

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

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

Docket 9189. Complaint, Dec. 20, 1984—Decision, Dec. 3, 1986*

This consent order prohibits, among other things, thirteen Detroit, Mich.-area Cadillac associations, dealerships and dealers from conspiring to not advertise in the classified sections of newspapers or to not advertise vehicle prices at all.

Appearances

For the Commission: *Dennis F. Johnson, Robert C. Jones, Richard B. Smith, Richard A. Wolff, Timothy Suich and Morris Bloom.*

For the respondents: *Lawrence F. Raniszkeski and Robert Y. Weller, Colombo & Colombo, Birmingham, Mich. and James F. Rill, Jeffrey W. King and Christopher J. MacAvoy, Collier, Shannon, Rill & Scott, Washington, D.C.*

DECISION AND ORDER

The Commission having heretofore issued its two count complaint charging the respondents named in the complaint issued in this matter on December 20, 1984, with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The Cadillac association, the Cadillac dealers, and the Cadillac individual respondents identified in Attachments A, B and C to this order, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order for Count II of the complaint, an admission by the identified respondents of all the jurisdictional facts set forth in the 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 Count II of such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn Count II of the complaint from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Cadillac dealers identified in Attachment A are all corporations with their principal places of business located at the addresses shown in Attachment A.

2. Individual respondents identified in Attachment B are officers of various Cadillac dealers, as shown in Attachment B, and as such they formulate, direct and control the acts and practices of the dealers for which they are officers.

3. The respondent Cadillac association identified in Attachment C is an incorporated trade association for Cadillac motor vehicle dealers with its principal place of business located at the address shown in Attachment C.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as it relates to Count II of the complaint and of the respondents listed in Attachments A, B and C, and the proceeding is in the public interest.

ORDER

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

1. *Person* means any natural person, corporation, partnership, association, joint venture, trust or any other organization or entity, but not governmental entities.

2. *Dealer* means any person who receives on consignment, or purchases, motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such person.

3. *Other dealer* means any dealer not named in this Order.

4. *Dealer association* means any trade, civic, service, or social association whose membership is comprised primarily of dealers.

5. *Detroit area* means the Detroit, Michigan metropolitan area, comprising Macomb County, Wayne County and Oakland County in the State of Michigan.

6. *Respondent* means any corporation listed in Attachment A, any individual listed in Attachment B, or any association listed in Attachment C, and the officers, directors, representatives, agents, divisions, subsidiaries, and successors and assigns of any listed corporation or association.

I.

It is ordered, That each respondent shall cease and desist from, directly or indirectly, or through any corporate or other device, entering into or continuing or carrying out any agreement, contract, combination or conspiracy with any respondent or any other dealer or dealer association in the Detroit area which has the purpose or effect of:

A. Restricting, regulating or limiting the advertising of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle, except to the extent that the restriction, regulation or limitation of such advertising is necessary for the purpose of engaging in lawful joint advertising; or

B. Maintaining, adopting or adhering to any policy, act or practice that restricts, regulates or limits the advertising by any person of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle, except to the extent that the restriction, regulation or limitation of such advertising is necessary for the purpose of engaging in lawful joint advertising.

II.

It is further ordered, That each respondent shall cease and desist from, directly or indirectly, or through any corporate or other device, performing any of the following acts or practices, or encouraging any person to perform any of the following acts or practices, or entering into or continuing or carrying out any agreement, contract, combination or conspiracy with any other person in the Detroit area to do or perform any of the following acts or practices:

A. Requesting, recommending, coercing, influencing, encouraging or persuading, or attempting to request, recommend, coerce, influence, encourage or persuade, any other respondent or any other dealer in the Detroit area to maintain, adopt or adhere to any policy, act or practice that restricts, regulates or limits the advertising by any person of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle, except to the extent that the restriction, regulation or limitation of such advertising is necessary for the purpose of engaging in lawful joint advertising; or

B. Requesting, recommending, coercing, influencing, encouraging or persuading, or attempting to request, recommend, coerce, influ-

ence, encourage or persuade, any other respondent or any other dealer in the Detroit area to change his advertised or published prices.

III.

It is further ordered, That nothing contained in Parts I or II above shall be construed to prohibit: (a) any respondent association from formulating, adopting, disseminating to its members, and enforcing lawful guidelines governing the conduct of its members with respect to advertisements that such respondent association reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act; (b) any other respondent from participating in such activities as identified in Subpart (a) of an association of which such respondent is a member; or (c) any respondent from informing or advising anyone regarding what the respondent reasonably believes to be the requirements of any other existing or proposed federal, state, or local law, regulation, or order, or publishing such interpretations thereof.

IV.

It is further ordered, That the respondent association listed in Attachment C shall cease and desist from failing to maintain for five (5) years following the taking of any action against a person alleged to have violated any advertising guidelines as described in Part III of this order, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

V.

It is further ordered, That the respondent association listed in Attachment C shall:

A. Within sixty (60) days of the date this order becomes final, amend its by-laws to incorporate by reference this order, and provide each member with a copy of this Order and the amended by-laws;

B. For three (3) years from the date this order becomes final, provide each new member with a copy of this order and the amended by-laws within thirty (30) days of the new member's admission to the association.

VI.

It is further ordered, That, for a period of three (3) years from the date this order becomes final, the respondent association listed in Attachment C shall notify the Commission at least sixty (60) days prior to the adoption of any advertising guidelines as described in Part III of this order.

VII.

It is further ordered, That each respondent shall, within sixty (60) days after this order becomes final, and then annually thereafter for a period of three (3) years, file with the Commission a report, in writing, signed by the respondent, setting forth in detail the manner and form in which it has complied with this order.

VIII.

It is further ordered, That each corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in that corporate respondent, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in that corporate respondent that may affect compliance obligations arising out of this order. In the case of each natural person respondent named herein, for a period of three (3) years from the date this order becomes final, said respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of any new affiliation or employment with any dealer or dealer association. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which said respondent is newly engaged, as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

ATTACHMENT A

Audette Cadillac, Inc.
7100 Orchard Lake Road
West Bloomfield, Michigan 48033

Dreisbach & Sons Cadillac Co.
24600 Grand River Avenue
Detroit, Michigan 48219

Crissman Cadillac, Inc.
1350 North Woodward Avenue
Birmingham, Michigan 48012

Arnold Jerome Cadillac, Inc.
675 S. Saginaw
Pontiac, Michigan 48053

Charles Dalglish Cadillac-Peugeot, Inc.
6160 Cass Avenue
Detroit, Michigan 48202

Roger Rinke Cadillac Co.
8333 East Eleven Mile Road
Warren, Michigan 48093

ATTACHMENT B

Charles Audette
Audette Cadillac, Inc.
7100 Orchard Lake Road
West Bloomfield, Michigan 48033

Douglas Dalglish
Charles Dalglish Cadillac-Peugeot, Inc.
6160 Cass Avenue
Detroit, Michigan 48202

Frank Audette
Audette Cadillac, Inc.
7100 Orchard Lake Road
West Bloomfield, Michigan 48033

Thomas S. Dreisbach
Dreisbach & Sons Cadillac Co.
24600 Grand River Avenue
Detroit, Michigan 48219

Charles Dalglish, Jr.
Charles Dalglish Cadillac-Peugeot, Inc.
6160 Cass Avenue
Detroit, Michigan 48202

Roger J. Rinke
Roger Rinke Cadillac Co.
8333 East Eleven Mile Road
Warren, Michigan 48093

ATTACHMENT C

Metro Detroit Cadillac Dealers Association, Inc.
100 Renaissance Center, Suite 3100
Detroit, Michigan 48243