING
4 Hutton Centre Drive, Santa Ana, CA 92707
(714) 662-6500

JOB# : MAZD-NTP-T3632
PRODUCT: '96 626 DX
LENGTH: :30
TITLE: Passion -626 DX-0 Down/209 L-30

CLIENT: MAZDA MOTOR OF AMERICA

AS PRODUCED: 3/28/96

ORIGINAL ISCI: JODB 0816
NEW ISCI: JQNB J840

	VIDEO		AUDIO
1.	OPEN ON QUICK CUTS OF DRIVER STARTING CAR AND 626 WITH EXPLOSION.	1.	SONG: I got a passion.
2.	QUICK CUTS OF LOCKED FENCE. 626 DRIVING ACROSS GRAPHIC WITH RUNNER FOLLOWED BY MORE EXPLOSIONS. SUPER: 626	2.	VO: Six two six.
3.	626 DRIVES OVER FRAME AS WOMAN APPEARS IN SKY WITH 626 IN BACKGROUND.	3.	SONG: Passion.
4.	CUT TO RUNNING FOOTAGE OF 626.	4.	VO: Total luxury.
5.	CUT TO GEAR SHIFT WITH LIGHTENING AS CAR DRIVES THROUGH TUNNEL. DISC.: **See dealer for limited-warranty details. Based on MSRP.**	5.	SFX: (THUNDER CRASH.) VO: Priced like a base Altima.
6.	QUICK CUTS OF 626 EXITING TUNNEL AND DRIVING ACROSS DESERT WITH MAN LOOKING ON.	6.	VO: Best basic warranty in its class.
7.	SUPER: MAZDA FLOATS ACROSS SCREEN AS CAR DRIVES THROUGH DESERT.	7.	SONG: Mazda!
8.	QUICK CLOSE UPS OF 626. QUICK CUT OF 626 BADGE.	8.	VO: Six two six.
9.	QUICK CUTS OF 626 DRIVING IN FRONT OF PYRAMID WITH MAN WITH CAR EVEN APPEARING IN FOREGROUND	9.	SONG: Passion for the Road.

EXHIBIT B

FCB FOOTE, CONE & BELDING
4 Hutton Centre Drive, Santa Ana, CA 92707
(714) 662-6500

CLIENT: MAZDA MOTOR OF AMERICA

JOB# : MAZD-NTP-T3632
PRODUCT: '96 626 DX
LENGTH: :30
TITLE: Passion -626 DX-0 Down/209 L-3

AS PRODUCED: 3/28/96

ORIGINAL ISCI: JQDB 0816
NEW ISCI: JQNB 0840

	VIDEO	AUDIO
10.	QUICK CUTS OF RUNNING FOOTAGE OF 626.	10. VO: Lease a 626 ...
11.	CUT TO TITLES. SUPER: **From $0 DOWN** **$209 A MO.** **36 MONTHS.**	11. zero down, two-o-nine a month.
12.	CUT TO 626 DRIVING ACROSS DESERT. DISC: 626 LX shown, net MSRP $17,695. Closed-end lease to qualified lessees on a '96 626 DX with Conv. Pkg., MSRP $17,540 incl. freight, excl. CA/NY/MA emissions. Assumes $1,241 dealer contribution. Approval of Mazda	12. SONG: Ooh, ooh Mazda!
13.	CONTINUE RUNNING FOOTAGE ACROSS DESERT AS SCREEN SPLITS AS CAR DRIVES ON AND MATCH IS BLOWN OUT. DISC.: (cont.) American Credit & insurance required. 36 monthly payments = $7,551. Initial fees = $459.75 plus $450 acq. fee, taxes, title, license & registration. Early termination fee = $200. Lessee liable for $.10/mi over 36,000.	13.
14.	CONTINUE RUNNING FOOTAGE OF 626 AS SUPER COMES UP. SUPER: **626** DISC: (cont.) maintenance, repairs & excess wear/tear. Purchase option at lease end = $9,471.60. Must take delivery by 4/30/96. SEE PARTICIPATING DEALERS FOR DETAILS AND ACTUAL TERMS. Prices slightly higher in HI.	14. VO: Six two six.
15.	CUT TO 626 DRIVING AWAY [illegible] DESERT. [illegible] MAZDA Passion [illegible]	15. SONG: Passion for the Road.

EXHIBIT C

FCB FOOTE, CONE & BELDING
4 Hutton Centre Drive, Santa Ana, CA 92707
(714) 662-6500

CLIENT: MAZDA MOTOR OF AMERICA
TYPE OF SCRIPT:
__X__ NATIONAL
_____ REGIONAL

JOB#: MAZD-DTP-T3631
PRODUCT: 626, Protege, B2300 SE-5
LENGTH: :30
TITLE: Jump-626/Prot/SE-5-L-30

ORIGINAL ISCI:
NEW ISCI: JQNB 0900

As Produced: 5/9/96

	VIDEO		AUDIO
1.	OPEN ON BIG MAZDA LOGO. LOGO ZOOMS IN, AWAY FROM CAMERA.	1.	MUSIC UP SINGERS: MAZDA...
2.	CUT TO MAN JUMPING INTO FRAME, IN FRONT OF LOGO.	2.	SINGERS: ...JUMP!
3.	EVENT TITLE BUILDS OVER HYPER STREET.	3.	ANNCR VO: It's Mazda Jump...
4.	SUPER: MAZDA JUMP ON SUMMER	4.	ANNCR VO: ...On Summer.
5.	CAR PUSHES THROUGH EVENT TITLE. SUPER: ZERO DOWN LEASES 36 MONTHS	5.	ANNCR VO: Zero down leases.
6.	SUPER: ENDS JUNE 3RD	6.	ANNCR VO: Ends June 3rd.
7.	CUT TO WOMAN BY VEHICLE. SHE DOES A "PSYCHED" JUMP.	7.	SINGERS: JUMP!
8.	CUT TO PROTEGE BADGE.	8.	ANNCR VO: On Protege.
9.	MAZDA PROTEGE RUNNING FOOTAGE. SUPER:	9.	ANNCR VO: Zero.

EXHIBIT C

FCB FOOTE, CONE & BELDING
4 Hutton Centre Drive, Santa Ana, CA 92707
(714) 662-6500

CLIENT: MAZDA MOTOR OF AMERICA
TYPE OF SCRIPT:
—X— NATIONAL
_____ REGIONAL

JOB# : MAZD-DTP-T3631
PRODUCT: 626, Protegé, B2300 SE-5
LENGTH: :30
TITLE: Jump-626/Prot/SE-5-L-30

ORIGINAL ISCI:
As Produced: 5/9/96 NEW ISCI: JQNB 0900 Page 2 of 4

	VIDEO	AUDIO
10.	PROTEGÉ RUNNING FOOTAGE. SUPER: $189 A MONTH WELL-EQUIPPED DISC: Closed-end leases to qualified lessees. Approval of Mazda American Credit & insurance required. Offer on '96 Protege DX w/ Conv. Pkg., MSRP $14,720. Assumes $1,325 dealer contribution. 36 mo. pymts = $6,836.04. Initial fees = $439.89. Purchase option at lease end = $7,507.20. Offer on '96 B2300 SE Reg Cab w/ A/C &	10. ANNCR VO: and one eighty-nine.
11.	CUT TO MAN	11. SINGERS: JUMP! JUMP! JUMP!
12.	CUT TO B2300 BADGE.	12. ANNCR VO: B2300 SE-5.
13.	MAZDA B2300 RUNNING FOOTAGE. SUPER: $0 DOWN PYMT.	13. ANNCR VO: Zero.
14.	B2300 RUNNING FOOTAGE. SUPER: $199 A MONTH FULLY LOADED SE-5 DISC: cont) Pref. Equip. Grp., MSRP $14,605. Assumes $1,888 dealer contribution. 36 mo. pymts = $7,193.16. Initial fees = $449.31. Purchase option at lease end = $7,740.65. Offer on '96 626 DX [illegible] Conv. Pkg., MSRP $17,540. Assumes [illegible] dealer contribution. 36 mo. pymts = $7,353.27. Initial fees = $459.58. Purchase [illegible] lease end = $9,047	14. ANNCR VO: and one ninety-nine.

EXHIBIT C

FCB FOOTE, CONE & BELDING
4 Hutton Centre Drive, Santa Ana, CA 92707
(714) 662-6500

CLIENT: MAZDA MOTOR OF AMERICA
TYPE OF SCRIPT:
—X— NATIONAL
_____ REGIONAL

JOB# : MAZD-DTP-T3631
PRODUCT: 626, Protegé, B2300 SE-5
LENGTH: :30
TITLE: Jump-626/Prot/SE-5-L-30

As Produced: 5/9/96

ORIGINAL ISCI:
NEW ISCI: JQNB 0900

	VIDEO	AUDIO
15.	WOMAN JUMPING OFF BED OF TRUCK ONTO GUY'S BACK.	15. SINGERS: JUMP!
16.	CUT TO 626 BADGE.	16. ANNCR VO: six-two-six.
17.	CUT TO WOMAN DOING HIGH FIVE.	17. SINGERS: MAZDA ...
18.	626 RUNNING FOOTAGE. SUPER: $0 DOWN PYMT.	18. ANNCR VO: Zero.
19.	626 RUNNING FOOTAGE. SUPER: $209 A MONTH WELL-EQUIPPED. DISC: (cont) All leases incl. freight. excl. CA/MA/NY emissions. $450 Acq. Fee plus taxes, title, license & registration also due at lease signing. Early termination = $200. Lessee liable for $.10/mile over 36,000. maintenance, repairs & excess wear/tear. Must take retail delivery by 6/3/96. SEE PARTICIPATING DEALERS FOR DETAILS AND ACTUAL TERMS.	19. ANNCR VO: and two-o-nine.
20.	MAZDA LOGO COMES UP OVER DESERT ROAD. SUPER: MAZDA PASSION FOR THE ROAD.	20. SINGERS: ...PASSION FOR THE ROAD.

