

Decision and Order

II.

IT IS FURTHER ORDERED that respondents, 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 in or affecting commerce, as “advertisement” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended, shall not, in any manner, expressly or by implication:

- A. 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; 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, and Sections 226.22 and 226.24(c) of Regulation Z, 12 C.F.R. §§ 226.22 and 226.24(c), as amended.)
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term.
- C. Fail to comply in any other respect with Regulation Z, 12 C.F.R. § 226, as amended, and the TILA, 15 U.S.C. §§ 1601-1667, as amended.

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III.

IT IS FURTHER ORDERED that respondent Norristown Automotive Co., Inc., and its successors and assigns, and respondent William Milliken shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

IV.

IT IS FURTHER ORDERED that respondent Norristown Automotive Co., Inc., and its successors and assigns, and respondent William Milliken shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Norristown Automotive Co., 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 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

Decision and Order

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. 20580.

VI.

IT IS FURTHER ORDERED that respondent William Milliken, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment involving the advertising and/or extension of a "consumer lease," as that term is defined in the CLA and its implementing Regulation M, or the advertising and/or extension of "consumer credit," as that term is defined in the TILA and its implementing Regulation Z. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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. 20580.

VII.

IT IS FURTHER ORDERED that respondent Norristown Automobile Co., Inc., and its successors and assigns, and respondent William Milliken shall, within sixty (60) 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.

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VIII.

This order will terminate on February 7, 2020, 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 respondents 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.

By the Commission.

Analysis to Aid Public Comment

**Analysis of Proposed Consent Orders
to Aid Public Comment****Summary**

The Federal Trade Commission has accepted separate agreements, subject to final approval, orders from respondents Dunphy Nissan, Inc. and Serge Naumovsky (“Dunphy”); Norristown Automobile Co., Inc. and William Milliken (“Norristown”); Northeast Auto Outlet, Inc. and Arthur Micchelli (“Northeast”); Pacifico Ardmore, Inc. and Kerry J. Pacifico (“Pacifico Ardmore”); Pacifico Ford, Inc. and Kerry T. Pacifico (“Pacifico Ford”); and Marty Sussman Organization, Inc. and Martin E. Sussman (“Sussman”)(together “respondents”). The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for sixty (60) days for receipt 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 agreements and the comments received and will decide whether it should withdraw from the agreement or make final the agreements' proposed orders.

I. Complaint Allegations**A. FTC Act Violations**

The complaints against the respondents allege that their automobile lease advertisements violate the Federal Trade Commission Act (“FTC Act”), the Consumer Leasing Act (“CLA”), and Regulation M. The complaints also allege that respondents' credit advertisements have violated the Truth in Lending Act (“TILA”) and Regulation Z. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease

Analysis to Aid Public Comment

and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board (“Board”) to promulgate regulations implementing such statutes -- Regulations M and Z respectively. See 15 U.S.C. §§ 1601-1667e; 12 C.F.R. Part 213; 12 C.F.R. Part 226.

The complaints against respondents allege that their lease advertisements represent 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 the downpayment amount. These lease advertisements, according to the complaints, have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception. The complaints allege that this information does not appear at all or appears in fine print in the advertisements and that the information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy and Northeast also allege that these respondents misrepresent that consumers can purchase the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. According to the complaints, the monthly payment amounts prominently stated in the advertisements are components of lease offers and not credit offers. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaint against Dunphy further alleges that Dunphy misrepresents that the amount stated as “down” or “downpayment” is the total amount consumers must pay at lease inception to lease the advertised vehicles. According to the complaint, however, consumers are required to pay additional fees beyond the amount

Analysis to Aid Public Comment

stated as “down” or “downpayment,” including but not limited to the first month's payment, a security deposit, and/or a bank fee. This practice, according to the complaint, constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaint against Northeast also alleges that Northeast misrepresents that the offer to double consumers' downpayments up to \$4,000 applied to the lease or credit offers advertised. According to the complaint, the offer to double consumers' downpayments up to \$4,000 was not available with the advertised lease or credit offers. This practice, according to the complaint, constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy, Northeast, Norristown, and Pacifico Ardmore allege that their credit advertisements represent that consumers can purchase the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the sales price and/or downpayment amount. According to the complaints, these credit advertisements fail to disclose additional terms pertaining to the credit offer, such as the terms of repayment and the annual percentage rate. Such information is alleged to be material to consumers in deciding whether to visit respondents' dealerships and/or whether to purchase an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

The complaints allege that all respondents violated the CLA and Regulation M. The complaints allege that respondents' lease ads state a monthly payment amount and/or downpayment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, one or more of the following required terms: that the transaction advertised is a lease; the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation and that such amount: 1) excludes third-party fees

Analysis to Aid Public Comment

that vary by state or locality, such as taxes, licenses, and registration fees, and discloses that fact or 2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

According to the complaints, the lease disclosures in respondents' lease advertisements are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location. These practices, according to the complaints, violate the advertising requirements of the CLA and Regulation M

The complaints also allege that respondents' lease advertisements state a downpayment amount more prominently than the disclosure of the total amount due at lease signing. According to the complaints, these practices violate Regulation M.

C. TILA and Regulation Z Violations

The complaints against Dunphy, Norristown, Northeast, Pacifico Ardmore, and Pacifico Ford allege that these respondents violated the TILA and Regulation Z. According to the complaints, these respondents state a monthly payment amount and/or a downpayment amount as terms for financing the purchase of the advertised vehicles, but fail to disclose the following items of information required by Regulation Z: the annual percentage rate and the terms of repayment. In addition, the complaints against all respondents allege that their credit ads do not properly state the finance charge as the annual percentage rate, as required by Regulation Z.

II. Proposed Orders

The proposed orders prohibit respondents from disseminating advertisements that state the amount of any payment due at inception (excluding the monthly payment amount) or the fact that any or no inception payment is due without also disclosing with “equal prominence” the total amount a consumer must pay at lease signing or delivery. This requirement parallels an identical requirement found in Regulation M.

The proposed orders also prohibit respondents from disseminating advertisements that state the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows: that the transaction advertised is a lease; the total amount due at lease signing or delivery; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and 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. This requirement is intended to enjoin the respondents from deceptively advertising only the most attractive portions of its lease offers by requiring clear and conspicuous disclosure of the information necessary for consumers to make informed decisions about advertised lease offers. This paragraph parallels the advertising disclosure requirements from the CLA and Regulation M. The proposed orders also prohibit respondents from violating the CLA and Regulation M.

In addition, the proposed order for Dunphy prohibits Dunphy from misrepresenting the costs of leasing, including the total due at lease inception. The proposed orders for respondents Dunphy and Northeast prohibit these respondents from misrepresenting that advertised terms apply to a cash or credit offer, when, in fact, the terms apply to an offer to lease the advertised vehicle. The

Analysis to Aid Public Comment

proposed order for Northeast also prohibits Northeast from misrepresenting the availability of any advertised offer.

With respect to credit advertisements, the proposed orders prohibit respondents from 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 disclosing clearly and conspicuously all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment; and 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.

The proposed orders also prohibit respondents from stating a rate of finance charge without stating the rate as an "annual percentage rate" or "APR." The proposed orders also prohibit all respondents from violating the TILA or Regulation Z.

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

Complaint

IN THE MATTER OF

DUNPHY NISSAN, INC., ET AL.

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

Docket C-3924; File No. 992 3082
Complaint, February 7, 2000 – Decision, February 7, 2000

This consent order prohibits respondents from disseminating advertisements that state the amount of any payment due at inception (excluding the monthly payment amount) or the fact that any or no inception payment is due without also disclosing with “equal prominence” the total amount a consumer must pay at lease signing or delivery. The consent orders also prohibit respondents from disseminating advertisements that state the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required, that the transaction advertised is a lease; the total amount due at lease signing or delivery; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and 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. With respect to credit advertisements, the proposed orders prohibit respondents from stating the amount or percentage of any down payment, 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, the amount or percentage of the down payment; the terms of repayment; and 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. The consent orders also prohibit respondents from stating a rate of finance charge without stating the rate as an “annual percentage rate” or “APR.” Respondent is also prohibited from

Participants

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

For the Respondents: *Serge Naumovsky, Dunphy Nissan, Inc.*

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that Dunphy Nissan, Inc., a corporation, and Serge Naumovsky, individually and as an officer of the corporation, (“respondents”) have 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. §§ 1667-1667f, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, and the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Dunphy Nissan, Inc. is a Pennsylvania corporation with its principal office or place of business at 5018 Township Line Rd., Drexel Hill, Pennsylvania 19083. Respondent offers automobiles for sale or lease to consumers.

2. Respondent Serge Naumovsky is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, controls, and participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

3. Respondents have 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 C.F.R. § 213.2, as amended.

4. Respondents have 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 C.F.R. § 226.2, as amended.

Complaint

5. The acts and practices of respondents 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.

6. Respondents have disseminated or have caused to be disseminated consumer lease advertisements (“lease advertisements”) and credit sale advertisements (“credit advertisements”) for automobiles, including but not necessarily limited to the attached Dunphy Exhibits A, B, and C. Dunphy Exhibits A, B, and C are advertisements in the print media. These lease and/or credit advertisements contain the following statements:

A. [Dunphy Exhibit A states numerous lease and credit offers, including:]

**“HURRY! FINAL 2 DAYS TO TAKE ADVANTAGE
OF THE SPECIAL OFFERS! . . .**

FINANCING AS LOW AS 0% . . .

**ASK ABOUT OUR FAMOUS NO MONEY DOWN
PROGRAM . . .**

	ONLY \$999 DOWN	‘0 DOWN DEALS’
NEW ‘98 ALTIMA GXE \$14,295	\$179 LEASE PER MO.	\$199 LEASE PER MO.
NEW ‘98 ALTIMA SE \$15,599	\$189 LEASE PER MO.	\$219 LEASE PER MO.

Complaint

NEW '98 ALTIMA GLE	\$199 LEASE	\$229 LEASE
\$15,999	PER MO.	PER
	MO."	

[A fine print disclosure at the bottom of the ad states, "Altima/Maxima/Pathfinder/term/miles per year/42/42/50/12/12/12 All leases are with no money down, no cap cost reduction, 1st mo. Pymt., Ref.Sec.Dep., Bank Fee, Taxes, Tags & Registration are due at inception. All Buy Prices with \$2000 cash or trade. . . ."]
(Dunphy Exhibit A)

B. [Dunphy Exhibit B states several lease and credit offers, including:]

**"PRESIDENTS DAY SALE! . . .
WITH LOW DOWN PAYMENT OF ONLY
\$399 LOOK WHAT YOU GET!
HURRY! SPECIAL SALES INCENTIVES END
MONDAY AT 10PM**

...

FINANCING AS LOW AS
6.9%
& YOU KEEP THE REBATE. . .

ASK ABOUT OUR FAMOUS NO MONEY DOWN
PROGRAM

...

