

terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on March 27, 1995. No comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."² The Commission's modified consent order in Docket No. 3152 was issued on June 25, 1942, and has been in effect for more than fifty years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 3152.

Accordingly, it is ordered that this matter be, and it hereby is, reopened;

It is further ordered that the Commission's order in Docket No. 3152 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 95-14183 Filed 6-8-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932-3340]

**Jerry's Ford Sales, Inc., et al.;
Proposed Consent Agreement With
Analysis to Aid Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair and deceptive acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, three corporations in Annandale, Virginia and Leesburg, Virginia and their President and CEO, individually and as an officer of the three corporations, in any advertisement to promote any extension of consumer credit, to cease and desist from misrepresenting the terms of financing the purchase of a vehicle, including whether there may be a balloon payment and the amount of any balloon payment. The order would also require the respondents, in any advertisement to promote any extension of consumer credit, to cease and desist

from failing to state all terms required by Sections 226.24(b) and 226.24(c) of Regulation Z. The order would also require the respondents, in any advertisement to aid, promote or assist any consumer lease, to cease and desist from failing to state all terms required by Section 213.5(c) of Regulation M.

DATES: Comments must be received on or before August 8, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carole Reynolds, FTC/S-4429, Washington, D.C. 20580. (202) 326-3230.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying of its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In The Matter of Jerry's Ford Sales, Inc.; John's Ford Inc. dba Jerry's Leesburg Ford; Jerry's Chevrolet Geo Oldsmobile, Inc.; corporations, and Jerry C. Cohen, individually and as an officer of the corporations.

[Docket No. 932-3340]

The agreement herein, by and between Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, and Jerry's Chevrolet Geo Oldsmobile, Inc., corporations, by their duly authorized officer, and Jerry C. Cohen, individually and as an officer of the corporations (hereinafter sometimes referred to as "proposed respondents" or "respondents"), and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Jerry's Ford Sales, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 6510 Little River Turnpike,

Annandale, Virginia 22003. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

2. John's Ford, Inc. dba Jerry's Leesburg Ford is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 847 East Market Street, Leesburg, Virginia 22075. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

3. Jerry's Chevrolet Geo Oldsmobile, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 325 East Market Street, Leesburg, Virginia 22075. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

4. Jerry C. Cohen is an individual and an officer and director of the aforementioned corporate respondents. He formulates, directs and controls the acts and practices of the aforementioned corporate respondents, including the acts and practices hereinafter set forth. His business address is 6510 Little River Turnpike, Annandale, Virginia 22003. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

5. Proposed respondents waive:

- a. Any further procedural steps;
- b. The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute

² See Sunset Policy Statement, 59 FR at 45,289.

an admission by proposed respondents that the law has been violated as alleged in the draft of the complaint or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission's Rules, the Commission may, without further notice to the proposed respondents, (a) issue its complaint corresponding in form and substance with the draft of the complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, Jerry's Chevrolet Geo Oldsmobile Inc., corporations, their successors and assigns and their officers, and Jerry C. Cohen, individually and as an officer of the corporate respondents, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote directly or

indirectly any extension of consumer credit, as "advertisement," and "consumer credit" are defined in the TILA and Regulation Z, do forthwith cease and desist from:

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

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

(Sections 144 and 107 of the TILA, 15 U.S.C. 1664 and 1606, and Sections 226.24(b) and 226.22 of Regulation Z, 12 CFR 226.24(b) and 226.22, as more fully set out in Sections 226.24(b) and 226.22 of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 CFR 226.24(b) and 226.22, respectively.)

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

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

Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), as more fully set out in Section 226.24(c) of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 CFR 226.24(c.)

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

- (1) The amount or percentage of the downpayment;
- (2) The terms of repayment, and
- (3) The annual percentage rate, using that term or the abbreviation "APR." If

the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).)

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

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(a) of Regulation Z, 12 CFR 226.24(a).)

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

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

II

It is ordered that respondents Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, Jerry's Chevrolet Geo Oldsmobile, Inc., corporations, their successors and assigns and their officers, and Jerry C. Cohen, individually and as an officer of the corporate respondents, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote or assist directly or indirectly any consumer lease, as "advertisement," and "consumer lease" are defined in the CLA and Regulation M, do forthwith cease and desist from:

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

- (1) That the transaction advertised is a lease;
- (2) The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;
- (3) The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;
- (4) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), and
- (5) A statement of the amount or method of determining the amount of

any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

(Section 184 of the CLA, 15 U.S.C. 1667c, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c).)

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

(Section 184 of the CLA, 15 U.S.C. 1667c, and Section 213.5(a) of Regulation M, 12 CFR 213.5(a).)

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

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

III

It is further ordered that respondents, their successors and assigns shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns shall secure from each such person a signed statement acknowledging receipt of said order.