EXHIBIT C

FCB FOOTE, CONE & BELDING
4 Hutton Centre Drive, Santa Ana, CA 92707
(714) 662-6500

CLIENT: MAZDA MOTOR OF AMERICA
TYPE OF SCRIPT:
—X— NATIONAL
_____ REGIONAL

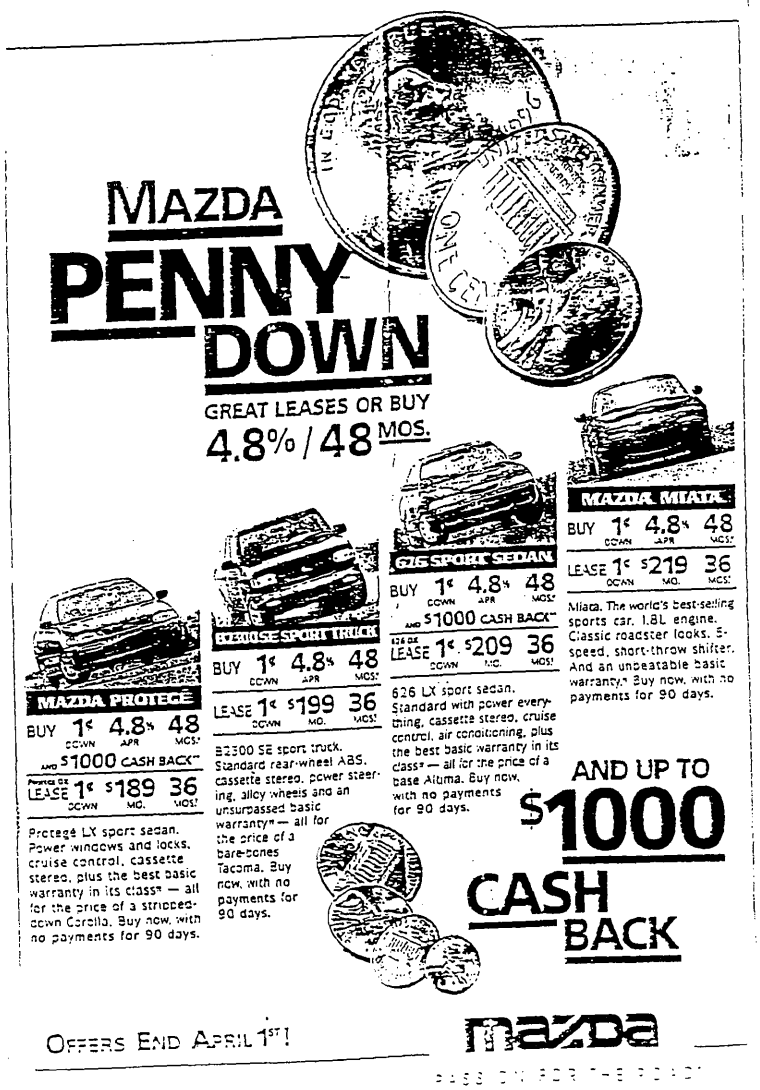
JOB#: MAZD-DTP-T3631
PRODUCT: 626, Protegé, B2300 SE-5
LENGTH: :30
TITLE: Jump-626/Prot/SE-5-L-30

As Produced: 5/9/96

ORIGINAL ISCI:
NEW ISCI: JQNB 0900

	VIDEO	AUDIO
22.	CLOSE UP OF WOMAN JUMPING INTO AIR TOWARDS CAMERA.	22. ANNCR VO: Jump on it.
23.	SUPER: ZERO DOWN LEASES 36 MONTHS	23. SINGERS: Jump
24.	SUPER: ENDS JUNE 3RD.	24. ANNCR VO: Zero down ... ends June 3rd.
25.	TITLE JUMPS IN SYNC WITH MUSIC.	25. SINGERS: JUMP!

EXHIBIT D


MAZDA
PENNY DOWN
GREAT LEASES OR BUY 4.8% / 48 MOS.
MAZDA PROTEGÉ
BUY 1¢ DOWN 4.8% APR 48 MOS
AND $1000 CASH BACK
LEASE 1¢ DOWN $189 MO. 36 MOS
Protegé LX sport sedan. Power windows and locks, cruise control, cassette stereo, plus the best basic warranty in its class* — all for the price of a stripped-down Corolla. Buy now, with no payments for 90 days.
B2300 SE SPORT TRUCK
BUY 1¢ DOWN 4.8% APR 48 MOS
LEASE 1¢ DOWN $199 MO. 36 MOS
B2300 SE sport truck. Standard rear-wheel ABS, cassette stereo, power steering, alloy wheels and an unsurpassed basic warranty* — all for the price of a bare-bones Tacoma. Buy now, with no payments for 90 days.
626 LX SPORT SEDAN
BUY 1¢ DOWN 4.8% APR 48 MOS
AND $1000 CASH BACK
LEASE 1¢ DOWN $209 MO. 36 MOS
626 LX sport sedan. Standard with power everything, cassette stereo, cruise control, air conditioning, plus the best basic warranty in its class* — all for the price of a base Altima. Buy now, with no payments for 90 days.
MAZDA MIATA
BUY 1¢ DOWN 4.8% APR 48 MOS
LEASE 1¢ DOWN $219 MO. 36 MOS
Miata. The world's best-selling sports car. 1.8L engine. Classic roadster looks. 5-speed, short-throw shifter. And an unbeatable basic warranty.* Buy now, with no payments for 90 days.
AND UP TO $1000 CASH BACK
OFFERS END APRIL 1ST!
mazda

DECISION AND ORDER

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Foote, Cone & Belding Advertising, Inc. is a Delaware corporation with its principal office or place of business located at 101 East Erie Street, Chicago, Illinois.

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

ORDER

DEFINITIONS

1. *"Clearly and conspicuously"* as used herein shall mean: 1) video or written disclosures must be made in a manner that is readable and understandable to a reasonable consumer and 2) audio or oral disclosures must be made in a manner that is audible and understandable to a reasonable consumer.

2. *"Total amount due at lease signing or delivery"* as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later. The total amount due at lease signing or delivery may 1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

3. Unless otherwise specified, *"respondent"* as used herein shall mean Foote, Cone & Belding Advertising, Inc., its successors and assigns, and its officers, agents, representatives, and employees.

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

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any consumer lease involving motor vehicles in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of revised Regulation M, 61 Fed. Reg. 52,246, 52,258 (Oct. 7, 1996) and 62 Fed. Reg. 15,364 (April 1, 1997)(to be codified at 12 CFR 213.2) ("revised Regulation M"), as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required).

B. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease signing or delivery.

C. State the amount of any payment or that any or no initial payment is required at lease signing or delivery unless all of the following items are disclosed clearly and conspicuously, as applicable:

1. That the transaction advertised is a lease;
2. The total amount due at lease signing or delivery;
3. Whether or not a security deposit is required;
4. The number, amount, and timing of scheduled payments; and

5. That an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

II.

It is further ordered, That an advertisement that complies with subparagraph I.C shall be deemed to satisfy the requirements of Section 184(a) of the Consumer Leasing Act, 15 U.S.C. 1667c(a), as amended by Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) ("revised CLA"), as amended, and Section 213.7(d)(2) of revised Regulation M, 61 Fed. Reg. at 52,261 and 62 Fed. Reg. at 15,368 (to be codified at 12 CFR 213.7(d)(2)), as amended.

III.

It is further ordered, That if the revised CLA, as amended, or revised Regulation M, as amended, are amended in the future to alter definition 2 of this order ("total amount due at lease signing or delivery") or to require or permit advertising disclosures that are different from those set forth in subparagraphs I.B or I.C of this order, then the change or changes shall be incorporated in subparagraph I.B, subparagraph I.C, and/or definition 2 for the purpose of complying with subparagraphs I.B and I.C only, as appropriate; provided however, that all other requirements of this order, including definition 1 ("clearly and conspicuously"), will survive any such revisions.

IV.

It is further ordered, That respondent Foote, Cone & Belding Advertising, Inc., and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

V.

It is further ordered, That respondent Foote, Cone & Belding Advertising, Inc., and its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, distribute a copy of this order to all current principals, officers,

directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease advertising; and

B. For a period of ten (10) years from the date of service of this order, distribute a copy of this order to all future principals, officers, directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease advertising, within thirty (30) days after the person or entity assumes such position or responsibilities.

VI.

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

VII.

It is further ordered, That respondent Foote, Cone & Belding Advertising, Inc. and its successors and assigns shall, within one hundred and twenty (120) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on April 6, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order,

whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

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

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

Commissioner Thompson and Commissioner Swindle not participating.

IN THE MATTER OF

GREY ADVERTISING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE CONSUMER LEASING ACT, REGULATION M, TRUTH IN LENDING ACT, REGULATION Z AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3793. Complaint, April 6, 1998--Decision, April 6, 1998

This consent order prohibits, among other things, the New York-based advertising agency of Mitsubishi Motor of America from misrepresenting in any motor vehicle lease advertisement the total amount due at lease signing or delivery, the amount down, and/or the down payment, capitalized cost, reduction, or other amounts that reduce the capitalized cost of the vehicle (or that no such amount is required). The consent order also prohibits the respondent, in any closed-end credit advertisement involving motor vehicles, from misrepresenting the existence and amount of any balloon payment or annual percentage rate.

Appearances

For the Commission: *Rolando Berrelez, Sally Pitofsky* and *David Medine.*

For the respondent: *Leonard Orkin, Kay, Collyer & Boose*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Grey Advertising, Inc., a corporation ("respondent" or "Grey"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and the Truth in Lending Act, 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Grey Advertising, Inc. is a Delaware corporation with its principal office or place of business at 777 Third Avenue, New York, New York.