'98 ALTIMA GXE. . .		
\$195	OR	\$15,999
PER MONTH		BUY FOR

'98 PATHFINDER SE. . .		
\$299	OR	\$24,999

Complaint

PER MONTH		BUY FOR
'98 QUEST . . .		
\$299	OR	\$18,299"
PER MONTH		BUY FOR

[Fine print disclosures near the bottom and at the bottom of the ad state "Prices and payments include down payment of \$399. All leases are for 42 months with 12,000 mile a year with approved credit, 1st months payment, security deposit, bank fee & reg. are required at inception. All payments and prices are plus tax and include all factory rebates and incentives.] (Exhibit B)

C. [Dunphy Exhibit C states numerous lease and credit offers, including:]

"SUMMER SAVINGS EVENT!

**FINANCING AS LOW AS 0%
ON EVERY NEW VEHICLE**

**NEW '98 MAXIMA SE . . .
\$18,999 with \$2000 cash or trade
\$2,000 DOWN DEALS
\$229 LEASE PER MO.
'0 DOWN DEALS'
\$289 LEASE PER MO. . . .**

**NEW '98 PATHFINDER SE . . .
\$23,699 with \$2000 cash or trade**

**\$2,000 DOWN DEALS
\$269 LEASE PER MO.'0 DOWN DEALS'
\$319 LEASE PER MO. . . ."**

[A fine print disclosure at the bottom of the ad states:
"ALTIMA/MAXIMA/PATHFINDER/SENTRA/QUEST/TERM/
MILES PER YEAR/48/38/48/48/48/12/10/12/12/12 1ST MO.

Complaint

PYMT., REF.SEC.DEF., BANK FEE, TAXES, TAGS, & REGISTRATION ARE DUE AT INCEPTION”] (Dunphy Exhibit C)

FEDERAL TRADE COMMISSION ACT VIOLATIONS**COUNT I: MISREPRESENTATION OF INCEPTION FEES**

7. In lease advertisements, including but not necessarily limited to Dunphy Exhibits A, B, and C, respondents have represented, expressly or by implication, that the amount stated as “down” or “downpayment” is the total amount consumers must pay at lease inception to lease the advertised vehicles.

8. In truth and in fact, the amount stated as “down” or “downpayment” in respondents’ lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers are required to pay additional fees beyond the amount stated as “down” or “downpayment,” including but not limited to the first month’s payment, a security deposit, and/or a bank fee. Therefore, respondents’ representation as alleged in Paragraph 7 was, and is, false or misleading.

9. Respondents’ 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: MISREPRESENTATION OF ADVERTISED TRANSACTION

10. In lease advertisements, including but not necessarily limited to Dunphy Exhibit B, respondents have represented, expressly or by implication, that consumers can finance the purchase of the advertised vehicles for the monthly payment amounts prominently stated in the advertisements.

Complaint

11. In truth and in fact, consumers cannot finance the purchase of the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. The monthly payment amounts prominently stated in the advertisements are components of lease offers and not credit offers. Therefore, respondents' representation as alleged in Paragraph 10 was, and is, false or misleading.

12. Respondents' 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: FAILURE TO DISCLOSE, AND/OR FAILURE TO DISCLOSE ADEQUATELY, LEASE TERMS

13. In lease advertisements, including but not necessarily limited to Dunphy Exhibits A, B, and C, respondents have 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 downpayment amount.

14. These lease advertisements have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception. This information does not appear at all or appears in fine print in the advertisements. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. The failure to disclose, and/or failure to disclose adequately, these additional terms, in light of the representation made, was, and is, a deceptive practice.

15. Respondents' 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).

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COUNT IV: FAILURE TO DISCLOSE CREDIT TERMS

16. In credit advertisements, including but not necessarily limited to Dunphy Exhibits A, B, and C, respondents have represented, expressly or by implication, that consumers can purchase the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the sales price and/or downpayment amount.

17. These credit advertisements have failed to disclose additional terms pertaining to the credit offer, such as the annual percentage rate and the terms of repayment. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to purchase an automobile from respondents. The failure to disclose these additional terms, in light of the representation made, was, and is, a deceptive practice.

18. Respondents' 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).

**CONSUMER LEASING ACT AND REGULATION M
VIOLATIONS****COUNT V: FAILURE TO DISCLOSE, AND/OR FAILURE
TO DISCLOSE CLEARLY AND CONSPICUOUSLY
REQUIRED INFORMATION**

19. Respondents' lease advertisements, including but not necessarily limited to Dunphy Exhibits A, B, and C, state a monthly payment amount and/or downpayment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, certain additional terms required by the Consumer Leasing Act and Regulation M, including one or more of the following terms:

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- a. that the transaction advertised is a lease;
- b. the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation. This total amount may: 1) exclude third-party fees that vary by state or locality, 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 such fees may vary by state or locality are disclosed;
- c. whether or not a security deposit is required;
- d. the number, amounts, and timing of scheduled payments; and
- e. that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

20. The lease disclosures required by Regulation M, if provided, are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location.

21. Respondents' practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7.

**COUNT VI: FAILURE TO DISCLOSE THE TOTAL
AMOUNT DUE AT LEASE SIGNING WITH EQUAL
PROMINENCE**

22. Respondents' lease advertisements, including but not necessarily limited to Dunphy Exhibits A, B, and C, state a downpayment amount more prominently than the disclosure of

Complaint

the total amount due at lease signing, in violation of Section 213.7(b)(1) of Regulation M, 12 C.F.R. § 213.7(b)(1).

23. Respondents' practices have violated Section 213.7(b)(1) of Regulation M, 12 C.F.R. § 213.7(b)(1).

**TRUTH IN LENDING ACT AND REGULATION Z
VIOLATIONS**

**COUNT VII: FAILURE TO DISCLOSE REQUIRED
INFORMATION**

24. In credit advertisements, including but not necessarily limited to Dunphy Exhibits A, B, and C, respondents have stated a monthly payment amount and/or a downpayment amount as terms for financing the purchase of the advertised vehicles, but have failed to disclose the following items of information required by Regulation Z: the annual percentage rate and the terms of repayment.

25. Respondents' practices have violated Section 144 of the Truth in Lending Act, 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

**COUNT VIII: FAILURE TO STATE RATE OF FINANCE
CHARGE AS ANNUAL PERCENTAGE RATE**

26. In credit advertisements, including but not necessarily limited to Dunphy Exhibits A, B, and C, respondents have stated a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR."

27. Respondents' practice constitutes a violation of Section 144 and 107 of the TILA, 15 U.S.C. §§ 1664 and 1606, respectively, and Sections 226.24(b) and 226.22 of Regulation Z, 12 C.F.R. §§ 226.24(b) and 226.22, respectively.

Complaint

THEREFORE, the Federal Trade Commission this seventh day of February, 2000, has issued this complaint against respondents.

By the Commission.

Complaint Exhibits

Exhibit A

YOU CLIP IT & WE'LL BEAT IT!
BRING US ANY NISSAN DEALERS AD OR BUYERS ORDER FROM ANYWHERE IN THE COUNTRY AND WE'LL BEAT IT!
DO NOT PASS UP THIS TREMENDOUS OPPORTUNITY

HURRY! FINAL 2 DAYS TO TAKE ADVANTAGE OF THE SPECIAL OFFERS!

WE GUARANTEE OUR PRICE, SERVICE & YOUR SATISFACTION. EXPERIENCE THE DIFFERENCE TODAY BY DIFFERENCE.

CALL OUR TOLL-FREE CREDIT HOTLINE
(800) 947-1110

ASK ABOUT OUR FAMOUS NO MONEY DOWN PROGRAM

ONLY \$99 DOWN

CHOOSE FROM OVER 100 NEW & USED CAR INVENTORY

REBATES UP TO \$4,000

FINANCING AS LOW AS 0%

OVER 100 NEW CARS IN STOCK... ALL SIMILAR SAVINGS!

0 DOWN DEALS

NEW '98 ALTIMA GXE <small>Automatic, Air Cond, Power Windows, 13115084, Alloy Steel, Sunroof, VIN C1167017</small>	\$14,295	LEASE PER MO. \$179
NEW '98 ALTIMA SE <small>Automatic, Air Cond, Power Windows, 13115084, Alloy Steel, Sunroof, VIN C1167017</small>	\$15,599	\$219
NEW '98 ALTIMA GLE <small>Automatic, Air Cond, Power Windows, 13115084, Alloy Steel, Sunroof, VIN C1167017</small>	\$15,999	\$229
NEW '98 MAXIMA GXE <small>Automatic, Air Cond, Power Windows, 13115084, Alloy Steel, Sunroof, VIN C1167017</small>	\$18,399	\$279
NEW '98 MAXIMA SE <small>Automatic, Air Cond, Power Windows, 13115084, Alloy Steel, Sunroof, VIN C1167017</small>	\$20,699	\$299
NEW '98 MAXIMA GLE <small>Automatic, Air Cond, Power Windows, 13115084, Alloy Steel, Sunroof, VIN C1167017</small>	\$21,199	\$319
NEW '98 PATHFINDER VE <small>Automatic, Air Cond, Power Windows, 13115084, Alloy Steel, Sunroof, VIN C1167017</small>	\$21,199	\$279
NEW '98 PATHFINDER SE <small>Automatic, Air Cond, Power Windows, 13115084, Alloy Steel, Sunroof, VIN C1167017</small>	\$23,899	\$299

DUNPHY NISSAN
5018 TOWNSHIP LINE RD. DREXEL HILL, PA • 610-449-2800

Dunphy Exhibit A

Complaint Exhibits

Exhibit B

NEW DUNPHY NISSAN PRESIDENTS DAY SALE!

EXTENDED SALE HOURS! SAT. 9AM TIL 6PM MON. 9AM TIL 10PM

WITH LOW DOWN PAYMENT OF ONLY \$399 LOOK WHAT YOU GET

EXURRY! SPECIAL SALES INCENTIVES END MONDAY AT 5PM

<p>'98 ALTIMA GXE Auto, Air, PW, PL, AMPPS Cash, WCD Player, VCD, VIN C122188</p> <p>\$195 OR \$15,999</p>	<p>FACTORY REBATE \$14,000</p> <p>SAVINGS \$5,500</p> <p>COLLEGE GRAD REBATE \$500</p> <p>FINANCING AS LOW AS 6.9%</p> <p>CHOOSE FROM OVER 3 MILLION DOLLARS OF NEW & USED CAR INVENTORY</p> <p>ASK ABOUT OUR FAMOUS NO MONEY DOWN PROGRAM</p> <p>CALL OUR TOLL-FREE CREDIT HOTLINE (800) 943-LEND</p> <p>WE GUARANTEE OUR PRICES, SERVICE & YOUR SATISFACTION. EXPERIENCE THE DUNPHY DIFFERENCE</p>	<p>'98 MAXIMA GXE Auto, Air, VS Eng, PW, PL, VCD, AMPPS Cass., VIN M87148</p> <p>\$249 OR \$18,899</p>
<p>'98 ALTIMA SE Auto, Air, PW, PL, AMPPS Sports Cass, WCD, Spoiler, Alloy Wheels, VIN C128004</p> <p>\$225 OR \$17,999</p>		<p>'98 MAXIMA SE Auto, Air, PW, PL, Spoiler, Alloy Wheels, AMPPS Cass., VIN T81208</p> <p>\$279 OR \$19,999</p>
<p>'98 ALTIMA GLE Auto, Air, PW, PL, AMPPS Cassette WCD Player, Leather, TR, Cruise, Park, Cass, KATRON</p> <p>\$235 OR \$18,999</p>		<p>'98 MAXIMA GLE Auto, Air, PW, PL, TR, Cruise, Leather, Alloy Wheels, VIN M81222</p> <p>\$299 OR \$22,999</p>
<p>'98 PATHFINDER SE Auto, Air, 4 Dr, 4 Dr, PW, PL, Alloy Wheels, AMPPS Cass, WCD, VIN W82108</p> <p>\$299 OR \$24,999</p>		<p>'98 FRONTIER Extended Cab, Air, VS, 4 Dr, Alloy Wheels, VIN C202541</p> <p>\$249 OR \$15,000</p>
<p>'98 PATHFINDER XE Auto, Air, 4 Dr, 4 Dr, PW, PL, Cassette WCD Player, VIN W22084</p> <p>\$265 OR \$21,999</p>		<p>'98 SENTRA GXE 4 Dr, Auto, Air, PW, PL, VCD, AMPPS Stereo Cass., VIN C71308</p> <p>YOUR CHOICE</p> <p>'98 200 SX 4 Dr, Auto, Air, PW, PL, Alloy Wheels, Spoiler, AMPPS Stereo Cass., VIN C58758</p> <p>\$199 OR \$13,999</p> <p>SAVE BIG!</p>

DUNPHY-NISSAN

5018 TOWNSHIP LINE RD. DREXEL HILL, PA

PHILA
MARKET
DUNPHY NISSAN (PHILA)
DUNPHY NISSAN (MARKET)

Complaint Exhibits

Exhibit C

G34-MNW The Philadelphia Inquirer

SUMMER SAVINGS EVENT!

