

law has been violated as alleged in the complaint.

Donald S. Clark,
Secretary.

[FR Doc. 97-2809 Filed 2-4-97; 8:45 am]

BILLING CODE 6750-01-P

[File No. 942-3114]

Herb Gordon Auto World, Inc. d/b/a Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Silver Spring, Maryland-based automobile dealerships from misrepresenting financing terms and would require them to comply with federal laws mandating accurate disclosure of the annual percentage rate and monthly payments in financed offers and clear and conspicuous disclosure of major automobile deal terms. They also agreed not to advertise terms that are not actually available to consumers. The Commission had alleged that, in several car leasing advertising campaigns, Herb Gordon Auto had not included all of the disclosures of lease costs and terms required under the Consumer Leasing Act.

DATES: Comments must be received on or before April 7, 1997.

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

FOR FURTHER INFORMATION CONTACT: David Medine, Federal Trade Commission, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326-3224. Carole Reynolds, Federal Trade Commission, 6th and Pennsylvania Ave, NW, Washington, DC 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 § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned 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. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 23, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Herb Gordon Auto, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars.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 respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that state initial low monthly payment amounts and promote the "luxury of low payments" and in fine print, *inter alia*, state an initial number of payments, a downpayment and another amount described as a "purchase option" ("Gold Key Plus" advertisements). The complaint alleges that the Gold Key Plus advertisements misrepresent that the additional amount is optional and fail to disclose that the financing to be signed at purchase

requires the consumer to make a substantial balloon payment at the conclusion of the initial payments, which is a mandatory obligation, and that respondent, therefore, has engaged in a deceptive act or practice in violation of section 5(a) of the Federal Trade Commission Act ("FTC Act"). The complaint also alleges that the Gold Key Plus advertisements fail to accurately state the terms of repayment, by failing to disclose that the additional amount is a final payment and by inaccurately stating that the amount is optional when, in fact, it is mandatory based on the financing to be signed at purchase, in violation of the Truth in Lending Act ("TILA") and § 226.24(c) of Regulation Z. The complaint also alleges that the Gold Key Plus advertisements fail to disclose the annual percentage rate for the financing, using that term or the abbreviation "APR," in violation of the TILA and § 226.24(c) of Regulation Z, and that this is a deceptive act or practice in violation of section 5(a) of the FTC Act.

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

The complaint also alleges that in fine print in the Gold Key Plus advertisements, respondent's advertisements state an initial number of payments, a downpayment and another amount described as a "purchase option" (the "disclaimer"). The complaint also alleges that in fine print (print), in fine print for a short duration (television) and orally for a short duration (radio) in the Drive for 95

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

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

The complaint also alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, or the amount of any payment, but fail to state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR," in violation of the TILA and § 226.24(c) of Regulation Z.

The complaint also alleges that respondent Herb Gordon Auto has disseminated or caused to be disseminated advertisements that state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, but fail to state all of the terms required by Regulation M, as applicable and as follows: That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the number, amount, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the

method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term, in violation of the Consumer Leasing Act ("CLA") and § 213.5(c) of Regulation M.

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

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

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

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

The proposed order prohibits respondent Herb Gordon Auto, in

connection with any advertisement to aid, promote or assist any consumer lease, from misrepresenting the costs or terms of leasing a vehicle.

The proposed order also requires respondent Herb Gordon Auto, in any advertisement to aid, promote or assist any consumer lease, whenever the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease is stated, to state, clearly and conspicuously, all of the terms required by Regulation M, as applicable and as follows: That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term if the lessee has such liability.² The proposed order also

²The Federal Reserve Board ("Board"), which implements the CLA, recently issued revised Regulation M, 61 FR 52246 (Oct. 7, 1996) (to be codified at 12 CFR part 213). Revised Regulation M is not mandatorily effective until Oct. 1, 1997; compliance with revised Regulation M is optional starting Oct. 1, 1996. 61 FR at 52246. In addition, President Clinton recently signed the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 ("Omnibus Act"), Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Title II, Section 2605 of the Omnibus Act amends certain provisions of the CLA ("revised CLA") (to be codified at 15 U.S.C. 1667 *et seq.*); in the future, the Board will implement the revised CLA. The revised CLA is mandatorily effective on the first October 1 that follows the Board's promulgation of implementing regulations, amendments or interpretations by not less than six months; compliance with the revised CLA is optional at any time before the mandatory effective date. See Title II, section 2605(b)(2) of the Omnibus Act.