2. Respondent, at all times relevant to this complaint, was an advertising agency of Mitsubishi Motor of America, Inc. ("Mitsubishi"). Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement"

and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

3. Respondent has disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 CFR 226.2, as amended.

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

LEASE ADVERTISING

5. Respondent has prepared and disseminated or has caused to be prepared and disseminated consumer lease advertisements ("lease advertisements") for Mitsubishi vehicles, including but not necessarily limited to the attached Grey Exhibits A through C. Grey Exhibits A and B are television lease advertisements (attached in video and storyboard format). Grey Exhibit C is a print lease advertisement. These advertisements contain the following statements:

A. [Audio:] "Lease for zero down and just two forty-nine a month for thirty-six months."
[Video:] "MITSUBISHI GALANT S $0 DOWN $249 A MONTH, 36 MONTHS"
[The advertisement contains the following lease disclosure at the bottom of the screen in dark-colored fine print superimposed on a background of similar shade: "First payment, plus a $0 down payment and a refundable security deposit of $250 (in NY, final monthly payment of $249 in lieu of security deposit) due upon delivery. 36 monthly payments based on MSRP of $18,043 . . . with a dealer capitalized cost reduction of $922, excluding tax, title, license, registration, regionally required equipment, dealer options, and charges for a 36-closed month closed-end lease. . . . Total payments: $8964 Lessee liable for maintenance, non-warrantable repairs, excess wear and tear, and up to 15[cents]/mile over 36,000 miles and $350 disposition fee and applicable taxes at lease end. Option to purchase at lease end for residual value of $10,068, plus applicable fees and taxes and purchase option fee of $150. . . ." The fine print is displayed on three screens, each containing a block of at least seven lines, and each block appearing for approximately three seconds.] (Grey Exhibit A).

B. [Audio:] "Lease for just two forty-nine a month for forty-eight months with a thousand dollars down."
[Video:] "$1000 DOWN $249 A MONTH 48 MONTHS"
[The advertisement contains the following lease disclosure at the bottom of the screen in white fine print superimposed on a dark-colored, moving background and accompanied by background sound and other moving images: "First payment, plus a $1000 down payment and a refundable security deposit of $250 (in NY, final

monthly payment of $249 in lieu of security deposit) due upon delivery. 48 monthly payments based on MSRP of $18,747 . . . with a dealer capitalized cost reduction of $1,289, excluding tax, title, license, registration, regionally required equipment, dealer options, and charges for a 48-month closed-end lease. . . . Total payments: $11,952 Lessee liable for maintenance, non-warrantable repairs, excess wear and tear, and up to 15[cents]/mile over 60,000 miles and $350 disposition fee and applicable taxes at lease end. Option to purchase at lease end for residual value of $8,436, plus applicable fees, taxes and purchase option fee of $150. . . ." The fine print is displayed on three screens, each containing a block of seven lines, and each block appearing for approximately three seconds.] (Grey Exhibit B).

C. "$0 Down Plus $500 CASH BACK* Now, Lease for 36 Months or Buy a Galant S* LEASE OR BUY $0 DOWN $249 A MONTH"

[The advertisement contains the following lease disclosure at the bottom of the page in small print: " . . . **First payment, plus a $0 down payment and a refundable security deposit of $250 (in NY, final monthly payment of $249 in lieu of security deposit) due upon delivery. 36 monthly payments based on MSRP of $18,043 for a Galant S with automatic transmission (FOG A88), with a dealer capitalized cost reduction of $922, excluding tax, title, license, registration, regionally required equipment, dealer options, and charges for a 36-month closed-end lease rounded to the nearest dollar. Total payments: $8,964. Lessee liable for maintenance, non-warrantable repairs, excess wear and tear, and up to 15 [cents]/mile over 36,000 miles and $350 disposition fee and applicable taxes at lease end. Option to purchase at lease end for residual value of $10,068, plus applicable fees and taxes and purchase option fee of $150. . . ."] (Grey Exhibit C).

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT I: MISREPRESENTATION IN LEASE ADVERTISING

6. Through the means described in paragraph five, respondent has represented, expressly or by implication, that the amount stated as "down" in respondent's lease advertisements is the total amount consumers must pay at lease inception to lease the advertised vehicles.

7. In truth and in fact, the amount stated as "down" in respondent's lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers must also pay additional fees beyond the amount stated as "down," such as the first month's payment and security deposit, at lease inception. Therefore, respondent's representation as alleged in paragraph six was, and is, false or misleading.

8. Respondent knew or should have known that the representation set forth in paragraph six was, and is, false and misleading.

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

COUNT II: FAILURE TO DISCLOSE ADEQUATELY IN LEASE ADVERTISING

10. In its lease advertisements, respondent has represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." These lease advertisements do not adequately disclose additional terms pertaining to the lease offer, including but not necessarily limited to a required security deposit and first month's payment due at lease inception. The existence of additional terms would be material to consumers in deciding whether to lease a Mitsubishi vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

11. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in paragraph ten was, and is, deceptive.

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

COUNT III: CONSUMER LEASING ACT AND REGULATION M VIOLATIONS

13. Respondent's lease advertisements, including but not necessarily limited to Grey Exhibits A through C, state a monthly payment amount, the number of required payments, and/or an amount "down." The lease disclosures in these advertisements contain one or more of the following terms required by Regulation M: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the total of periodic payments due under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time or the method of determining the purchase-option price; and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term.

14. The lease disclosures in respondent's television lease advertisements, including but not necessarily limited to Grey Exhibits A and B, are not clear and conspicuous because they appear on the screen in small type, against a background of similar shade, for a very short duration, with background sounds or images, and/or over a moving background. The lease disclosures in respondent's print lease

advertisements, including but not necessarily limited to Grey Exhibit C, are not clear and conspicuous because they appear in small type.

15. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, as amended, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c), as amended.

CREDIT ADVERTISING

16. Respondent has prepared and disseminated or has caused to be prepared and disseminated credit sale advertisements ("credit advertisements") for Mitsubishi vehicles, including but not necessarily limited to the attached Grey Exhibits C, D, and E. Grey Exhibits D and E are television credit advertisements (attached in video and storyboard format). Grey Exhibit C, described above, is also a print credit advertisement. These advertisements contain the following statements:

A. [Audio:] "Buy a new Galant ES with automatic transmission and air conditioning for seven hundred fifty dollars down and one ninety-nine a month." [Video:] "$199 a mo. $750 down/ Auto. Transmission Air conditioning. [The advertisement contains the following credit disclosure at the bottom of the screen in light-colored fine print superimposed on a light-colored, moving background with background sounds and images: "Example based on MSRP of $18,300 and a selling price of $16,764 for a Galant ES (FOG A83). $750 down. 5.15% APR Diamond Advantage Plan financing for 60 months: 59 months at $199 per month and a FINAL PAYMENT OF $7,320. Tax, title, license, registration, regionally required equipment, dealer options, and charges extra. Under certain conditions you may refinance the final payment or sell the vehicle to Mitsubishi Motors Credit of America, Inc. at end of term . . ." The fine print is displayed on two screens, each containing a block of five lines, and each block appearing for approximately three seconds.] (Grey Exhibit D).

B. [Audio:] "Now you can buy a ninety-four Eclipse for one fifty-nine a month with five hundred down."
[Video:] "BUY: $159 a month/$500 DOWN" [The advertisement contains the following credit disclosure at the bottom of the screen in white fine print superimposed on a multi-colored, moving background and accompanied by background sound: "Example based on MSRP of $12,519 and a selling price of $11,827 for an Eclipse STD M/T (FOG A01). $500 down. 5.06% APR Diamond Advantage Plan financing for 54 mos.: 53 months at $159/mo. and a FINAL PAYMENT OF $4,757. Tax, title, lic., registration, regionally required equipment, dealer options, and charges extra. Under certain conditions you may refinance the final payment or sell the vehicle to Mitsubishi Motors Credit of America, Inc. at end of term. . . ." The fine print is displayed on two screens, each containing a block of five lines, and each block appearing for approximately three seconds.] (Grey Exhibit E).

C. "$0 Down Plus $500 CASH BACK* Now, Lease for 36 Months or Buy a Galant S * LEASE OR BUY $0 DOWN $249 A MONTH"

Exhibit C contains the following credit disclosure at the bottom of the page in small print: " . . . For example: 2.9% APR Diamond Retail Plan financing available for 24 months at $801 per month for a Galant S with automatic transmission (FOG A88), with a selling price of $18,043. $0 down. Tax, title, license, registration, regionally required equipment, dealer options, and charges extra . . . Example based on MSRP of $18,043 and a selling price of $17,121 for a Galant S with automatic transmission (FOG A88). $0 down. 5.53% APR Diamond Advantage Plan financing for 42 months: 41 months at $249 per month and a FINAL PAYMENT OF $9,509. Tax, title, license, registration, regionally required equipment, dealer options, and charges extra. Under certain conditions, you may refinance the final payment or sell the vehicle to Mitsubishi Motors Credit of America, Inc. at end of term. . . ."] (Grey Exhibit C).

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT IV: MISREPRESENTATION IN CREDIT ADVERTISING

17. Through the means described in paragraphs five and sixteen, respondent has represented, expressly or by implication, that consumers can buy the advertised Mitsubishi vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down."

18. In truth and in fact, consumers cannot buy the advertised Mitsubishi vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." Consumers are also responsible for a final balloon payment of several thousand dollars to purchase the advertised vehicles. Therefore, respondent's representation as alleged in paragraph seventeen was, and is, false or misleading.

19. Respondent knew or should have known that the representation set forth in paragraph seventeen was, and is, false and misleading.

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

COUNT V: FAILURE TO DISCLOSE ADEQUATELY IN CREDIT ADVERTISING

21. In its credit advertisements, respondent has represented, expressly or by implication, that consumers can buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." These advertisements do not adequately disclose additional terms pertaining to the credit offer,

including but not necessarily limited to a final balloon payment of several thousand dollars and the annual percentage rate. The existence of these additional terms would be material to consumers in deciding whether to buy a Mitsubishi vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

22. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in paragraph twenty-one was, and is, deceptive.