FINANCING AS LOW AS 0% ON EVERY NEW VEHICLE

SAVINGS UP TO \$6000

LOWEST PRICES THIS YEAR! HURRY FOR BEST SELECTION!

THIS MONTH'S SPECIAL!
Get a New Maxima for What You Would Pay for an Altima at Another Dealer

NEW 1998 MAXIMA GXE
Automatic Transmission, Air Condition, Power Windows, Power Door Locks, Cruise, TR, SR, #2248



\$16,595 with \$2000 cash or trade
\$199 LEASE PER MO. 0% DOWN DEALS

SUMMER BLOWOUT!

NEW 1998 PATHFINDER XE
Auto, Air Cond., 4 Door, AM/FM Stereo Cass., w/ CD Player, SR, #2250



\$22,299 with \$2000 cash or trade
\$259 LEASE PER MO. 0% DOWN DEALS

OVER 100 NEW CARS IN STOCK, ALL AT SIMILAR SAVINGS!

<p>NEW '98 MAXIMA SE Automatic, 4-Door, 1700cc, Cass. w/CD, Alloy, Sport, SR, #2248</p> <p>\$18,999 with \$2000 cash or trade 2,000 DOWN DEALS \$229 LEASE PER MO. "0 DOWN DEALS" \$289 LEASE PER MO.</p>	<p>NEW '98 PATHFINDER SE Auto, Air, P/W, P/Locks, AM, CD & Cassette, Alloy, SR, #2248</p> <p>\$23,699 with \$2000 cash or trade 2,000 DOWN DEALS \$269 LEASE PER MO. "0 DOWN DEALS" \$319 LEASE PER MO.</p>	<p>NEW '98 SENTRA Auto, Air Condition, AM/FM Stereo Cassette, P/L, P/B, SR, #1198</p> <p>\$9,999 with \$2000 cash or trade 2,000 DOWN DEALS \$119 LEASE PER MO. "0 DOWN DEALS" \$169 LEASE PER MO.</p>	<p>NEW '98 QUEST Auto, Air, 7 Passenger, P/W, P/L, Cass., AM/FM Stereo Cassette, SR, #4216</p> <p>\$17,199 with \$2000 cash or trade 2,000 DOWN DEALS \$229 LEASE PER MO. "0 DOWN DEALS" \$269 LEASE PER MO.</p>
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CHOOSE FROM OVER \$3,000,000 OF NEW & USED CAR INVENTORY

CALL OUR TOLL-FREE CREDIT HOTLINE (800) 947-LEND

EVERY NEW CAR IN STOCK \$2,000 REBATE PLUS HUGE DUNPHY DISCOUNTS

WE GUARANTEE OUR PRICES, SERVICE & YOUR SATISFACTION EXPERIENCE THE DUNPHY DIFFERENCE

DUNPHY NISSAN

**5018 TOWNSHIP LINE RD.
DREXEL HILL, PA**

610-449-2800



ALL DUNPHY NISSAN FINANCIAL OFFERS ARE SUBJECT TO CREDIT REVIEW. FINANCING PER YEAR: 10/10/98-11/10/98: 12/10/98-12/10/98: 1ST MO. PPY/INT. REF. SEC. DEP. BIRTH CERT. TAXES, TITLES & REGISTRATION FEE. IN-STATE. AT RECEPTION. REBATES & INCENTIVES INCLUDED TO QUAL. BUYERS. *REBATE OFFER AVAILABLE TO NEW COLLEGE GRAD. RESIDENTS ONLY.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violations of the Federal Trade Commission Act, 15 U.S.C. §§ 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, and the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended; 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 the respondents 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 respondents have 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:

Decision and Order

1. Respondent Dunphy Nissan, Inc. is a Pennsylvania corporation with its principal office or place of business at 5018 Township Line Rd., Drexel Hill, Pennsylvania 19026.
2. Respondent Serge Naumovsky is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of the corporate respondent.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

1. "Clearly and conspicuously" shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it.
 - b. In a print advertisement, a disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in

Decision and Order

print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

2. "Equal prominence" shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, a video disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. An audio disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.
 - b. In a print advertisement, a disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. "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, as required by Regulation M, 12 C.F.R. § 213, as amended. 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 such fees may vary

Decision and Order

by state or locality are disclosed. (Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. Unless otherwise specified, "respondents" shall mean Dunphy Nissan, Inc., a corporation, its successors and assigns and its officers; Serge Naumovsky, individually and as an officer of the corporation; and each of the above's agents, representatives, and employees.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended, shall not, in any manner, expressly or by implication:

- A. Misrepresent the costs of leasing a vehicle, including but not necessarily limited to the total amount due at lease inception.
- B. Misrepresent that any advertised lease terms, including but not limited to a monthly payment amount or downpayment, pertain to a cash or credit offer.
- C. 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, unless the advertisement also

Decision and Order

states with equal prominence the total amount due at lease signing or delivery.

- D. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows:
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, amounts, 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.

(Section 184(a) of the Consumer Leasing Act (“CLA”), 15 U.S.C. § 1667c(a), as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)

For radio advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. § 1667c(C), and Section 213.7(f) of Regulation M, 12 C.F.R. § 213.7(f), as amended. For television advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

Decision and Order

- E. Fail to comply in any other respect with Regulation M, 12 C.F.R. § 213, as amended, and the CLA, 15 U.S.C. §§ 1667-1667f, as amended.

II.

IT IS FURTHER ORDERED that respondents, 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 in or affecting commerce, as “advertisement” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended, shall not, in any manner, expressly or by implication:

- A. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term.
- B. 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; 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, and Sections 226.22

Decision and Order

and 226.24(c) of Regulation Z, 12 C.F.R. §§ 226.22 and 226.24(c), as amended.)

- C. Fail to comply in any other respect with Regulation Z, 12 C.F.R. § 226, as amended, and the TILA, 15 U.S.C. §§ 1601-1667, as amended.

III.

IT IS FURTHER ORDERED that respondent Dunphy Nissan, Inc., and its successors and assigns, and respondent Serge Naumovsky, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

IV.

IT IS FURTHER ORDERED that respondent Dunphy Nissan, Inc., and its successors and assigns, and respondent Serge Naumovsky, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Dunphy Nissan, 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

Decision and Order

this order, including but not necessarily 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. 20580.

VI.

IT IS FURTHER ORDERED that respondent Serge Naumovsky for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment involving the advertising and/or extension of a "consumer lease," as that term is defined in the CLA and its implementing Regulation M, or the advertising and/or extension of "consumer credit," as that term is defined in the TILA and its implementing Regulation Z. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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. 20580.

Decision and Order

VII.

IT IS FURTHER ORDERED that respondent Dunphy Nissan, Inc., and its successors and assigns, and respondent Serge Naumovsky shall, within sixty (60) 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 February 7, 2020, 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 respondents 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.

By the Commission.

Analysis to Aid Public Comment

Analysis of Proposed Consent Orders to Aid Public Comment

Summary

The Federal Trade Commission has accepted separate agreements, subject to final approval, orders from respondents Dunphy Nissan, Inc. and Serge Naumovsky (“Dunphy”); Norristown Automobile Co., Inc. and William Milliken (“Norristown”); Northeast Auto Outlet, Inc. and Arthur Micchelli (“Northeast”); Pacifico Ardmore, Inc. and Kerry J. Pacifico (“Pacifico Ardmore”); Pacifico Ford, Inc. and Kerry T. Pacifico (“Pacifico Ford”); and Marty Sussman Organization, Inc. and Martin E. Sussman (“Sussman”)(together “respondents”). The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for sixty (60) days for receipt 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 agreements and the comments received and will decide whether it should withdraw from the agreement or make final the agreements' proposed orders.

I. Complaint Allegations

A. FTC Act Violations

The complaints against the respondents allege that their automobile lease advertisements violate the Federal Trade Commission Act (“FTC Act”), the Consumer Leasing Act (“CLA”), and Regulation M. The complaints also allege that respondents' credit advertisements have violated the Truth in Lending Act (“TILA”) and Regulation Z. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or

Analysis to Aid Public Comment

omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board ("Board") to promulgate regulations implementing such statutes -- Regulations M and Z respectively. See 15 U.S.C. §§ 1601-1667e; 12 C.F.R. Part 213; 12 C.F.R. Part 226.

The complaints against respondents allege that their lease advertisements represent 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 the downpayment amount. These lease advertisements, according to the complaints, have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception. The complaints allege that this information does not appear at all or appears in fine print in the advertisements and that the information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy and Northeast also allege that these respondents misrepresent that consumers can purchase the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. According to the complaints, the monthly payment amounts prominently stated in the advertisements are components of lease offers and not credit offers. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaint against Dunphy further alleges that Dunphy misrepresents that the amount stated as "down" or "downpayment" is the total amount consumers must pay at lease inception to lease the advertised vehicles. According to the complaint, however,

Analysis to Aid Public Comment

consumers are required to pay additional fees beyond the amount stated as “down” or “downpayment,” including but not limited to the first month's payment, a security deposit, and/or a bank fee. This practice, according to the complaint, constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaint against Northeast also alleges that Northeast misrepresents that the offer to double consumers' downpayments up to \$4,000 applied to the lease or credit offers advertised. According to the complaint, the offer to double consumers' downpayments up to \$4,000 was not available with the advertised lease or credit offers. This practice, according to the complaint, constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy, Northeast, Norristown, and Pacifico Ardmore allege that their credit advertisements represent that consumers can purchase the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the sales price and/or downpayment amount. According to the complaints, these credit advertisements fail to disclose additional terms pertaining to the credit offer, such as the terms of repayment and the annual percentage rate. Such information is alleged to be material to consumers in deciding whether to visit respondents' dealerships and/or whether to purchase an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

The complaints allege that all respondents violated the CLA and Regulation M. The complaints allege that respondents' lease ads state a monthly payment amount and/or downpayment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, one or more of the following required terms: that

Analysis to Aid Public Comment

the transaction advertised is a lease; the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation and that such amount: 1) excludes third-party fees that vary by state or locality, such as taxes, licenses, and registration fees, and discloses that fact or 2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

According to the complaints, the lease disclosures in respondents' lease advertisements are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location. These practices, according to the complaints, violate the advertising requirements of the CLA and Regulation M.