IV

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

V

It is further ordered that for five years after the date of service of this order respondents, their successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI

It is further ordered that respondents, their successors and assigns shall, within sixty days (60) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in

which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, Jerry's Chevrolet Geo Oldsmobile, Inc., and Jerry C. Cohen, individually and as an officer of the corporations.¹

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents Jerry's Ford and Cohen have disseminated or caused to be disseminated advertisement that state an initial low monthly payment and in fine print, *inter alia*, state an initial number of payments and another amount variously described as "optional final payment," "optional final price," or "COP." The complaint alleges that these advertisements misrepresent that the remaining obligation is optional and fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial balloon payment at the conclusion of the initial payments, which is a mandatory obligation, and have therefore engaged in an unfair and deceptive act or practice, in violation of Section 5(a) of the Federal Trade Commission Act. The complaint also alleges that these advertisements state an initial number and amount of payments required to repay the indebtedness and another amount variously described as "optional final payment," "optional final price," or "COP," but fail to accurately state the terms of repayment, by failing to disclose that the additional amount required is a final payment and by inaccurately stating that the final amount is optional when, in fact, it is mandatory based on the financing to be signed at purchase, in violation of the TILA and Section 226.24(c) of Regulation Z.

¹ In this Analysis to Aid Public Comment, Jerry's Ford Sales, Inc. and John's Ford, Inc. dba Jerry's Leesburg Ford are referred to collectively as "respondent Jerry's Ford." Jerry's Chevrolet Geo Oldsmobile, Inc. is referred to as "respondent Jerry's Chevy." Jerry C. Cohen is referred to as "respondent Cohen."

The complaint also alleges that respondents Jerry's Ford and Cohen have disseminated or caused to be disseminated advertisements that state a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR," and have failed to calculate that rate in accordance with Regulation Z, in violation of the TILA and Sections 226.22 and 226.24(b) of Regulation Z, and have also engaged in an unfair and deceptive act or practice, in violation of Section 5(a) of the FTC Act.

The complaint also alleges that respondents Jerry's Chevy and Cohen have disseminated or caused to be disseminated advertisements that state an initial, low monthly payment and an initial number of payments but fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial final balloon payment, and have therefore engaged in an unfair and deceptive act or practice, in violation of Section 5(a) of the FTC Act. The complaint also alleges that these advertisements state an initial number and amount of payments required to repay the indebtedness, but fail to accurately state the terms of repayment, by failing to disclose the amount of the final balloon payment required at the end of the initial payments, based on the financing to be signed at purchase, in violation of the TILA and Section 226.24(c) of Regulation Z.

The complaint also alleges that respondents Jerry's Ford, Jerry's Chevy and Cohen have disseminated or caused to be disseminated advertisements that state the amount of percentage of any downpayment, the number of payments of period of repayment, or the amount of any payment, but fail to state all of the terms required by Regulation Z, as follows: The amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR," in violation of the TILA and Section 226.24(c) of Regulation Z.

The complaint also alleges that respondents Jerry's Ford, Jerry's Chevy and Cohen have disseminated or caused to be disseminated advertisements that state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, but fail to state all of the terms required by Regulation M, as applicable and as follows: That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the

number, amount, due dates or periods of scheduled payments, and the total of such payments under the lease; and a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), in violation of the CLA and Section 213.5(c) of Regulation M.

The proposed order prohibits respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to promote any extension of consumer credit, from misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to whether there may be a balloon payment and the amount of any balloon payment.

The proposed order also prohibits respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to promote any extension of consumer credit, from stating a rate of finance charge without stating the rate as an "annual percentage rate," using that term or the abbreviation "APR," and from failing to calculate the rate in accordance with Regulation Z.

The proposed order also requires respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to promote any extension of consumer credit, whenever the number or amount of payments required to repay the debt are stated, to accurately, clear and conspicuously, state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment, including the amount of any balloon payment, and the annual percentage rate.

The proposed order also requires respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to promote any extension of consumer credit, whenever the number or amount of payments required to repay the debt are stated, to accurately, clearly and conspicuously, state all of the terms required by Regulation Z, as follows: The amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate. The proposed order also requires respondents Jerry's Ford, Jerry's Chevy and Cohen to state only those terms that actually are or will be arranged or offered by the creditor, in any credit advertisement.

The proposed order also requires respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to aid, promote or assist any consumer lease, whenever the amount of any payment, the number of required payments, or

that any or no downpayment or other payment is required at consummation of the lease is stated, to state, clearly and conspicuously, all of the terms required by Regulation M, as applicable and as follows: That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term if the lessee has such liability. The proposed order also requires respondents in any lease advertisement to state that a specific lease of any property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease such property at those amounts or terms.

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

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95-14138 Filed 6-8-95; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3574]

Orchid Technology; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based company from falsely representing that any of its computer peripheral products had been rated, reviewed or endorsed by any person or publication, and from misrepresenting the results of any test, study or evaluation in connection with

marketing its computer peripheral equipment. The consent order also requires the respondent to possess competent and reliable evidence to substantiate performance claims.

DATES: Complaint and Order issued May 1, 1995.¹

FOR FURTHER INFORMATION CONTACT: Matthew Gold or Jeffrey Klurfeld, FTC/ San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103, (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Monday, February 13, 1995, there was published in the **Federal Register**, 60 FR 8237, a proposed consent agreement with analysis In the Matter of Orchid Technology, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95-14184 Filed 6-8-95; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3577]

The Penn Traffic company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, the Penn Traffic Company to acquire a number of Acme supermarkets from American Stores Company, but requires it to divest, to a Commission approved acquirer or acquirers within twelve months, one supermarket in each of the three Pennsylvania areas designated (Towanda, Mount Carmel, and Pittston). If the divestitures are not completed on time, the consent order permits the

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.