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

COUNT VI: TRUTH IN LENDING ACT AND REGULATION Z VIOLATIONS

24. Respondent's credit advertisements, including but not necessarily limited to Grey Exhibits C, D, and E, state a monthly payment amount and/or an amount "down." The credit disclosures in these advertisements contain the following terms required by Regulation Z: the annual percentage rate and the terms of repayment.

25. The credit disclosures in respondent's television credit advertisements, including but not necessarily limited to Grey Exhibits D and E, are not clear and conspicuous because they appear on the screen in small type, against a background of similar shade, for a very short duration, with background sounds and images, and/or over a moving background. The credit disclosures in respondent's print credit advertisements, including but not necessarily limited to Grey Exhibit C, are not clear and conspicuous because they appear in small print.

26. Respondent's practices violate Section 144 of the Truth in Lending Act, 15 U.S.C. 1664, as amended, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), as amended.

Commissioner Thompson and Commissioner Swindle not participating.

EXHIBIT A

AS PRODUCED TELEVISION

Grey Advertising Inc.
The Pacific Plaza
7711 Center Avenue, Suite 400
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PRODUCT: Galant	
TITLE: Galant Summer of Thunder/Lease MGMM-1570		JOB NUMBER:	
DATE: 7/26/95	PAGE NUMBER: 1	REVISION: 1	LENGTH:
COPYWRITER: I STONE	FILM: ( )Yes ( )No	TAPE: ( )Yes ( )No	AS REC: (X)Yes ( )No

Video	Audio
SUMMER OF THUNDER	Mitsubishi's Summer of Thunder continues...
SUPER: GALANT S PREFERRED EQUIPMENT PACKAGE	with our best offer ever on a Galant S with the Preferred Equipment Package.
SUPER: MITSUBISHI GALANT S $0 DOWN $249 A MONTH, 36 MONTHS DISCLAIMER: First payment, plus a $0 down payment and a refundable security deposit of $250 (in NY, final monthly payment of $249 in lieu of security deposit) due upon delivery. 36 monthly payments based on MSRP of $18,043 for a Galant S with automatic transmission (FOG A88), with a dealer capitalized cost reduction of $922, excluding tax, title, license, registration, regionally required equipment, dealer options, and charges for a 36-month closed-end lease rounded to the nearest dollar. Total payments: $8,964. Lessee liable for maintenance, non-warrantable repairs, excess wear and tear, and	Lease for zero down, and just two forty-nine a month for thirty-six months.

EXHIBIT A

TELEVISION

[illegible] Advertising Inc.
One Pacific Plaza
[illegible] Center Avenue, Suite 400
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PRODUCT: Galant	
TITLE: Galant Summer or Thunder Lease MGVM-1570		JOB NUMBER: 415-10-824	
DATE: 7/26/95	PAGE NUMBER: 2	REVISION:	LENGTH: 30
COPYWRITER: J. Stone	FILM: ( )Yes ( )No	TAPE: ( )Yes ( )No	AS REC'D: (X)Yes ( )No

SUPER:
$0 DOWN
$249 A MONTH, 36 MONTHS
AUTOMATIC TRANSMISSION
AIR CONDITIONING
POWER WINDOWS AND DOOR LOCKS
CRUISE CONTROL
DISCLAIMER.

up to 15¢/mile over 36,000 miles and $350 disposition fee and applicable taxes at lease end. Option to purchase at lease end for residual value of $ 10,068, plus applicable fees and taxes and purchase option fee of $150. Purchase option during lease (after first 12 months) for Initial Lease Balance of $17,521 reduced by the depreciation portion of the monthly payments, plus applicable fees and taxes, plus purchase option fee of $150. Depreciation is determined on a level yield basis following the rules for journal entries for lessors under "Direct Financing Leases" in statement of Financial Accounting Standards No. 13 issued by the Financial Accounting Standards Board and will reduce the Initial Lease Balance to the residual value at the end of the lease term. Lease offered to qualified customers with approved credit and insurance. Program for 1995 models only through Mitsubishi Motors Credit of America, Inc. and not available in HI on these terms. Program scheduled to end July 31, 1995. DEALER PRICE AND TERMS MAY VARY. SEE PARTICIPATING DEALERS FOR DETAILS.

and get automatic transmission, air conditioning, power windows and door locks, and much more.

EXHIBIT A

G2

TELEVISION

G2 Advertising Inc.
One Pacific Plaza
7711 Center Avenue, Suite 400
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PRODUCT: Galant	
TITLE: Galant Summer of Thunder/Lease MGMM-1570		JOB NUMBER: 415-10-824	
DATE: 7/26/95	PAGE NUMBER: 3	REVISION:	LENGTH: :30
COPYWRITER: J. Stone	FILM: ()Yes ()No	TAPE: ()Yes()No	AS REC:(X)Yes()No

SUPER
PLUS $500 CASH BACK
DISCLAIMER:
$500 cash back when financed through Mitsubishi Motors Credit of America, Inc. $1,100 savings includes $500 cash back plus $602 savings on PEP which is based on MSRP for air conditioning, power windows and door locks, cruise control, six-speaker stereo cassette, large door armrests and pockets, molded door trim with fabric inserts, full trunk trim, and courtesy door lights.

Plus, right now, get five hundred dollars cash back. That's eleven hundred dollars in savings.

SUPER:
$ 0 DOWN PLUS $500 CASH BACK

Zero down, plus cash back, for a limited time,

during the Summer of Thunder,

LOGO: Mitsubishi.
The New Thinking in Automobiles™
1-800-55MITSU

from Mitsubishi. The New Thinking in Automobiles™.

EXHIBIT B

AS PRODUC

[illegible] Advertising, Inc.
[illegible] Center Avenue, Suite [illegible]
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PROJECT: Eclipse	
TITLE: Final Storm - Eclipse Lease MGMM 2514		JOB NUMBER: 415-12-829	
DATE: 9/29/95	PAGE NUMBER: 1	REVISION: 2	LENGTH: :30
WRITER:	FILM: (Yes (No	TAPE: Yes (No	AS REC.: (Yes (No

Video	Audio
	(MUSIC UNDER)
Morase of clouds expands	This summer's hottest event just got hotter.
Graphic type treatment of: Thunder with clouds back drop	Miller Auto's Summer of Thunder heats up with an electrifying offer on an Eclipse GS.

EXHIBIT B

32 Advertising, Inc
[illegible] Center Avenue, Suite 400
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PRODUCT: Eclipse	
TITLE: Final Storm - Eclipse Lease MGMM 2514		JOB NUMBER: 415-12-829	
DATE: 9/29/95	PAGE NUMBER: 2	REVISION: 2	LENGTH: 30
WRITER:	FILM: ()Yes ()No	TAPE: ()Yes ()No	AS REC. ()Yes (x)No

SUPER:
$249 A MONTH, 48 MONTHS
$1,000 DOWN
DISCLAIMER:
First payment, plus a $1,000 down payment and a refundable security deposit of $250 (in NY, final monthly payment of $249 in lieu of security deposit) due upon delivery. 48 monthly payments based on MSRP of $13,747 for an Eclipse GS with manual transmission (FOG A87), with a dealer capitalized cost reduction of $1,289, excluding tax, title, license, registration, regionally required equipment, dealer options, and charges for a 48-month closed-end lease rounded to the nearest dollar. Total payments: $11,952 Lessee liable for maintenance, non-warrantable repairs, excess wear and tear, and up to 15¢/mile over 60,000 miles and $350 disposition fee and applicable taxes at lease end. Option to purchase at lease end for residual value of $8,436, plus applicable fees and taxes and purchase option fee of $150. Purchase option during lease (after first 12 months) for Initial Lease Balance of $16,858 reduced by the depreciation portion of the monthly payments, plus applicable fees and taxes, plus purchase option fee of $150. Depreciation is determined on a level yield basis following the rules for journal entries for lessors under "Direct Financing Leases" in statement of Financial Accounting Standards No. 13 issued by the Financial Accounting Standards Board and will reduce the Initial Lease Balance to the residual value at the end of the lease term. Lease offered to qualified customers with approved credit and insurance. Program for 1995 models only through Mitsubishi Motors Credit of America, Inc. and not available in HI on these terms. Program scheduled to end September 11, 1995. DEALER PRICE AND TERMS MAY VARY SEE

Lease for just two forty-nine a month for forty-eight months with a thousand dollars down.

EXHIBIT B

G2 Advertising, Inc.
7711 Center Avenue, Suite 400
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PRODUCT: Eclipse	
TITLE: Final Storm - Eclipse Lease MGMM 2514		JOB NUMBER: 415-12-829	
DATE: 9/29/95	PAGE NUMBER: 3	REVISION: 2	LENGTH: :30
WRITER:	FILM: ()Yes ()No	TAPE: ()Yes ()No	AS REC. ()Yes (x)No

SUPER:
AIR CONDITIONER
POWER WINDOWS AND DOOR
LOCKS
ALLOY WHEELS
SIX-SPEAKER STEREO CASSETTE

But hurry in. Because this offer ends soon.

And so does the Summer of Thunder.

LOGO: Mitsubishi
The New Thinking in Automobiles™
1-800-55MITSU

From Mitsubishi.
The New Thinking in Automobiles.