The complaints also allege that respondents' lease advertisements state a downpayment amount more prominently than the disclosure of the total amount due at lease signing. According to the complaints, these practices violate Regulation M.

C. TILA and Regulation Z Violations

The complaints against Dunphy, Norristown, Northeast, Pacifico Ardmore, and Pacifico Ford allege that these respondents violated the TILA and Regulation Z. According to the complaints, these respondents state a monthly payment amount and/or a downpayment amount as terms for financing the purchase of the advertised vehicles, but fail to disclose the following items of information required by Regulation Z: the annual percentage rate and the terms of repayment. In addition, the complaints against all respondents allege that their credit ads do not properly state the

Analysis to Aid Public Comment

finance charge as the annual percentage rate, as required by Regulation Z.

II. Proposed Orders

The proposed orders prohibit respondents from disseminating advertisements that state the amount of any payment due at inception (excluding the monthly payment amount) or the fact that any or no inception payment is due without also disclosing with “equal prominence” the total amount a consumer must pay at lease signing or delivery. This requirement parallels an identical requirement found in Regulation M.

The proposed orders also prohibit respondents from disseminating advertisements that state the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows: that the transaction advertised is a lease; the total amount due at lease signing or delivery; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and 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. This requirement is intended to enjoin the respondents from deceptively advertising only the most attractive portions of its lease offers by requiring clear and conspicuous disclosure of the information necessary for consumers to make informed decisions about advertised lease offers. This paragraph parallels the advertising disclosure requirements from the CLA and Regulation M. The proposed orders also prohibit respondents from violating the CLA and Regulation M.

Analysis to Aid Public Comment

In addition, the proposed order for Dunphy prohibits Dunphy from misrepresenting the costs of leasing, including the total due at lease inception. The proposed orders for respondents Dunphy and Northeast prohibit these respondents from misrepresenting that advertised terms apply to a cash or credit offer, when, in fact, the terms apply to an offer to lease the advertised vehicle. The proposed order for Northeast also prohibits Northeast from misrepresenting the availability of any advertised offer.

With respect to credit advertisements, the proposed orders prohibit respondents from 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 disclosing clearly and conspicuously all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment; and 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.

The proposed orders also prohibit respondents from stating a rate of finance charge without stating the rate as an "annual percentage rate" or "APR." The proposed orders also prohibit all respondents from violating the TILA or Regulation Z.

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

Complaint

IN THE MATTER OF

PACIFICO ARDMORE, INC., ET AL.

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

*Docket C-3920; File No. 992 3116
Complaint, February 7, 2000 – Decision, February 7, 2000*

This consent order prohibits respondents from disseminating advertisements that state the amount of any payment due at inception (excluding the monthly payment amount) or the fact that any or no inception payment is due without also disclosing with “equal prominence” the total amount a consumer must pay at lease signing or delivery. The consent orders also prohibit respondents from disseminating advertisements that state the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required, that the transaction advertised is a lease; the total amount due at lease signing or delivery; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and 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. With respect to credit advertisements, the proposed orders prohibit respondents from 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 disclosing clearly and conspicuously all of the terms, the amount or percentage of the downpayment; the terms of repayment; and 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. The consent orders also prohibit respondents from stating a rate of finance charge without stating the rate as an “annual percentage rate” or “APR.”

Participants

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

Complaint

For the Respondents: *Richard A. Sprague, Sprague & Sprague.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Pacifico Ardmore, Inc., a corporation, also doing business as Kerry's Pacifico Ford, and Kerry J. Pacifico, individually and as an officer of the corporation ("respondents"), have 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. §§ 1667-1667f, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, and the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Pacifico Ardmore, Inc. is a Pennsylvania corporation with its principal office or place of business at 211 East Lancaster Avenue, Ardmore, Pennsylvania 19903. Respondent offers automobiles for sale or lease to consumers.

2. Respondent Kerry J. Pacifico is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, controls, and participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

3. Respondents have 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 C.F.R. § 213.2, as amended.

4. Respondents have disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms

Complaint

“advertisement,” “credit sale,” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.

5. The acts and practices of respondents 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.

6. Respondents have disseminated or have caused to be disseminated advertisements promoting consumer leases (“lease advertisements”) and credit sales (“credit advertisements”) for automobiles, including but not necessarily limited to the attached Pacifico Ardmere Exhibits A and B. Pacifico Ardmere Exhibits A and B are advertisements in the print media. These lease and/or credit advertisements contains the following statements:

A. [Pacifico Ardmere Exhibit A states several lease and credit offers, including:]

“1998 FORD TAURUS LX. . .

CASH OR TRADE DOWN \$2,500
BUY \$14,54 FOR

OR LEASE FOR:
\$212 PER MO. 27 MOS. . . .

1998 FORD EXPLORER SPT 4X4. . .

CASH OR TRADE DOWN \$2,500
BUY \$22,105
FOR

OR LEASE FOR:
\$241 PER
MO.

Complaint

24
MOS. . . .

AS LOW AS 1.9% FINANCING. . .”

[A fine print disclosure at the bottom of the ad states, “1.9 Financing on Escort, Mustang, Contour & Ranger. Prior Sales Excluded. All Leases 24 Mo. (27 Mo. On Taurus). Due at inception \$2,500 down cash or trade, 1st mo. pymt., ref.sec.dep., bank fee (if req.) tax & tags.] (Pacifco Ardmore Exhibit A)

B. [Pacifco Ardmore Exhibit B states several lease and credit offers, including:]

“0%
FINANCING ...

‘99 FORD TAURUS . . .

LEASE PER MO
FOR: \$239 36 MOS.

BUY
FOR: \$16,899

‘99 FORD EXPEDITION XLT

LEASE \$339 PER MO.
FOR: 36 MOS. . . .”

[A fine print disclosure at the bottom of the ad states, “36 Mo. Closed End Lease, Due at inception \$2,000 down cash or trade, 1st Mo. pymt., Ref.sec.dep., bank fee, tax & tags to qual. buyers . . .] (Pacifco Ardmore Exhibit B)

Complaint

FEDERAL TRADE COMMISSION ACT VIOLATIONS**COUNT I: FAILURE TO DISCLOSE, AND/OR FAILURE TO DISCLOSE ADEQUATELY, LEASE TERMS**

7. In lease advertisements, including but not necessarily limited to Pacifico Ardmore Exhibits A and B, respondents have 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.

8. These lease advertisements have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception. This information either does not appear at all or appears in fine print in the advertisements. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. The failure to disclose, and/or failure to disclose adequately, these additional terms, in light of the representation made, was, and is, a deceptive practice.

9. Respondents' 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, AND/OR FAILURE TO DISCLOSE ADEQUATELY, CREDIT TERMS

10. In credit advertisements, including but not necessarily limited to Pacifico Ardmore Exhibit A, respondents have represented, expressly or by implication, that consumers can finance the purchase of the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the sales price and a downpayment amount.

Complaint

11. These credit advertisements have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the credit offer, such as the terms of repayment and the annual percentage rate. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to purchase an automobile from respondents. The failure to disclose, and/or failure to disclose adequately, these additional terms, in light of the representation made, was, and is, a deceptive practice.

12. Respondents' 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).

**CONSUMER LEASING ACT AND REGULATION M
VIOLATIONS**

**COUNT III: FAILURE TO DISCLOSE, AND/OR FAILURE
TO DISCLOSE CLEARLY AND CONSPICUOUSLY,
REQUIRED INFORMATION**

13. Respondents' lease advertisements, including but not necessarily limited to Pacifico Ardmore Exhibits A and B, state a monthly payment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, certain additional terms required by the Consumer Leasing Act and Regulation M, including one or more of the following terms:

- a. that the transaction advertised is a lease;
- b. the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation. This total amount may: 1) exclude third-party fees that vary by state or locality, 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

Complaint

state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed;

- c. whether or not a security deposit is required;
- d. the number, amounts, and timing of scheduled payments; and
- e. that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

14. The lease disclosures required by Regulation M, if provided, are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location.

15. Respondents' practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7.

**COUNT IV: FAILURE TO DISCLOSE THE TOTAL
AMOUNT DUE AT LEASE SIGNING WITH EQUAL
PROMINENCE**

16. Respondents' lease advertisements, including but not necessarily limited to Pacifico Ardmore Exhibits A and B, state a downpayment amount more prominently than the disclosure of the total amount due at lease signing, in violation of Section 213.7(b)(1) of Regulation M, 12 C.F.R. § 213.7(b)(1).

17. Respondents' practices have violated Section 213.7(b)(1) of Regulation M, 12 C.F.R. § 213.7(b)(1).

Complaint

**TRUTH IN LENDING ACT AND REGULATION Z
VIOLATIONS****COUNT V: FAILURE TO DISCLOSE, AND/OR FAILURE
TO DISCLOSE CLEARLY AND CONSPICUOUSLY,
REQUIRED INFORMATION**

18. In credit advertisements, including but not necessarily limited to Pacifico Ardmore Exhibit A, respondents have stated a downpayment amount, but have failed to disclose, and/or failed to disclose clearly and conspicuously, the following items of information required by Regulation Z: the annual percentage rate and/or the terms of repayment.

19. The credit disclosures required by Regulation Z, if provided, are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location.

20. Respondents' practices have violated Section 144 of the Truth in Lending Act, 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

**COUNT VI: FAILURE TO STATE RATE OF FINANCE
CHARGE AS ANNUAL PERCENTAGE RATE**

21. In credit advertisements, including but not necessarily limited to Pacifico Ardmore Exhibits A and B, respondents have stated a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR."

22. Respondents' practice constitutes a violation of Section 144 and 107 of the TILA, 15 U.S.C. §§ 1664 and 1606, respectively, and Sections 226.24(b) and 226.22 of Regulation Z, 12 C.F.R. §§ 226.24(b) and 226.22, respectively.

Decision and Order

amended, and the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended; 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 the respondents 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 respondents have 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 Pacifico Ardmore, Inc. is a Pennsylvania corporation with its principal office or place of business at 211 East Lancaster Avenue, Ardmore, Pennsylvania 19903.
2. Respondent Kerry J. Pacifico is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation. His principal

Decision and Order

office or place of business is the same as that of the corporate respondent.

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

ORDER**DEFINITIONS**

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

1. “Clearly and conspicuously” shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it.
 - b. In a print advertisement, a disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

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2. “Equal prominence” shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, a video disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. An audio disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.
 - b. In a print advertisement, a disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. “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, as required by Regulation M, 12 C.F.R. § 213, as amended. 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 such fees may vary by state or locality are disclosed. (Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)
4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

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5. Unless otherwise specified, “respondents” shall mean Pacifico Ardmore, Inc., a corporation, its successors and assigns and its officers; Kerry J. Pacifico, individually and as an officer of the corporation; and each of the above's agents, representatives, and employees.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any consumer lease in or affecting commerce, as “advertisement” and “consumer lease” are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended, shall not, in any manner, expressly or by implication:

- A. 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, unless the advertisement also states with equal prominence the total amount due at lease signing or delivery.
- B. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows:
 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, amounts, and timing of scheduled payments; and

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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.