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

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

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

The proposed order defines the term "clearly and conspicuously" for respondent's advertisements in all media. In a television or videotaped advertisement, the required disclosures made in the audio portion of the advertisement must be in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer. The required disclosures made in the video portion of the advertisement must appear on the screen in a size, shade, contrast, prominence and location, and for a duration, as to be readily noticeable, readable and comprehensible to an ordinary consumer. In a radio advertisement, the required disclosures must be delivered in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer. In a print advertisement (including but not limited to mail solicitations), the required disclosures must appear in a size, shade, contrast, prominence and location as to be readily noticeable, readable and comprehensible to an ordinary consumer. Additionally, nothing contrary to, inconsistent with or in mitigation of the required disclosures can be used in any advertisement.

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

Donald S. Clark,
Secretary.

[FR Doc. 97-2807 Filed 2-4-97; 8:45 am]

BILLING CODE 6750-01-P

184(b) of the CLA, 15 U.S.C. 1667c(b), as amended by Title II, section 2605 of the Omnibus Act (to be codified at 15 U.S.C. 1667c(c)) ("Section 184(c) of the revised CLA"), as amended, or utilize § 213.7(f) of revised Regulation M (to be codified at 12 CFR 213.7(f)), as amended. For television lease advertisements, respondent may also utilize § 213.7(f) of revised Regulation M, as amended.

³The proposed order permits respondent to comply with other requirements of existing Regulation M, 12 CFR part 213, as amended, and the CLA, 15 U.S.C. 1667-1667e, as amended, by utilizing revised Regulation M, as amended.

[File No. 952-3009]

Huling Bros. Chevrolet, Inc.; Huling Buick, Inc.; Huling Bros. Chrysler/Plymouth, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Seattle-based automobile dealerships from misrepresenting financing terms and would require them to comply with federal laws mandating accurate disclosure of the annual percentage rate and monthly payments in financed offers and clear and conspicuous disclosure of major automobile deal terms. They also agreed not to advertise terms that are not actually available to consumers. The Commission had alleged that Huling Bros.' advertising understated the true annual percentage rate ("APR") for their financed purchase deals or failed to state the APR at all, even though a triggering term appeared in the ads, defeating the purpose of the APR as a means for assisting consumers in comparison shopping.

DATES: Comments must be received on or before April 7, 1997.

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

FOR FURTHER INFORMATION CONTACT:

Charles Harwood, Federal Trade Commission, Seattle Regional Office, 2896 Federal Building, 915 Second Ave., Seattle, WA 98174 (206) 220-6350.

George Zweibel, Federal Trade Commission, Seattle Regional Office, 2896 Federal Building, 915 Second Ave., Seattle, WA 98174. (206) 220-4485

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned 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. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic

copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 23, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Huling Bros. Chevrolet, Inc., Huling Buick, Inc., and Huling Bros. Chrysler/Plymouth, Inc.

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

The complaint alleges that respondent Huling Bros. Chevrolet has disseminated, or caused to be disseminated, advertisements that state annual percentage rates as well as monthly payment amounts and vehicle sales prices, but in many instances understate the annual percentage rates by more than 1/4 of 1 percentage point, in violation of the Truth in Lending Act ("TILA") and §§ 226.22(a) and 226.24(b) and (c) of Regulation Z, and have also engaged in an unfair or deceptive act or practice, in violation of section 5(a) of the Federal Trade Commission Act ("FTC Act").

The complaint also alleges that respondents Huling Bros. Chevrolet, Huling Buick, and Huling Bros. Chrysler/Plymouth have disseminated, or caused to be disseminated, advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, or the amount of any payment, but fail to state the annual percentage rate, in violation of the TILA and § 226.24(c) of Regulation Z.

The complaint also alleges that respondents Huling Bros. Chevrolet and Huling Buick have disseminated, or