EXHIBIT C

6C - THURSDAY, JUNE 15, 1995 - USA TODAY

MITSUBISHI'S SUMMER OF THUNDER

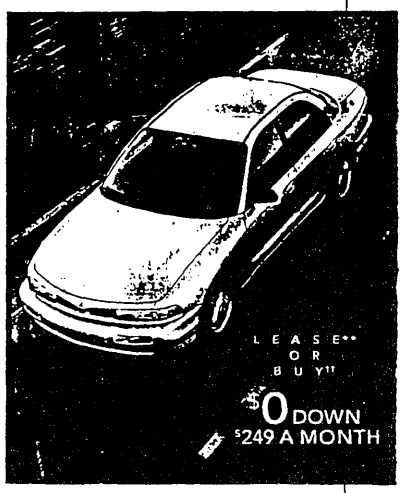
$0
DOWN PLUS
$500
CASH BACK

SAVE OVER $1,100
ON A GALANT S*

NOW, LEASE FOR 36 MONTHS OR BUY A GALANT S, WITH AUTOMATIC TRANSMISSION AND THE PREFERRED EQUIPMENT PACKAGE, AND ENJOY:

- AIR CONDITIONING
- POWER WINDOWS AND DOOR LOCKS
- CRUISE CONTROL
- SIX-SPEAKER STEREO CASSETTE
- AND MUCH MORE.

YOU SAVE $600 ON THIS SPECIAL PACKAGE. PLUS, YOU GET $500 CASH BACK. TOTAL SAVINGS: $1,100. ALSO, ASK YOUR DEALER ABOUT 2.9% FINANCING.† BUT HURRY IN, BECAUSE THE SUMMER OF THUNDER AND THESE HOT DEALS WON'T LAST FOREVER.



GALANT
MITSUBISHI
The New Thinking in Automobiles

EXHIBIT D

G2 Advertising, Inc
7711 Center Avenue Suite 400
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PRODUCT: Galant	
TITLE: "Favorite Things" $199 Buy (AS REC) MGMM-1473		JOB NUMBER: 415-10-712	
DATE: 9/25/95	PAGE NUMBER: 1	REVISION: 2	LENGTH: :30
WRITER: J. Stone	FILM: ()Yes ()No	TAPE: ()Yes ()No	AS REC (X)Yes ()No

Video	Audio
ROSE IN VASE WITH DRIVER'S SEAT RECLINING	*(MUSIC UNDER) "RAINDROPS ON ROSES AND ...*
7/8 OVERHEAD FRONT BEAUTY SHOT, DRIVER'S SIDE W/ BADGING	*WHISKERS ON KITTENS..."*
	The all-new Mitsubishi Galant. Filled with thoughtful details.
DRIVER'S SEAT MOVES BACK AND RECLINES	*"THESE ARE A ...*
ARMREST LIFTS OPEN	*...FEW OF MY ...*
CRUISE INDICATOR COMES ON	*...FAVORITE ...*
POWER ANTENNA COMES UP	*...THINGS."*
Footage of Galant S appears with buy mention. SUPER: $199 a mo. $750 down/ Auto. transmission Air conditioning. DISCLAIMER: Example based on MSRP of 18,300, and a selling price of $16,764 for a Galant ES, (POG A83). $750 down. 5.15% APR Diamond Advantage Plan financing for 60 months: 59 months at $199 per month and a FINAL PAYMENT OF $7,320. Tax, title, license, registration, regionally required equipment, dealer options, and charges extra. Under certain conditions you may refinance the final payment or sell the vehicle to Mitsubishi Motors Credit of America, Inc. at end of term.	Buy a new Galant ES with automatic transmission and air conditioning for seven hundred fifty dollars down and one ninety-nine a month.

EXHIBIT D

TELEVISIO

G2 Advertising, Inc
7711 Center Avenue, Suite 400
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PRODUCT: Galant	
TITLE: "Favorite Things" $199 Buy (AS REC) MGMM-1473		JOB NUMBER: 415-10-712	
DATE: 9/25/95	PAGE NUMBER: 2	REVISION: 2	LENGTH: :30
WRITER: J. Stone	FILM: ()Yes ()No	TAPE: ()Yes ()No	AS REC: (X)Yes ()No

Diamond Advantage Plan offered to qualified customers with approved credit and insurance. Program for 1994 models only through Mitsubishi Motors Credit of America, Inc. and not available in HI on these terms. Diamond Advantage Plan financing not available in NC. Program scheduled to end June 30, 1994. DEALER PRICE AND TERMS MAY VARY SEE PARTICIPATING DEALERS FOR DETAILS. AVAILABILITY OF SPECIFIC MODELS MAY VARY BY DEALER.

HEIGHT ADJUSTABLE SAFETY BELT

"THESE ARE A...

REAR SEAT ARMREST FOLDS DOWN

...FEW OF...

DUAL AIR BAGS DEPLOY
SUPER: Always wear safety belts.

...MY FAVORITE THINGS."

3/4 Overhead front beauty shot, driver side.
SUPER: $199 a mo. $750 down./
Auto. transmission
Air conditioning.

The affordable Galant ES offer. Perhaps the most . . .

LOGO: Mitsubishi
The New Thinking in Automobiles.™
1-800-55MITSU

. . favorite thing of all.

EXHIBIT E

TELEVISIC

CK Advertising
One Pacific Plaza
7711 Center Avenue, Suite 400
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PRODUCT: ECLIPSE	
TITLE: Eclipse all others R4 MGMM-2414		JOB NUMBER: 415-02-713	
DATE: 3/24/93	PAGE NUMBER 1	REVISION:	LENGTH: 30
WORD COUNT:	FILM: ()Yes ()No	TAPE: ()Yes ()No	AS REC (X)Yes ()No

Video	Audio
FRONT VIEW OF BUS DRIVING FORWARD	MUSIC BEAT
BUS DRIVES RIGHT TO LEFT OF SCREEN	ANNCR: If you're looking for a way to get from here to there
SIDE VIEW OF BUS SHOWING A BILLBOARD OF THE MITSUBISHI ECLIPSE	MUSIC BEAT
CLOSE-UP OF ECLIPSE BILLBOARD THE CAR IS BEGINNING TO COME ALIVE	that eclipses all other forms of transportation.
THE ECLIPSE HAS DRIVEN OFF THE BILLBOARD	look at this. The Mitsubishi Eclipse.
RUNNING FOOTAGE OF ECLIPSE	MUSIC BEAT
RUNNING FOOTAGE OF ECLIPSE SUPER: BUY: $159 A MONTH/$500 DOWN DISCLAIMER: (SEE ATTACHED FOR DETAILS) SUPER: $1,000 FACTORY CASH BACK DISCLAIMER: Factory cash back on the purchase of any '94 Eclipse model, offer ends June 30,1994. See your participating Mitsubishi Motors Dealer for details.	ANNCR: Now you can buy a ninety-four Eclipse for one fifty-nine a month with five hundred down. Or, buy any ninety-four Eclipse and get factory cash back.
REAR VIEW OF ECLIPSE DRIVING OFF	The Eclipse from Mitsubishi.
MITSUBISHI LOGO 1-800-55MITSU	The New Thinking in Automobiles.

EXHIBIT E

G2 MITSUBISHI EXHIBIT E

TELEVISION

G2 Advertising
One Pacific Plaza
7711 Center Avenue, Suite 400
Huntington Beach, CA 92647
(714) 372-6600

CLIENT: MMSA		PRODUCT: ECLIPSE	
TITLE: Eclipse all others R4 MGMM-2414		JOB NUMBER: 415-02-713	
DATE: 3/24/94	PAGE NUMBER: 2	REVISION:	LENGTH: 30
WORD COUNT:	FILM: ( )Yes ( )No	TAPE: ( )Yes ( )No	AS REC (X)Yes ( )No

Example based on MSRP of $12,519 and a selling price of $11,827 for an Eclipse STD M/T (FOG A01). $500 down. 5.06% APR Diamond Advantage Plan financing for 54 months: 53 months at $159/mo. and a FINAL PAYMENT OF $4,757. Tax, title, lic., registration, regionally required equipment, dealer options, and charges extra. Under certain conditions you may refinance the final payment or sell the vehicle to Mitsubishi Motors Credit of America, Inc. at end of term. Diamond Advantage Plan offered to qualified customers with approved credit and insurance. Program for 1994 models only through Mitsubishi Motors Credit of America, Inc. and not available in HI on these terms. Diamond Advantage Plan financing not available in NC. Program scheduled to end June 30, 1994.

DEALER PRICE AND TERMS MAY VARY. SEE PARTICIPATING DEALERS FOR DETAILS.

DECISION AND ORDER

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Grey Advertising, Inc. is a New York corporation with its principal office or place of business at 777 Third Avenue, New York, New York.

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

ORDER

DEFINITIONS

1. *"Clearly and conspicuously"* as used herein shall mean: 1) video or written disclosures must be made in a manner that is readable and understandable to a reasonable consumer and 2) audio or oral disclosures must be made in a manner that is audible and understandable to a reasonable consumer.

2. *"Total amount due at lease signing or delivery"* as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later. The total amount due at lease signing or delivery may 1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

3. *"Balloon payment"* as used herein shall mean any scheduled payment with respect to a consumer credit transaction that is at least twice as large as the average of earlier scheduled payments.

4. Unless otherwise specified, *"respondent"* as used herein shall mean Grey Advertising, Inc., its successors and assigns, and its officers, agents, representatives, and employees.

5. *"Commerce"* as used herein shall mean as defined in Section 4 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any consumer lease involving motor vehicles in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of revised Regulation M, 61 Fed. Reg. 52,246, 52,258 (Oct. 7, 1996) and 62 Fed. Reg. 15,364 (April 1, 1997)(to be codified at 12 CFR 213.2) ("revised Regulation M"), as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required).

B. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease signing or delivery.

C. State the amount of any payment or that any or no initial payment is required at lease signing or delivery unless all of the following items are disclosed clearly and conspicuously, as applicable:

1. That the transaction advertised is a lease;
2. The total amount due at lease signing or delivery;
3. Whether or not a security deposit is required;
4. The number, amount, and timing of scheduled payments; and
5. That an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

II.