(Section 184(a) of the Consumer Leasing Act (“CLA”), 15 U.S.C. § 1667c(a), as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)

For radio advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. § 1667c(C), and Section 213.7(f) of Regulation M, 12 C.F.R. § 213.7(f), as amended. For television advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

- C. Fail to comply in any other respect with Regulation M, 12 C.F.R. § 213, as amended, and the CLA, 15 U.S.C. §§ 1667-1667f, as amended.

II.

IT IS FURTHER ORDERED that respondents, 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 in or affecting commerce, as “advertisement” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended, shall not, in any manner, expressly or by implication:

- A. 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

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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; 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, and Sections 226.22 and 226.24(c) of Regulation Z, 12 C.F.R. §§ 226.22 and 226.24(c), as amended.)

- B. State a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term.
- C. Fail to comply in any other respect with Regulation Z, 12 C.F.R. § 226, as amended, and the TILA, 15 U.S.C. §§ 1601-1667, as amended.

III.

IT IS FURTHER ORDERED that respondent Pacifico Ardmore, Inc., and its successors and assigns, and respondent Kerry J. Pacifico shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

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IV.

IT IS FURTHER ORDERED that respondent Pacifico Ardmore, Inc., and its successors and assigns, and respondent Kerry J. Pacifico shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Pacifico Ardmore, 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 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. 20580.

Decision and Order

VI.

IT IS FURTHER ORDERED that respondent Kerry J. Pacifico, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment involving the advertising and/or extension of a “consumer lease,” as that term is defined in the CLA and its implementing Regulation M, or the advertising and/or extension of “consumer credit,” as that term is defined in the TILA and its implementing Regulation Z. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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. 20580.

VII.

IT IS FURTHER ORDERED that respondent Pacifico Ardmore, Inc., and its successors and assigns, and respondent Kerry J. Pacifico shall, within sixty (60) 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 February 7, 2020, 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:

Analysis to Aid Public Comment

- 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 respondents 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.

By the Commission.

**Analysis of Proposed Consent Orders
to Aid Public Comment**

Summary

The Federal Trade Commission has accepted separate agreements, subject to final approval, orders from respondents Dunphy Nissan, Inc. and Serge Naumovsky (“Dunphy”); Norristown Automobile Co., Inc. and William Milliken (“Norristown”); Northeast Auto Outlet, Inc. and Arthur Micchelli (“Northeast”); Pacifico Ardmore, Inc. and Kerry J. Pacifico (“Pacifico Ardmore”); Pacifico Ford, Inc. and Kerry T. Pacifico

Analysis to Aid Public Comment

("Pacifco Ford"); and Marty Sussman Organization, Inc. and Martin E. Sussman ("Sussman")(together "respondents"). The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for sixty (60) days for receipt 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 agreements and the comments received and will decide whether it should withdraw from the agreement or make final the agreements' proposed orders.

I. Complaint Allegations

A. FTC Act Violations

The complaints against the respondents allege that their automobile lease advertisements violate the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. The complaints also allege that respondents' credit advertisements have violated the Truth in Lending Act ("TILA") and Regulation Z. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board ("Board") to promulgate regulations implementing such statutes -- Regulations M and Z respectively. *See* 15 U.S.C. §§ 1601-1667e; 12 C.F.R. Part 213; 12 C.F.R. Part 226.

The complaints against respondents allege that their lease advertisements represent 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 the downpayment amount. These lease advertisements, according to the complaints, have failed to

Analysis to Aid Public Comment

disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception. The complaints allege that this information does not appear at all or appears in fine print in the advertisements and that the information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy and Northeast also allege that these respondents misrepresent that consumers can purchase the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. According to the complaints, the monthly payment amounts prominently stated in the advertisements are components of lease offers and not credit offers. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaint against Dunphy further alleges that Dunphy misrepresents that the amount stated as "down" or "downpayment" is the total amount consumers must pay at lease inception to lease the advertised vehicles. According to the complaint, however, consumers are required to pay additional fees beyond the amount stated as "down" or "downpayment," including but not limited to the first month's payment, a security deposit, and/or a bank fee. This practice, according to the complaint, constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaint against Northeast also alleges that Northeast misrepresents that the offer to double consumers' downpayments up to \$4,000 applied to the lease or credit offers advertised. According to the complaint, the offer to double consumers' downpayments up to \$4,000 was not available with the advertised lease or credit offers. This practice, according to the complaint,

Analysis to Aid Public Comment

constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy, Northeast, Norristown, and Pacifico Ardmore allege that their credit advertisements represent that consumers can purchase the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the sales price and/or downpayment amount. According to the complaints, these credit advertisements fail to disclose additional terms pertaining to the credit offer, such as the terms of repayment and the annual percentage rate. Such information is alleged to be material to consumers in deciding whether to visit respondents' dealerships and/or whether to purchase an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

The complaints allege that all respondents violated the CLA and Regulation M. The complaints allege that respondents' lease ads state a monthly payment amount and/or downpayment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, one or more of the following required terms: that the transaction advertised is a lease; the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation and that such amount: 1) excludes third-party fees that vary by state or locality, such as taxes, licenses, and registration fees, and discloses that fact or 2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

Analysis to Aid Public Comment

According to the complaints, the lease disclosures in respondents' lease advertisements are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location. These practices, according to the complaints, violate the advertising requirements of the CLA and Regulation M.

The complaints also allege that respondents' lease advertisements state a downpayment amount more prominently than the disclosure of the total amount due at lease signing. According to the complaints, these practices violate Regulation M.

C. TILA and Regulation Z Violations

The complaints against Dunphy, Norristown, Northeast, Pacifico Ardmore, and Pacifico Ford allege that these respondents violated the TILA and Regulation Z. According to the complaints, these respondents state a monthly payment amount and/or a downpayment amount as terms for financing the purchase of the advertised vehicles, but fail to disclose the following items of information required by Regulation Z: the annual percentage rate and the terms of repayment. In addition, the complaints against all respondents allege that their credit ads do not properly state the finance charge as the annual percentage rate, as required by Regulation Z.

II. Proposed Orders

The proposed orders prohibit respondents from disseminating advertisements that state the amount of any payment due at inception (excluding the monthly payment amount) or the fact that any or no inception payment is due without also disclosing with "equal prominence" the total amount a consumer must pay at lease signing or delivery. This requirement parallels an identical requirement found in Regulation M.

Analysis to Aid Public Comment

The proposed orders also prohibit respondents from disseminating advertisements that state the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows: that the transaction advertised is a lease; the total amount due at lease signing or delivery; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and 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. This requirement is intended to enjoin the respondents from deceptively advertising only the most attractive portions of its lease offers by requiring clear and conspicuous disclosure of the information necessary for consumers to make informed decisions about advertised lease offers. This paragraph parallels the advertising disclosure requirements from the CLA and Regulation M. The proposed orders also prohibit respondents from violating the CLA and Regulation M.

In addition, the proposed order for Dunphy prohibits Dunphy from misrepresenting the costs of leasing, including the total due at lease inception. The proposed orders for respondents Dunphy and Northeast prohibit these respondents from misrepresenting that advertised terms apply to a cash or credit offer, when, in fact, the terms apply to an offer to lease the advertised vehicle. The proposed order for Northeast also prohibits Northeast from misrepresenting the availability of any advertised offer.

With respect to credit advertisements, the proposed orders prohibit respondents from 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 disclosing clearly and conspicuously all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment; and the correct annual percentage rate, using that term or the abbreviation "APR." If the

Analysis to Aid Public Comment

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

The proposed orders also prohibit respondents from stating a rate of finance charge without stating the rate as an “annual percentage rate” or “APR.” The proposed orders also prohibit all respondents from violating the TILA or Regulation Z.

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

Complaint

IN THE MATTER OF

THE QUIGLEY CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3926; File No. 982 3152
Complaint, February 10, 2000 – Decision, February 10, 2000

This consent order addresses representations by respondent Quigley Corporation concerning the effectiveness of its Cold-Eeze Zinc Lozenges, Cold-Eezer Plus Zinc Gluconate Lozenges, and Kids-Eeze Bubble Gum (“Kids-Eeze”) products. The consent order prohibits the respondent from making representations that its products prevent users from contracting colds and pneumonia; will treat allergies; will reduce the severity of colds in children; and that Kids-Eeze will reduce the severity of cold symptoms in children unless it possesses and relies upon competent and reliable scientific evidence that substantiates such representations. The consent order also prohibits the respondent from making any representation that any food, drug, or dietary supplement can or will cure, treat, or prevent any disease, or have any effect on the structure or function of the human body, unless it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Participants

For the Commission: *Daniel Kaufman, Lisa B. Kopchik, C. Lee Peeler and Michelle K. Rusk.*

For the Respondent: *Lewis Rose, Arent Fox Plotkin & Kahn, PLLC; Alan K. Palmer, Cooper, Carvin & Rosenthal; Glenn A. Mitchell, Stein, Mitchell & Mezines; and Ed Glynn, Venable, Baetjer, Howard & Civiletti, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Quigley Corporation, a corporation (“respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

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1. Respondent The Quigley Corporation (“Quigley”) is a Nevada corporation with its principal office or place of business at 10 South Clinton Street, Doylestown, PA 18901.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed dietary supplement products to the public, including Cold-Eezer Plus Zinc Gluconate Lozenges and Cold-Eeze Zinc Lozenges (hereinafter, collectively, “Cold-Eeze”), and Kids-Eeze Bubble Gum (“Kids-Eeze”). These products are “foods” and/or “drugs” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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.

4 Respondent has disseminated or has caused to be disseminated advertisements for Cold-Eeze, including but not limited to the attached Exhibits A through C, transcripts of television advertisements that appeared on QVC or Q2, home shopping cable channels run by QVC, Inc.; Exhibits D through E, advertisements that appeared on the Internet at www.quigleyco.com; and Exhibits F through H, advertisements that appeared on radio programs. These advertisements contain the following statements:

(a) C. Phillips: To have a strategy to help fight the common cold. The kids are in school. They are there right now.

...

C. Phillips: It’s a breeding ground. Everything they touch -- if the child before had a cold

Complaint

and they touch that spot and they touch their noses, its off to the races.

...

C. Phillips: So, there's a couple of strategies. One is we can take one a day and try to see if you can beat the cold to what they call prophylactic or a preventive medicine.

Show Host: Excellent

C. Phillips: Try taking one a day. Or if the child comes home and you see that it's here . . . that they have symptoms, start treating the child. Take one every three hours. But everyone in the family should take a couple to prevent picking up that cold.

(Exhibit A, p. 2).

(b) Caller: I just wanted you to know I have a granddaughter that's 12 years old, and ever since birth when she gets a cold, it turns into bronchitis.

...

Caller: And so I tried these . . . and it eliminated the cold almost immediately.

C. Phillips: Well, that's really important because we have several customers we know through QVC and other places where they really can't afford to have their children even get a cold because what

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happens is this exacerbated condition appears.

Show Host: Sure.

C. Phillips: You get bronchitis, pneumonias. And here's an opportunity right in front of us to stop it right now.

Show Host: Right. Exactly.

(Exhibit A, p. 3).

(c) C. Phillips: The other thing is allergies.

Show Host: Yes.

C. Phillips: We have many, many people who have reported to us that their usual choice is to have antihistamines, which make them dopey --

Show Host: Sure.

C. Phillips: -- which make them incapable of functioning, some of them.

Show Host: Right.

C. Phillips: And we suggested they try it. So, we -- they tried it and they take one and they see how long it lasts. It does diminish the symptoms of allergies.

(Exhibit A, p. 4).

Complaint

(d) Show Host: Children can absolutely take this. In fact, I've heard . . . people will wrap one of these in cheesecloth and let their toddler suck on it so they can get the benefits from it without actually risking choking or anything.

C. Phillips: Um-hum. Yes.

(Exhibit A, p. 6).

(e) Caller: And I was glad to hear you say something about taking one a day as a preventative. We've never tried that before.

C. Phillips: Yes. Well, now's the time to try it.

Show Host: Yep.

C. Phillips: This is -- this is a strategy that may pay off big-time because it does help block as you saw in the animation. If we can stop the viruses we pick up over the day, they will not have a chance to even start.

Show Host: Perfect.

C. Phillips: Therefore, it will preclude you getting the cold.

Caller: Yes.

C. Phillips: And it's a good strategy. We highly recommend people try that.

(Exhibit A, pp. 6-7)

Complaint

(f) C. Phillips: Well not only that, but zinc is a critical, very important mineral that we all need. A lot of us are deficient in it. . . . So, not only are you preventing a cold, but you're getting that zinc which has been proven many times to have a positive effect on many conditions of the body.

Show Host: So you're getting even healthier.

C. Phillips: Absolutely.

(Exhibit A, p. 9).

(g) Show Host: And actually, if you take these on a preventative basis, you might not ever get a cold at all.

R. Pollack: Right.

(Exhibit B, p. 3)

(h) Show Host: You know, my own grandma just got over pneumonia.

R. Pollack: Hmm.

Show Host: And I'm sending her these so that she can continue to take them, and as some of the people do, take them on a preventative basis.

R. Pollack: Right. Yes.

Complaint

Show Host: I know that you have women in nursing homes --

R. Pollack: Right.

Show Host: -- and gentlemen in retirement communities who are taking these.

R. Pollack: Yes. And they find them very effective.

(Exhibit B, p. 4).

(i) C. Phillips: We're suggesting to moms, get Cold-Eezer Plus in the house.

Show Host: Um-hum.

C. Phillips: Have it ready, and at the very first hint of a cold, start applying it. But even before then, try to use it as a preventative measure, so that if you know that the child has had an exposure, which is school, they can take one a day --

Show Host: Um-hum.

C. Phillips: -- to try to prevent getting a cold.

Show Host: And you're talking about schools, I mean, everywhere you go, I mean, other children have it, other adults have it, you're just always exposed.

C. Phillips: Always exposed, exactly. You touch things.

Show Host: Um-hum.

Complaint

C. Phillips: You touch a doorknob and you go up and you touch your nose, you've got the chance to have it.

Show Host: Right.

C. Phillips: So, what we're saying is, point one, if you don't have it in the house, get some in the house so that you have it to use at the very first sign of a cold.

Show Host: Um-hum.

C. Phillips: That's the important thing. This year we're saying, have it around and take one a day. Give your child one before he goes to school, that way, it can possibly prevent that child from getting a cold.

(Exhibit C, p. 2).

(j) C. Phillips: It's also excellent for allergies.

Show Host: Oh, really?

C. Phillips: Absolutely.

(Exhibit C, p. 5)

Complaint

Internet Advertisements

- (k) Don't pass the cold in your family!
Reach for Cold-Eeze with Zigg.

You know what happens when one of the kids comes home from school with a cold . . . it seems everybody in the family gets it. Well, now you can fight back with Cold-Eeze. It's the only zinc lozenge with Zigg (zinc gluconate glycine), the only patented formula clinically proven to reduce the severity and duration of common cold symptoms.

(Exhibit D).

- (l) When the Common Cold or Allergies Strike

- Sneezing
- Sore Throat
- Teary Eyes
- Runny Nose
- Stuffy Sinus

. . . Strike Back

with Homeopathic Sugar Free
Cold-Eeze Tablets with ZIGG

(Exhibit E).

Radio Advertisements

- (m) You already know that Cold-Eeze lozenges are effective against colds, but have you ever thought of using them against your airborne allergies? The sneezing, sniffing, runny-nose and watery eyes can make you miserable. Try taking Cold-Eeze, the great tasting breakthrough lozenge you've heard so much

Complaint

about, with the zinc-gluconate glycine formula. . . . In fact, Cold Eeze is so effective, consumer testimony and preliminary findings suggest Cold-Eeze may also relieve the discomfort from airborne allergies. Try Cold-Eeze, for relief from the dreadful symptoms of hay fever, mold-spores and other airborne allergies. Homeopathic Cold-Eeze is all natural and non-sedating.

(Exhibit F).

- (n) Remember when I told you about passing the cold in your family? You know, the kids bring a cold home from school and pass it onto everybody else. Now with the phenomenal success of Cold-Eeze lozenges, many imposters are trying to copy it! Beware of these fake imitators. Cold-Eeze is the only lozenge clinically proven in two double-blind studies to reduce the duration and severity of the common cold. In fact, Cold Eeze has been so effective against common colds in families that pediatric studies are underway. Try Cold-Eeze to help protect your little ones from the nasty clutches of full-blown colds. So remember the next time one of your kids bring the sniffles home from school, stay away from those fake imitators. There's only one zinc lozenge proven to work on colds. Cold Eeze. Ask for it by name. Clinically proven Cold-Eeze, it really works.

(Exhibit G).

- (o) Allergy season is here . . . warm weather, sunshine, flowers . . . it's a terrible time to start sneezing! So attack those symptoms with Cold-Eeze.

(Exhibit H).

Complaint

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

- (a) Daily use of Cold Eeze will prevent users from contracting colds.
- (b) Use of Cold-Eeze will prevent users from contracting colds.
- (c) Use of Cold Eeze will reduce the risk of contracting pneumonia.
- (d) Use of Cold Eeze will relieve or reduce the symptoms of hay fever or allergies.
- (e) Use of Cold Eeze will reduce the severity of cold symptoms in children.
- (f) Daily use of Cold Eeze will prevent children from contracting colds.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that, it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

Complaint

KIDS-EEZE

8. Respondent has disseminated or has caused to be disseminated advertisements for Kids-Eeze, including but not limited to the attached Exhibit I that appeared on the Internet at www.quigleyco.com, and Exhibit J, statements on product packaging. These advertisements contain the following statements:

(a) Kids-Eeze Bubble Gum

[clicking on the hyper-link for Kids-Eeze displays the following text:]

Cold-Eeze Bubble Gum Formula

The same clinically proven ZIGG formula and dosage
as regular COLD-EEZE Lozenges!

(Exhibit I).

Product Packaging

(b) [Front]

KIDS-EEZE

COLD-EEZE BUBBLE GUM

REDUCES THE DURATION AND
SEVERITY OF THE COMMON COLD

[Back]

COLD-EEZE HOMEOPATHIC SUGAR-FREE

Complaint

TABLETS (FOR COLDS AND ALLERGIES)

...

CLINICALLY PROVEN
COLD-EEZE WITH ZIGG

(Exhibit J)

9. Through the means described in Paragraph 8, respondent has represented, expressly or by implication, that use of Kids-eeze will reduce the severity of cold symptoms in children.

10. Through the means described in Paragraph 8, respondent has represented, expressly or by implication, that, it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 9, at the time the representation was made.

11. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 9, at the time the representation was made. Therefore, the representation set forth in Paragraph 10 was, and is, false or misleading.

12. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

IN WITNESS WHEREOF, the Federal Trade Commission has caused its complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C. this tenth day of February, 2000.

By the Commission, Commissioner Anthony dissenting and Commissioner Leary not participating.

Complaint Exhibits

Exhibit A

TRANSCRIPT OF QVC

SEPTEMBER 11, 1997

OS SCREEN:
A-36293
60 Original or Cherry Flavor Cold-Eezers
Lozenges
QVC Price \$18.25
S&H \$3.97
QVC 1-800-345-1515
The Health Connection

Show Host. See you later, Jill. It's good to see you, honey.

Jill Bauer is coming up following Health Connections. She's got the today's special value at noon. **And** then all of the jewelry that I have on, if you're interested, coming up at 1:00. All right. Here you go. 1-800-345-1515. We want to talk to you. We want to hear how you're doing with Cold-Eezers. How did it save you last year. How did it save your kids? How do you feel when you take them?

I'd like you to meet someone who's pretty new to QVC, Chuck Phillips, one of the founders of the Cold-Eezers company.

C. Phillips: Good morning, Patricia.

Show Host. So nice to have you here, sir

C. Phillips: Thank you. Good to be here.

Show Host: Good to see you. **Now**, we are ready to put Chuck through the paces this morning on the morning show. So, thank you for sticking around. I appreciate it.

C. Phillips: My pleasure, **my** pleasure.

Show Host. Chuck is back **to** tell us why Cold-Eezers are so fabulous. Perfect time of year to bring them back because we've got hay fever and allergies combined with an upcoming cold season. Already I'm starting to see lots of sniffles around QVC

C. Phillips: Yes.

Show Host. **And**, you **know**, we're so glad that you came back because I tell you what, whenever the Cold-Eezers come to town, they're gone instantly backstage. People just kind of **grab** little handfuls --

C. Phillips. They disappear.

Show Host -- and then sort of scurry off with them. You're going to get lots of them, though. You get 60 for \$18.25. A-36293 is the item number in either the cherry, which you see there in the red wrapper, or the natural flavor, which you

Complaint Exhibits

see in the clear wrapper. So, if you're new to QVC, if you're new to Cold-Eezers, here's why they're so great. Take it away, Chuck.

C. Phillips: Well, it's -- first of all, it's an all-natural, homeopathic product.

Show Host: Right.

C. Phillips: It's a unique product here on QVC. It has been clinically proven to reduce the duration and severity of the common cold. And what we're asking people to do is to take a little more aggressive role in caring for their family.

Show Host: Right.

C. Phillips: To have a strategy to help fight the common cold. The kids are in school. They are there right now.

Show Host: Um-hum.

C. Phillips: And school is one of the most famous places to have --

Show Host: It's a breeding ground for germs.

C. Phillips: It's a breeding ground. Everything they touch -- if the child before had a cold and they touch that spot and they touch their nose, it's off to the races.

Show Host: Sure. That's it.

C. Phillips: So, there's a couple of strategies. One is we can take one a day and try to see you can beat the cold to what they call prophylactic or a preventive medicine.

Show Host: Excellent.

C. Phillips: Try taking one a day. Or if the child comes home and you see that it's here --

Show Host: Um-hum.

C. Phillips: -- that they have symptoms, start treating the child. Take one every three hours. But everyone in the family should take a couple to prevent picking up that cold.

Show Host: This is safe for kids to take.