It is further ordered, That an advertisement that complies with subparagraph I.C shall be deemed to satisfy the requirements of Section 184(a) of the Consumer Leasing Act, 15 U.S.C. 1667c(a), as amended by Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) ("revised CLA"), as amended, and Section 213.7(d)(2) of revised Regulation M, 61 Fed. Reg. at 52,261 and 62 Fed. Reg. at 15,368 (to be codified at 12 CFR 213.7(d)(2)), as amended.

III.

It is further ordered, That if the revised CLA, as amended, or revised Regulation M, as amended, are amended in the future to alter definition 2 of this order ("total amount due at lease signing or delivery") or to require or permit advertising disclosures that are different from those set forth in subparagraphs I.B or I.C of this order, then the change or changes shall be incorporated in subparagraph I.B, subparagraph I.C, and/or definition 2 for the purpose of complying with subparagraphs I.B and I.C only, as appropriate; provided however, that all other requirements of this order, including definition 1 ("clearly and conspicuously"), will survive any such revisions.

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of closed-end credit involving motor vehicles in or affecting commerce, as "advertisement" and "closed-end credit" are defined in Section 226.2 of Regulation Z, 12 CFR 226.2, as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the existence and amount of any balloon payment or the annual percentage rate.

B. State the amount of any payment, including but not limited to any monthly payment, in any advertisement unless the amount of any balloon payment is disclosed prominently and in close proximity to the most prominent of the above statements.

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

1. The amount or percentage of the downpayment;

2. The terms of repayment, including but not limited to the amount of any balloon payment; and

3. The correct annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Sections 107 and 144(d) of the TILA, 15 U.S.C. 1606 and 1664(d), as amended, or Sections 226.22 and 226.24(c) of Regulation Z, 12 CFR 226.22 and 226.24(c), as amended.)

V.

It is further ordered, That respondent Grey Advertising, Inc., and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

VI.

It is further ordered, That respondent Grey Advertising, Inc., and its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, distribute a copy of this order to all current principals, officers, directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease and/or motor vehicle closed-end credit advertising; and

B. For a period of ten (10) years from the date of service of this order, distribute a copy of this order to all future principals, officers, directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease and/or motor vehicle

closed-end credit advertising, within thirty (30) days after the person or entity assumes such position or responsibilities.

VII.

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

VIII.

It is further ordered, That respondent Grey Advertising, Inc., and its successors and assigns, shall within one hundred and twenty (120) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IX.

This order will terminate on April 6, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;
B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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

Commissioner Thompson and Commissioner Swindle not participating.

IN THE MATTER OF

RUBIN POSTAER AND ASSOCIATES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE CONSUMER LEASING ACT, REGULATION M AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3794. Complaint, April 6, 1998--Decision, April 6, 1998

This consent order prohibits, among other things, the California-based advertising agency of American Honda Motor Co. from misrepresenting in any motor vehicle lease advertisement the total amount due at lease signing or delivery, the amount down, and/or the down payment, capitalized cost, reduction, or other amounts that reduce the capitalized cost of the vehicle (or that no such amount is required).

Appearances

For the Commission: *Rolando Berrelez, Sally Pitofsky* and *David Medine.*

For the respondent: *Stephen P. Durschlag, Winston & Strawn,* Chicago, IL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Rubin Postaer and Associates, Inc., a corporation ("respondent" or "Rubin Postaer"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, and the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Rubin Postaer and Associates, Inc. is a California corporation with its principal office or place of business at 1333 Second Street, Santa Monica, California.

2. Respondent, at all times relevant to this complaint, was an advertising agency of American Honda Motor Co., Inc. ("Honda"), and prepared and disseminated advertisements to promote consumer leases of Honda vehicles, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

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

4. Respondent has prepared and disseminated or has caused to be disseminated consumer lease advertisements ("lease advertisements") for Honda vehicles, including but not necessarily limited to the attached Rubin Postaer Exhibits A through C. Rubin Postaer Exhibits A and B are television lease advertisements (attached hereto in video and storyboard format). Rubin Postaer Exhibit C is a print lease advertisement. These advertisements contain the following statements:

A. [Audio:] "Here's what you might put down on a typical car lease [$1750]. At Honda, however, we had a different idea. We took our fully equipped 1995 Accord LX and lowered the downpayment to some rather nice round numbers. [pause] The zero down, short-term lease from your Honda dealer. Zero down and $289 a month for 30 months."
[Video:] [View of an odometer set on $1750 that rolls down to $0000] "The $0 Down Lease. The Accord LX $0 Down $289/30 months"
[The advertisement contains the following lease disclosure in white print superimposed on a black background and accompanied by background sound: ". . . Advertised rate based on 30-mo. closed-end lease for 1995 Honda Accord 4-Door LX w/Automatic Trans.(Model CD583S). MSRP $18,880 (includes destination) with dealer cap. cost reduction of $620.50. DEALER PARTICIPATION MAY AFFECT ACTUAL PAYMENT. Taxes, title, lic. & reg., ins., opt. equip. & services not included. Due at lease signing are 1st mo.'s lease payment, refundable security dep. equal to 1 mo.'s payment rounded to the next highest $25 increment & applicable title, lic., reg. fee & tax. Total monthly payments $8,670 + applicable tax. Opt. to purchase at lease end for $12,548.50 + tax + official fees, except in NY & SD where no purchase opt. avail. If not purchased at lease end, customer returns vehicle & pays a disp. fee of no more than $400. Lessee pays maint., ins., repairs, service, all related taxes, reg. renewals, excessive wear and use. Mi. charge of $.15 [cents]/mi. over 12,000 mi./year. MSRP, dealer cap. cost reduction & opt. to purchase differ slightly in CA. . . ." The fine print is displayed on two screens, each containing a block of ten lines, each block appearing for approximately three seconds.] (Rubin Postaer Exhibit A).

B. [Audio:] "Now we've made the process of driving your own Accord just as streamlined. Lease an Accord LX for just $239 a month."
[Video:] "$239 a Month, 36 Months, $1500 Down."
[The advertisement contains the following lease disclosure at the top of the screen in white print superimposed on a black background and accompanied by background sound: ". . . Advertised rate based on 36- month closed-end lease for the 1994 Accord LX Sedan with MSRP of $18,330.00 with a dealer capitalized cost reduction of $795.35 ($965.35 in IL, IN, KS, ME, NY, OK, and UT where no security deposit is required); condition of dealer participation may affect actual rate. Taxes, title, license, and registration, insurance and optional equipment, and services not included. Due at lease signing are $1,500.00 down- payment, first lease payment, refundable deposit equal to one payment rounded to the next highest $25.00 increment where applicable, title, license and registration fee, and tax as applicable. Total monthly payment is $8,604.00 (plus tax, as applicable).

Option to purchase at end of lease for $10,061.50 plus tax and official fees, except in MS, NY, and SD where no option available. Lessee pays maintenance, insurance, repairs, service, any and all related taxes, registration renewals, and excessive wear and use. Mileage charge of $.15/mile over 15,000 miles per year. A disposition fee up to $400.00 is due if vehicle not purchased at end of lease term . . . ." The fine print is displayed on three screens, each containing a block of eight lines, each block appearing for approximately three seconds.] (Rubin Postaer Exhibit B).

C. "INTRODUCING ZIP, ZERO, NADA. Civic LX $229 per month/30 months Accord LX $289 per month/30 months Passport 4WDLX $389 per month/30 months The $0 down lease Now, for a limited time, you can get an affordable, short-term lease on a fully equipped Honda for zero (as in zip, as in nada) dollars down . . . ."

[The advertisement contains the following lease disclosure at the bottom of the page in small print: ". . . Taxes, title, lic. & reg., ins., opt. equip. & services not included. Due at lease signing are 1st mo.'s lease payment, refundable security dep. equal to 1 mo.'s payment rounded to the next highest $25 increment (except where no security dep. is collected) & applicable title, lic., reg. fee & tax. Total monthly payments $6,870 for the Civic LX Sedan, $8,670 for the Accord LX Sedan and $11,670 for the Passport 4WD LX + applicable tax. Opt. to purchase at lease end for $9,681.50 for the Civic LX Sedan, $12,649.60 for the Accord LX Sedan and $15,879.50 for the Passport 4WD LX + tax + official fees, except in MS, NY & SD where no purchase opt. avail. If not purchased at lease end, customer returns vehicle & pays a disp. fee of no more than $400. Lessee pays maint., ins., repairs, service, all related taxes, reg. renewals, excessive wear & use. Mi. Charge of 15[cents]/mi. over 12,000 mi/yr. . . ."] (Rubin Postaer Exhibit C).

FEDERAL TRADE COMMISSION ACT VIOLATIONS
COUNT I: MISREPRESENTATION IN LEASE ADVERTISING

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that the amount stated as "down" in respondent's lease advertisements, including but not necessarily limited to "$0 down," is the total amount consumers must pay at lease inception to lease the advertised vehicles.

6. In truth and in fact, the amount stated as "down" in respondent's lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers must also pay additional fees beyond the amount stated as "down," such as the first month's payment and security deposit, at lease inception. Therefore, respondent's representation as alleged in paragraph five was, and is, false or misleading.

7. Respondent knew or should have known that the representation set forth in paragraph five was, and is, false and misleading.

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

COUNT II: FAILURE TO DISCLOSE ADEQUATELY IN LEASE ADVERTISING

9. In its lease advertisements, respondent has represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or the amount stated as "down." These advertisements do not adequately disclose additional terms pertaining to the lease offer, including but not necessarily limited to a required security deposit and first month's payment due at lease inception. The existence of these additional terms would be material to consumers in deciding whether to lease a Honda vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

10. Respondent knew or should have known that the failure to disclose adequately material terms set forth in paragraph nine was, and is, deceptive.

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

COUNT III: CONSUMER LEASING ACT AND REGULATION M VIOLATIONS

12. Respondent's lease advertisements, including but not necessarily limited to Rubin Postaer Exhibits A through C, state a monthly payment amount, the number of required payments, and/or an amount "down." The lease disclosures in these advertisements contain one or more of the following terms required by Regulation M: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the total of periodic payments due under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time or the method of determining the purchase-option price; and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term.