C. Phillips: Absolutely.

Show Host: It's certainly safe for adults. It's safe for senior citizens to take. In fact, we got a call the last time I was on the air with Cold-Eezers of a woman whose mom was in a nursing home.

C. Phillips: Yes.

Show Host: And she was taking them one a day as a preventative measure because she was surrounded by lots of other people and lots of other germs. So, it's a great step to take in maintaining your health, and it's also really helpful when you get a cold. In fact, we have someone on the phone who's used Cold-Eezers in the

Complaint Exhibits

past. So, let's say good morning to Renee Hi. Renee. I'd like you to meet Chuck Phillips.

Caller: Hi. Hi. Chuck.

C. Phillips: Hi, Renee.

Caller: I just wanted you to know I have a granddaughter that's 12 years old, and ever since birth when she gets a cold, it turns into bronchitis

Show Host: Oh, that's tough.

C. Phillips: Uh-huh.

Caller: And so, I tried these because she was out here visiting from Illinois with me for three months, and it eliminated the cold almost immediately.

C. Phillips: Well, that's really important because we have several customers we know through QVC and other places where they really can't afford to have their children even get a cold because what happens is this exacerbated condition appears.

Show Host: Sure.

C. Phillips: You get bronchitis, pneumonia. And here's an opportunity right in front of us to stop it right now.

Show Host: Right. Exactly.

C. Phillips: Just nail it.

Caller: It -- it worked fantastic.

C. Phillips: Well, I'm glad that you had that.

Show Host: And you saw it work. Hands on experience, right, Renee?

Caller: Yes, I have. Because she was born with a weak lung and weak bronchial tubes.

Show Host: Uh-huh.

Caller: And ever since then, like I say, it goes into bronchitis or pneumonia.

Show Host: She's a little susceptible. Sure.

Caller: And I tried these and the cold just went away

Show Host: Oh, that is excellent. Good.

C. Phillips: Well, just get a little more aggressive now Just have her take one during cold season, one a day --

Show Host: Um-hum.

Complaint Exhibits

C. Phillips: -- and that will help to prevent this from even beginning. There's reports out that tell us that over 55 percent of people who get colds end up at the doctors.

Show Host: Ugh.

C. Phillips: So, now you have the doctor's bill --

Show Host: Right.

C. Phillips: -- you have the prescription and you still have the cold and the bronchitis

Show Host: You have time off from work and you have miserable kids if they're sick. too

C. Phillips: Absolutely.

Show Host: Well, Renee, **I'm** so glad it worked for you and for your granddaughter. Thanks for being a part of our show.

Caller: Thank you.

Show Host: You take care.

Caller: And have a great day, both of you.

Show Host: Bye-bye now.

C. Phillips: All right. *Thank* you, Renee.

Caller: Bye-bye.

C. Phillips: Bye-bye. The other **thing** is allergies.

Show Host: Yes.

C. Phillips: We have many, many people who have reported to us that their usual choice is to have antihistamines, which make them dopey --

Show Host: Sure.

C. Phillips: -- which make them incapable of functioning, some of them.

Show Host: Right.

C. Phillips: And we suggested they try it. So, we -- they tried it and they take one and they see how long it lasts. **It does** diminish the symptoms of allergies and --

Show Host: **Lots** of people have asked exactly how does it work, and we actually have some animation to show you. **I'm** just showing you, **this** is what one of the Cold-Eezers **looks** like up close and personal. Take a look at **this**. Now --

C. Phillips: Those -- those are purple rhinoviruses.

ON SCREEN: Animation

Complaint Exhibits

Show Host: Okay.

C. Phillips: And what they do is in your mouth. they lodge on the cells inside your mouth by, let's say, magnetism, electricity

Show Host: Urn-hum.

C. Phillips: Positives and negatives attract

Show Host: Um-hum.

C. Phillips: So, when they lodge, they intrude and replicate themselves, kill the cell, and then you have an irritation. But --

Show Host: Now, the little blue balls there --

C. Phillips: That's Cold-Eezer Plus double positive ions. They actually go and coat the areas on the rhinovirus --

Show Host: Uh-huh.

C. Phillips: -- that it would normally use to grab on to the cell. Now, they can't because it's an effective blockage to keep them from lodging. So --

Show Host: So, now, that actual cold cell that -- what gives us a cold, the common cold virus cell, cannot attach itself to our cells.

C. Phillips: That's right. That's right.

Show Host: So, it can't dock in and we can't get sick.

C. Phillips: And that allows the body's natural function, which is mucus --

Show Host: Um-hum.

C. Phillips: -- to wash them away. It can happen within eight or nine hours. If you have a rhinovirus enter within eight or nine hours, that process is begun.

Show Host: How many of these do we have to take, Chuck?

C. Phillips: You should take one every three to four hours.

Show Host: Okay.

C. Phillips: And remember, please, it's medicine. Some -- it tastes good.

Show Host: It does.

C. Phillips: It's wonderful. But take one every three hours.

Show Host: I want to show you some of the people who are able to use this. Airline pilots are allowed to use this. Now, you know that they're not allowed to take decongestants or antihistamines or anything obviously

Complaint Exhibits

C. Phillips: Exactly. Exactly

Show Host: School bus drivers can take this. Teachers can take this. Children can absolutely take this. In fact, I've heard how more people will wrap one of these in cheesecloth and let their toddler suck on it so they can get the benefits from it without actually risking choking or anything.

C. Phillips: Um-hum. Yes.

Show Host: Senior citizens can take it. Pregnant ladies can take it. Nursing moms can take it. It's perfectly safe to take. We're going to take a phone call actually.

C. Phillips: Excellent.

Show Host: We're going to head right back to the phones and say good morning to Doris. Hi, Doris. Come on in and meet Chuck Phillips.

Caller: Good morning.

C. Phillips: Good morning, Doris.

Show Host: How are you?

Caller: Just fine. We used these last year. I have a son who goes to college up in Minneapolis.

Show Host: Ah-ha.

Caller: And so, we sent them up there because he has a lot of cold weather and he has allergies.

Show Host: Yeah.

C. Phillips: Uh-huh.

Show Host: Um-hum.

Caller: And I was glad to hear you say something about taking one a day as a preventive. We've never tried that before.

C. Phillips: Yes. Well, now's the time to try it.

Show Host: Yep.

C. Phillips: This is -- this is a strategy that may pay off big-time because it does help block as you saw in the animation. If we can stop the viruses we pick up over the day, they will not have a chance to even start.

Show Host: Perfect.

C. Phillips: Therefore, it will preclude you getting the cold.

Caller: Yes.

Complaint Exhibits

C. Phillips: And it's a good strategy. We highly recommend people try that.

Caller: Well, I'm going to recommend it to him when I send another package to him

Show Host: Oh, good

C. Phillips: Good.

Show Host: That's a wonderful care package to get

Caller: Yeah. It helps us all of us. Since last year, we -- my husband and I have used them and really feel like it does help to keep from getting it any worse than what we do.

Show Host: Right.

C. Phillips: That's good. Well, make sure that you understand that it's got to have what we call ZIGG, zinc gluconate glycine. It is our patented process.

Show Host: Um-hum.

C. Phillips: You're going to see other zincs out in the world, but only Cold-Eezer Plus that has ZIGG in it, zinc gluconate glycine. is the one that's clinically proven, the one that does work.

Show Host: That's the only one.

Caller: Well --

C. Phillips: So, it's -- it's a caution, but you're in the right place and I know they'll get the product to you in a -- quick.

Show Host: Seven to ten days.

Caller: Yeah. Well, we have a few left, but -- and we really like the cherry-flavored ones.

Show Host: Yeah, that's my favorite, too.

Caller: Uh-huh.

Show Host: The other one is -- Just for everybody who is watching and wondering, the other one is a little more like a citrus or an orange flavor.

C. Phillips: Urn-hum.

Show Host: But I'm with you, I'm a cherry gal all the way.

Caller: Yeah. We are, too.

Show Host: Thanks for calling in and being part of our show

Caller: Uh-huh. Thank YOU.

Complaint Exhibits

Show Host: Take care now. Bve-bye.

Caller: Thank you.

C. Phillips: So long.

Show Host: \$18.25. Now, you get 60 lozenges. If you want to do it as a preventative measure, that's going to be a two month supply for you. If you want to stash some in your desk at work, stash some in the glove compartment in your car. Give a couple to your kids at school, because halfway through the day if they start to get that tickle in their throat, by taking one of these, they're already taking steps ahead to prevent getting sicker and to prevent spreading it to the rest of the family. So, these do last you a rood long time.

But this is the time of year to stock up. Even if you're not suffering from hav fever and allergies, you know that cold season has pretty much started --

C. Phillips: Oh, it's started.

Show Host: -- or else it's right around the corner

C. Phillips: It's definitely started.

Show Host: Right back to the phones we go. Chuck --

C. Phillips: Okay.

Show Host: -- this time we're going to say good morning to Alice. Alice, hello. How are you doing?

Caller: Well, good morning to both of you.

Show Host: Good morning.

Caller: And I'm doing great, and, of course, ordering more Cold-Eezers

C. Phillips: All right.

Show Host: So, you've tried them in the past, have you?

Caller: Oh, absolutely. I wouldn't be without them. I've bought some for my sons who are -- they live kind of close by but they're out of the home, and we all swear by them. And I definitely do. You know, I was kind of skeptical in the beginning about colds --

Show Host: Um-hum.

Caller: -- but they really do -- as soon as you feel you've got a cold, you know, you just put one in your mouth and, oh boy, they are just fantastic. They stop it right away. And like that other lady said, I was delighted to hear this morning that you could take one every day to prevent a cold.

Show Host: Sure.

Complaint Exhibits

Caller: And that's just terrific news. So, I'm going to start doing that right today

Show Host: Oh, good. Good for you.

C. Phillips: Good. Well, not only that, but zinc is a critical, very important mineral that we all need. A lot of us are deficient in it.

Show Host: Um-hum.

C. Phillips: So, not only are you preventing a cold, but you're getting that zinc which has been proven many times to have a positive effect on many conditions of the body.

Show Host: So you're getting even healthier

C. Phillips: Absolutely.

Caller: Oh, I think they're wonderful. As a matter of fact, I'm going to order more for my **sons**. **Now** that we can take one every day, I'm just going to go back and order some more.

Show Host: Oh, good. Good thinking.

C. Phillips: That's a **good** idea.

Show Host: Well, Alice, you sit tight **on** the lines. I'll send you back over to the operators and they can help you out, okay?

Caller: Okay.

Show Host: Take care.

Caller: Thank you very much.

Show Host: Thanks for your call, Alice.

Caller: Bye-bye.

Show Host: Bye-bye **now**.

Sixty of them, original flavor or cherry flavor for \$18.25. That's a great deal, and that's not a lot of money to spend preventing a cold. Because if you think of it, you **go to** the drugstore, you're going to spend a \$20 bill getting all the cold medicine **and** you're going to be out of work for a couple of days. If your kids are sick, you've got to take time off from work. It winds up costing a lot more than \$18.25.

Right back to the phones. Let's see if we can't get in one more quick call. This time we'll say good morning to Rachel. Rachel, how are you this morning?

Caller: Hi. **How** are you?

Show Host: Great. How are you doing?