13. The lease disclosures in respondent's television lease advertisements, including but not necessarily limited to Rubin Postaer Exhibits A and B, are not clear and conspicuous because they appear on the screen in small type for a very short duration. The lease

disclosures in respondent's print lease advertisements, including but not necessarily limited to Rubin Postaer Exhibit C, are not clear and conspicuous because they appear in small type.

14. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, as amended, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c), as amended.

Commissioner Thompson and Commissioner Swindle not participating.

EXHIBIT A

Rubin Postaer Exhibit A

VIDEO	AUDIO
(Open with view of odometer and Accord LX Sedan)	(Background music throughout)
(Odometer reads $1750)	Here's what you might put down on a typical car lease.
(Engine starts revving)	
(Odometer starts to scroll down)	At Honda, however, we had a different idea. We took our fully equipped 1995 Accord LX and lowered the downpayment to some rather nice round numbers.
[Super]: **The $0 Down Lease.** From your Honda dealer.	
(Odometer reads $0000)	The zero down short-term lease from your Honda dealer.
[Super]: **The Accord LX** **$0 Down** **$289/30 months**	$0 down and $289 a month for 30 months.
(View Disclosure*)	
Leadership Leasing	

*[First screen]:
SUBJECT TO LIMITED AVAILABILITY. Avail. thru January 5, 1995 at participating Honda dealers to approved lessees by American Honda Finance Corp. Advertised rate based on 30-mo. closed-end lease for 1995 Honda Accord 4-Door LX w/Automatic Trans.(Model CD583S.) MSRP $18,880 (includes destination) with dealer cap. cost reduction of $620.50 DEALER PARTICIPATION MAY AFFECT ACTUAL PAYMENT. Taxes, title, lic. & reg., ins., opt. equip. & services not included. Due at lease signing are 1st mo.'s lease payment, refundable security dep. equal to 1 mo.'s payment rounded to the next highest $25 increment & applicable title, lic.,

[Second screen]:
reg. fee & tax. Total monthly payments [illegible] - applicable tax. Opt. to purchase at lease end for $12,548.50 + tax

EXHIBIT A

& official fees, except in NY & SD
where no purchase opt. avail.
If not purchased at lease end,
customer returns vehicle & pays a
disp. fee of no more than $400.
Lessee pays maint., ins., repairs,
service, all related taxes, reg.
renewals, excessive wear and use.
Mi. charge of $.15 [cents] /mi. over
12,000 mi./year. MSRP, dealer cap.
cost reduction & opt. to
purchase differ slightly in CA.
This offer may not be available
in conjunction with any other
advertised offer. See your
participating Honda dealer for
details.

EXHIBIT B

Rubin Postaer Exhibit B

VIDEO	AUDIO
(Open with view of white stream and view of Accord LX)	(Background music throughout)
	Motor Trend calls it the most fuel-efficient, the best performing, the quietest, the strongest, and the safest Accord we've ever built. And they named us Motor Trend Import Car of the Year.
[Super]: $239 a Month, 36 Months, $1500 Down.	Now we've made the process of driving your own Accord just as streamlined.
(View Disclosure*)	Lease an Accord LX for just $239 a month. Leadership leasing from Honda.
We Won. You Win. A Car Ahead.	We Won. You Win.

*[First screen]:
Available through 2/28/94, at participating Honda dealers to qualified lessees approved by American Honda Fin. Corp. Subject to availability. Advertised rate based on 36-month closed-end lease for the 1994 Accord LX Sedan with MSRP of $18,330.00 with a dealer capitalized cost reduction of $795.35 ($965.35 in IL, IN, KS, ME, NY, OK, and UT where no security deposit is required); condition of dealer participation may affect actual rate. Taxes, title, license, and

[Second screen]:
registration, insurance and optional equipment, and services not included. Due at lease signing are $1,500.00 down-payment, first lease payment, refundable deposit equal to one payment rounded to the next highest $25.00 increment where applicable, title, license and registration fee, and tax as applicable. Total monthly

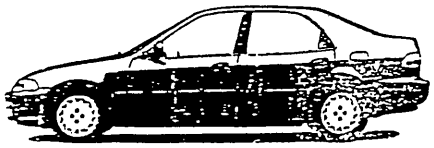
EXHIBIT B

payment is $8,604.00 (plus tax, as applicable). Option to purchase at end of lease for $10,061.50 plus tax and official fees, except in MS, NY, and

[Third screen]:
SD where no option available. Lessee pays maintenance, insurance, repairs, service, any and all related taxes, registration renewals, and excessive wear and use. Mileage charge of $.15/mile over 15,000 miles per year. A disposition fee up to $400.00 is due if vehicle not purchased at end of lease term. MSRP, dealer capital cost reduction, and option-to-purchase price differ in AK, CA and HI. See participating Honda dealers for details.

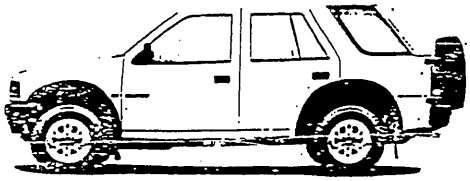
EXHIBIT C

Introducing Zip, Zero, Nada.



Civic LX
$229 per month/30 months

Accord LX
$289 per month/30 months



Passport 4WD LX
$389 per month/30 months

The $0 down lease.

Now for a limited time, you can get an affordable, short-term lease on a fully equipped Honda for zero (as in zip, as in nada) dollars down.

Lease the practical, reliable Civic LX, for example, and discover how far your money will take you in an automobile. Dual airbags,* power windows and door locks, cruise control, quartz digital clock and tinnable windshield suppression all come standard. Or lease the luxurious, fully equipped Accord LX.

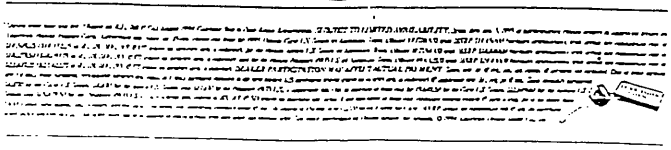
The car has an automatic transmission, air conditioning and more head- and legroom than you'll know what to do with. It also has the honor of being the best-selling car in America among individual buyers.†

Or if you're the kind of individual who not only goes your own way in life, but even makes your own road, there's the rugged, 175-horsepower Honda Passport 4-wheel drive LX.

You'd better hurry, however, because this zero down lease offer is only available for a limited time.

And if you wait too long, zip, zero and nada is what you may wind up with.

Leadership Leasing™ At your Honda dealer.



DECISION AND ORDER

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Rubin Postaer and Associates, Inc. is a California corporation with its principal office or place of business located at 1333 Second Street, Santa Monica, California.

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

ORDER

DEFINITIONS

1. *"Clearly and conspicuously"* as used herein shall mean: 1) video or written disclosures must be made in a manner that is readable and understandable to a reasonable consumer and 2) audio or oral disclosures must be made in a manner that is audible and understandable to a reasonable consumer.

2. *"Total amount due at lease signing or delivery"* as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later. The total amount due at lease signing or delivery may 1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

3. Unless otherwise specified, *"respondent"* as used herein shall mean Rubin Postaer and Associates, Inc., its successors and assigns, and its officers, agents, representatives, and employees.

4. *"Commerce"* as used herein shall mean as defined in Section 4 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any consumer lease involving motor vehicles in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of revised Regulation M, 61 Fed. Reg. 52,246, 52,258 (Oct. 7, 1996) and 62 Fed. Reg. 15,364 (April 1, 1997)(to be codified at 12 CFR 213.2) ("revised Regulation M"), as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required).

B. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease signing or delivery.

C. State the amount of any payment or that any or no initial payment is required at lease signing or delivery unless all of the following items are disclosed clearly and conspicuously, as applicable:

1. That the transaction advertised is a lease;
2. The total amount due at lease signing or delivery;
3. Whether or not a security deposit is required;
4. The number, amount, and timing of scheduled payments; and

5. That an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

II.

It is further ordered, That an advertisement that complies with subparagraph I.C shall be deemed to satisfy the requirements of Section 184(a) of the Consumer Leasing Act, 15 U.S.C. 1667c(a), as amended by Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) ("revised CLA"), as amended, and Section 213.7(d)(2) of revised Regulation M, 61 Fed. Reg. at 52,261 and 62 Fed. Reg. at 15,368 (to be codified at 12 CFR 213.7(d)(2)), as amended.

III.

It is further ordered, That if the revised CLA, as amended, or revised Regulation M, as amended, are amended in the future to alter definition 2 of this order ("total amount due at lease signing or delivery") or to require or permit advertising disclosures that are different from those set forth in subparagraphs I.B or I.C of this order, then the change or changes shall be incorporated in subparagraph I.B, subparagraph I.C, and/or definition 2 for the purpose of complying with subparagraphs I.B and I.C only, as appropriate; provided however, that all other requirements of this order, including definition 1 ("clearly and conspicuously"), will survive any such revisions.

IV.

It is further ordered, That respondent Rubin Postaer and Associates, Inc., and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

V.

It is further ordered, That respondent Rubin Postaer and Associates, Inc., and its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, distribute a copy of this order to all current principals, officers,

directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease advertising; and

B. For a period of ten (10) years from the date of service of this order, distribute a copy of this order to all future principals, officers, directors, managers, employees, agents, and representatives having responsibilities involving motor vehicle lease advertising, within thirty (30) days after the person or entity assumes such position or responsibilities.

VI.

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

VII.

It is further ordered, That respondent Rubin Postaer and Associates, Inc., and its successors and assigns, shall within one hundred and twenty (120) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on April 6, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order,

whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

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

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

Commissioner Thompson and Commissioner Swindle not participating.

IN THE MATTER OF

SENSORMATIC ELECTRONICS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3795. Complaint, April 6, 1998--Decision, April 6, 1998

This consent order prohibits, among other things, the Florida-based manufacturer of electronic article surveillance equipment from entering into any agreement that prohibits, restricts, impedes, interferes with, restrains, places limitations on, or advises against engaging in truthful, non-deceptive advertising, comparative advertising or promotional and sales activities. In addition, the consent order nullifies the agreement, between Sensormatic Electronics Corporation and Checkpoint Systems, Inc., to restrict advertising and promotional claims about each other's products or services.

Appearances

For the Commission: *William Lanning, Michael McNeely* and *William Baer.*

For the respondent: *Randy Smith, Crowell & Moring,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated and are violating the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 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 that respect as follows:

PARAGRAPH 1. Respondent Sensormatic Electronics Corporation (hereinafter "Sensormatic"), a manufacturer of electronic article surveillance (hereinafter "EAS") equipment, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 951 Yamato Road, Boca Raton, Florida.

PAR. 2. Respondent Checkpoint Systems, Inc. (hereinafter "Checkpoint"), a manufacturer of EAS equipment, is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Pennsylvania, with its principal place of business at 101 Wolf Drive, P.O. Box 188, Thorofare, New Jersey.

PAR. 3. Respondents Sensormatic and Checkpoint are now, and for some time have been, engaged in the manufacture, advertisement, sale, distribution, installation, and maintenance of EAS systems. EAS systems are electronic devices used by retailers and others to deter and detect shoplifting and internal theft, and for other security-related purposes. An EAS system may contain many electronic components including sensors, deactivation equipment, disposable labels or tags, source tags or labels, and other electronic parts.

PAR. 4. Sensormatic and Checkpoint are the two largest manufacturers and sellers of EAS systems in the United States and the world, and together have sold over 70% of the EAS systems purchased worldwide.

PAR. 5. Entry into certain segments of the EAS market is difficult because of patent protection that exists for the technology of many components of EAS systems.

PAR. 6. The acts and practices of respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 7. Except to the extent that competition has been restrained as alleged herein, Sensormatic and Checkpoint have been, and are now, in competition between themselves and with others as manufacturers of EAS equipment.

PAR. 8. In January of 1993, Checkpoint caused an advertisement to be placed in Billboard magazine wherein it alleged that components of Sensormatic's Ultra*Max EAS system damaged recorded media. Included in the advertisement were depictions of: audio cassettes, compact discs, reel to reel tape, and video cassettes. Thereafter, Sensormatic initiated a lawsuit in February of 1993 against Checkpoint alleging that said advertisement was false and deceptive because, among other things, the advertisement contained depictions of compact discs.

PAR. 9. Shortly after Sensormatic filed the aforementioned suit, executives of Sensormatic and Checkpoint met to discuss the settlement of the lawsuit and other business matters, including matters arising out of Sensormatic's acquisition of Checkpoint's European distributor, Sensormatic's performance under that distributorship agreement, advertising issues, and the cross-licensing of specified technologies under certain circumstances.

PAR. 10. During March, April, May, and June of 1993, high-ranking officials of Checkpoint and Sensormatic, including the Chief

Executive Officers of the respondents, met, discussed, engaged in telephone conferences, and exchanged correspondence for the purpose of entering into an agreement to settle the aforementioned lawsuit, to terminate Sensormatic as Checkpoint's European distributor, to refrain from negative advertising, and to agree to an optional cross-license of technology under certain circumstances.

PAR. 11. On or about June 27, 1993, Checkpoint and Sensormatic executed a written agreement that included provisions relating to the agreement to settle the aforementioned lawsuit, to terminate Sensormatic as Checkpoint's European distributor, to refrain from negative advertising, and to agree to an optional cross-license of technology under certain circumstances.

PAR. 12. The advertising provision of the June 27, 1993 agreement, in part, binds the parties to refrain from:

> negative advertising or other negative selling, promotional activities or other communications with respect to the other party or the other party's products and services. The terms 'negative advertising' and 'other negative selling, promotional activities or other communications' are defined to mean the knowing use of (i) materially false statements about the other party or the other party's products or services, or (ii) statements that the other party's products or services cause or may cause harm to customers, consumers or merchandise or that the other party is engaging or has engaged in illegal or improper conduct. The foregoing shall not be deemed to prohibit either party from otherwise communicating the features, benefits, characteristics, functions, specifications, or performance of their respective products.

PAR. 13. The advertising provision of the June 27, 1993 agreement has also been construed to restrict comparative advertising on the features and functions of the respondents' products and the services offered by the respondents.

PAR. 14. On or about July 7, 1993, Checkpoint's CEO, A.E. Wolf, issued a memorandum to all of Checkpoint's employees explaining the advertising provisions of the June 27, 1993 agreement. Checkpoint's CEO wrote, "Basically, what it [the agreement] means is that the two parties agree to compete on a positive rather than a negative basis. Simply what that means is that we will promote the positive aspects of our own products, services and companies rather than the negative aspects of the other party."

PAR. 15. On or about July 19, 1993, Sensormatic's Vice President of Retail Sales, Dennis Gillette, issued a memorandum to Sensormatic's United States and Canadian employees explaining the advertising restrictions contained in the agreement. Gillette noted:

The [advertising] agreement allows both Sensormatic and Checkpoint to continue informing customers of the features, benefits, characteristics, functions and specifications of its products, but neither Checkpoint nor Sensormatic may convey negative information about the other party or the other party's products or services. For example, we can continue to tell customers that UltraMax products don't cause false alarms and is the only false alarm-free system but we cannot tell them that Checkpoint products do cause false alarms [emphasis in original].

This memorandum was subsequently distributed to the relevant Sensormatic employees worldwide in September 1993.

PAR. 16. Sensormatic attempted to enforce the advertising provision of the agreement in December 1993 when its attorneys alleged that a "Commentary" article authored by Checkpoint's CEO, entitled "EAS: Sound Quality Is First Concern," was published in Billboard magazine. The article did not mention Sensormatic, but expressed the opinion that some EAS technologies could degrade the quality of audio cassettes. While Sensormatic's attorneys did not claim that the information was either false or misleading, they claimed that the publication of the article violated the advertising provision of the June 27, 1993 agreement.

PAR. 17. Prior to the execution of the advertising provision of the June 27, 1993 agreement, Sensormatic and Checkpoint competed by promoting the technological attributes of their systems and pointing out the inadequacies of their competitors' systems in promotional materials and advertisements.

PAR. 18. Since the agreement of June 27, 1993, comparative advertising by Sensormatic and Checkpoint has been restricted.

PAR. 19. The advertising provision of the June 27, 1993 agreement is an agreement not to compete on an important element of competition. Retailers and other EAS customers have an interest in obtaining information relevant to their purchasing decisions. Certain information about EAS product performance is also relevant to consumers, such as potential harm to products and information about possible interactions between certain medical devices and EAS equipment. The agreement deprives retailers, other EAS customers and consumers of comparative information about the characteristics of EAS systems that they would find helpful.

PAR. 20. The conduct engaged in by Sensormatic and Checkpoint described in paragraphs eight through eighteen constitutes an agreement among competitors to refrain from making truthful, non-deceptive claims, including comparisons, criticisms, or disparaging statements in advertising.

PAR. 21. The aforesaid acts and practices constitute unfair methods of competition in or affecting commerce in violation of

Section 5 of the Federal Trade Commission Act. The acts and practices herein alleged are continuing and will continue in the absence of the relief herein requested.

Commissioner Thompson and Commissioner Swindle not participating.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the 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 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 a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sensormatic Electronics Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 951 Yamato Road, Boca Raton, Florida.

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

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. *"Respondent"* means Sensormatic Electronics Corporation.

B. *"Sensormatic Electronics Corporation"* means Sensormatic Electronics Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Sensormatic Electronics Corporation, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. *"Checkpoint Systems, Inc."* means Checkpoint Systems, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Checkpoint Systems, Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

D. *"EAS system"* means electronic article surveillance equipment, including, but not limited to, sensors, deactivation equipment, labels or tags, source tags or labels, and any other component parts or related products.

II.

It is further ordered, That within three (3) days after the date this order becomes final, respondent shall declare null and void Section 4, the "Negative Advertising" provision, of the June 27, 1993 agreement between Checkpoint Systems, Inc. and respondent.

III.

It is further ordered, That respondent, directly or indirectly, or through any person, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any EAS system, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Entering into, attempting to enter into, organizing, continuing, carrying out, or acting in furtherance of any agreement or combination, either express or implied, that prohibits, restricts, impedes, interferes with, restrains, places limitations on, or advises

against engaging in truthful, non-deceptive advertising, comparative advertising, and promotional and sales activities; and

B. Encouraging, advising, pressuring, assisting, inducing, or attempting to induce any non-governmental person or organization to engage in any action prohibited by this order.

IV.

It is further ordered, That respondent shall:

A. Within thirty (30) days of the date on which this order becomes final, provide a copy of this order to all of its directors and officers;

B. For a period of three (3) years from the date on which this order becomes final, and within ten (10) days after the date on which any person becomes a director or officer of respondent, provide a copy of this order to such person; and

C. Require each person to whom a copy of this order is furnished pursuant to subparagraphs IV.A and B of this order to sign and submit to its respective employer named as a respondent within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject the respondent to civil penalties for violation of the order.

V.

It is further ordered, That respondent shall:

A. Within sixty (60) days from the date on which this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may by written notice to the respondent require, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order;

B. For a period of five (5) years after the order becomes final, maintain and make available to the staff of the Federal Trade Commission for inspection and copying, upon reasonable notice, all records of communications with EAS competitors relating to any aspect of advertising, and records pertaining to any action taken in connection with any activity covered by parts II, III, IV, and V of this order; and

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

VI.

It is further ordered, That this order shall terminate on April 6, 2018.

Commissioner Thompson and Commissioner Swindle not participating.