Complaint Exhibits

C. Phillips: Hi, Rachel.

Caller: I have to tell you a story and this is honest truth I have two kids in college

Show Host: Ah-ha.

C. Phillips: Ahh.

Caller: I gave my son the other flavor, my daughter takes the cherry, and I ran out of it

Show Host: Uh-oh.

Caller: And she already told me, ma, I think I'm catching a cold.

Show Host: Oh, no. Quick, you got to get her more Cold-Eezers.

Caller: Because -- yeah. Because in college, one person sneezes --

Show Host: Um-hum.

Caller: -- 400, 500 kids, they all catch a cold.

C. Phillips: Oh, yes.

Show Host: You're absolutely right.

C. Phillips: It goes through like lightning.

Show Host: It **runs** through those dorms.

C. Phillips: Absolutely.

Caller: I wish I had them today, I'm going to go visit her this weekend.

Show Host: Oh.

Caller: But I did two orders *again*.

Show Host: That is marvelous. **And**, you know, for you and for everybody else, you can always do **our** bill to-ship to option. QVC will --

Caller: Yes, that's how I sent it today.

Show Host: Yes. Good for you. We'll do it.

Caller: Yes. Yeah, because they have the cleansing for the face, whatever, when I order from you **people**.

Show Host: Oh.

Caller: Thank you so much. The most wonderful things with the -- you know, with the zinc and everything.

Show Host: Oh, good.

Complaint Exhibits

Caller: I take it myself.

Show Host: Good.

C. Phillips: Good.

Caller: Because last year I had the worst -- the worst bronchitis.

Show Host: Uh-oh.

Caller: And I didn't have them with me.

Show Host: Oh.

C. Phillips: Ahh.

Show Host: See that?

C. Phillips: Now you know.

Show Host: Well, now you've got them all stocked up for the season. I'm so glad.

Caller: Yes. Yeah, thank you --

Show Host: Good for you.

Caller: -- and have a good day.

Show Host: You, too.

C. Phillips: Thank you.

Show Host: **Take** care of yourself.

Caller: **Thank** you again.

Show Host: Bye-bye.

C. Phillips: Bye-bye.

Caller: Bye-bye.

Show Host: If you are sending them to someone you love, family on the other side of the country, kids away in college, use our bill to-ship to. We'll ship them to them, we'll send you the bill. You don't have to worry about it. But be sure to pick some up for yourself.

Sixty of them, two packages, 30 in each package, cherry flavor or original flavor, the Cold-Eezers lozenges, \$18.25.

Chuck Phillips, what a delight to see you. Thanks so much for being a part of our show today.

C. Phillips: Thank you, Patricia.

Complaint Exhibits

Show Host: **Good to see you, sir.**

C Phillips: **Good to see you.**

Show Host: **We'll see you back.**

C. Phillips: **Okay.**

(The Cold-Eezers segment was concluded.)

Complaint Exhibits

Exhibit B

TRANSCRIPT OF QVC

JANUARY 28, 1997

Show Host: Please pick up the phone and call us at 1-800-345-1515. if you have used Cold-Eezers and you've knocked out that awful cold and you've taken care of it naturally and healthily because we have Dr Robert Pollack joining us and we want to get going. We want to get going, we want to hear a story.

R. Pollack: Right, right.

Show Host: Hello, hello.

R. Pollack: Hello

Show Host: Good morning.

R. Pollack: Nice seeing you again.

Show Host: It's nice to have you back.

R. Pollack: Thank you.

ON SCREEN:
Dr. Robert Pollack

Show Host: We're so happy every time you come to town. And I have to tell you every time Dr. Robert is with us, he comes on and he's kind enough to leave a bag or two of the Cold-Eezers up front by the producer's desk and we all kind of pick and choose. Well, the last time you were here, they were gone.

ON SCREEN:
A-36293
60 Original or Cherry Flavor Cold-Eezers
Lozenges
QVC Price \$18.25
S&H \$3.97
QVC • 1-800-345-1515

R. Pollack: They were gone.

Show Host: By 9:00 in the morning. Everyone came down and stole them and ran

R. Pollack: Okay

Show Host: And that's what happens on air as well. We tend to get these into stock, and the next thing you know, they fly out the door

R. Pollack: Right, because of the fact that they work

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Complaint Exhibits

- Show Host: They sure do
- R. Pollack: They work.
- Show Host: We are talking about the Cold-Eezers lozenges, and we have two flavors to choose from, your original, which is sort of a citrusy, kind of an orangy -
- R. Pollack: Um-hum.
- Show Host: -- and the new cherry flavor. The item number is A-36293. \$18.25, you get two packages of them, so it's 60 lozenges in all.
- R. Pollack: Right.
- Show Host: And just like Dr. Pollack said, they work. And tell us why they work.
- R. Pollack: Well, the fact -- very simply, we've treated the zinc in a certain way, which it is zinc: just normal, natural zinc.
- Show Host: Um-hum.
- R. Pollack: **And** it plugs up the viruses, the crevices that attach to the contact points on our cells. There they --
- Show Host: Yeah.
- ON SCREEN: Animation**
- R. Pollack: There you see the picture of how the viruses are attaching to the cell.
- Show Host: Um-hum.
- R. Pollack: You see those little crevices that are in each side.
- Show Host: Um-hum.
- R. Pollack: They attach onto the cell **and** that's what causes the cold. They start replicating. Here we have the zinc. Notice how they plug up the crevices **and** they just can't attach to the cell. It's **as** simple as that and as effective as that. It's the first treatment that actually treats -- or is effective against the virus that causes the **cold --**
- Show Host: Yes
- R. Pollack: -- not the symptoms, the runny nose or the teary eyes.
- Show Host: Right.
- R. Pollack: Here, when we eliminate the virus, you eliminate the symptoms, all of them, not just one, the runny nose that you might buy something for, or the cough.
- Show Host: Sure, sure.

Complaint Exhibits

R. Pollack: So, you see, that's the difference. And it happens very rapidly.

Show Host: It really does. This cuts down the actual time you spend suffering from a cold. And actually, if you take these on a preventative basis, you might not ever get a cold at all.

R. Pollack: Right. So, there we have the fact that you can see they were plugging them up.

Show Host: Sure. We're going to head off to the phones and take our first phone call of the QVC Morning Show.

Hello, you're live on the air with Dr. Pollack and Patricia. Who's this, please?

Caller: Hello, Pat. This is Alice from (inaudible).

Show Host: Hi, Hi, Alice. How are you doing?

Caller: We're doing fine. How are you?

Show Host: Say hi to Dr. Bob.

R. Pollack: Hi. Hello, Alice.

Caller: Heilo.

Show Host: Alice, I --

Caller: We love your cold tablets.

Show Host: Um-hum.

Caller: This is our third order of them. They're very good.

R. Pollack: Well, good, I'm glad that you agree also.

Caller: Yes, we do. We've tried them, both kinds --

Show Host: Um-hum.

Caller: -- and this is the third time we ordered them.

R. Pollack: Um-hum.

Show Host: What kind of results have you seen, Alice'?

Caller: Well, as soon as we start getting a runny nose or a sore throat, we take them.

R. Pollack: Cm-hum.

Show Host: And does the --

Complaint Exhibits

Caller: They help nght away.

Show Host: Yep, they sure do. So, you've made it through this winter season okay, huh"

Caller: Yes, we have.

R. Pollack: Good.

Caller: And **I'm**83 years old and **I'm**doing fine

R. Pollack: Bless you.

Show Host: Wonderful. That's **so** wonderful to hear. Alice, thank you very much for your phone call. Thanks for being a part of the morning show.

Caller: Thank you for talking to me.

Show Host: Our pleasure.

Caller: Okay. Bye-bye.

Show Host: Have a great day.

R. Pollack: Bye.

Show Host: Bye-bye.

You know, my own grandma just got over pneumonia.

R. Pollack: Hmm.

Show Host: And I'm sending her these so that she can continue to take them, and as some of the people do, take them on a preventative basis.

R. Pollack: Right. Yes.

Show Host: I know that you have women in nursing homes --

R. Pollack: Right.

Show Host: -- **and** gentlemen in retirement communities who are taking these.

R. Pollack: **Yes**. And they **find** them very effective.

Show Host: They sure do. **And** we've got --

R. Pollack: Because of **all** the people together and so on.

Show Host: Well, that's -- that's where you get germs from --

R. Pollack: Right, right.

Complaint Exhibits

Show Host: -- you know, and living in close quarters

R. Pollack: Right, correct

Show Host: Sure. We have someone else on the phone, so we'll go ahead right back to the phones and see who else is with us this morning

Hello. You're on the QVC Morning Show with Patricia and Dr. Robert Pollack and Cold-Eezers. Who's this?

Caller: This is Sandra from Portland, Oregon

Show Host: Hi

R. Pollack: Hi, Sandra.

Caller: Good morning.

R. Pollack: Good morning to **you**.

Caller: I've been -- I've been **looking** for these for a long time

Show Host: Um-hum.

Caller: **And** I just got over a bad cold and I wish I would have had them.

R. Pollack: Ahh.

Show Host: Um-hum.

R. Pollack: Right.

Caller: I recently was -- heard on a national television program that these --

Show Host: Um-hum.

Caller: -- are one of the most effective things in stopping a cold --

R. Pollack: Right.

Caller: -- in about **three** or **four** days.

Show Host: Correct.

R. Pollack: Correct. **And if you** get it right at the beginning --

Show Host: Um-hum.

R. Pollack: -- then it's possible that **you** would have even greater effect and it would be even less than the three days.

Show Host: Yes.

Complaint Exhibits

- R. Pollack: When you get just the first sign and you say to yourself, uh-oh, I got that tickle or I have that --
- Show Host: Right.
- R. Pollack: -- you know, we know when we're going to get it
- Show Host: Yeah.
- R. Pollack: That's the time to have them ready, pop one in your mouth, and it's going to start like that picture you saw, immediately beginning to get an effect.
- Caller: Now, what is the action of the zinc" I understand the zinc coats itself to the lining of the nose?
- R. Pollack: Well, not quite. We feel that -- have you seen the pictures just before that we had on the air? It appears that the zinc --
- ON SCREEN: Animation**
- Show Host: There you go. There it is.
- R. Pollack: There they go.
- Show Host: Yeah, um-hum.
- R. Pollack: See, here's a virus with the crevices that you see, and they attach onto positively charged projections that are in our -- that line our nose and mouth and throat. Now, here's the zinc. Notice how they plug up the crevices --
- Caller: Oh.
- R. Pollack: -- and they can't attach to the cell and there is no way then that they're going to replicate and give us the cold.
- Caller: Oh.
- R. Pollack: That's the whole key. Now, the point is that we were talking before we came on the program --
- Show Host: Right.
- R. Pollack: -- there are others that are out there that are trying to imitate this, and they say because Cold-Eezer Plus has zinc and ours has zinc, they must be alike.
- Show Host: **Uh-uh.**
- R. Pollack: They're not.
- Caller: No.
- R. Pollack: Because in attempting to flavor them, they tie up the zinc so tightly, they can't

Complaint Exhibits

get down into those crevices that you saw in the picture and they won't work. Only Cold-Eezer Plus will do what you see -- well, here, of course, is where they're attaching again.

ON SCREEN: Animation

Show Host: Um-hum.

R. Pollack: And that's where the cold starts.

Caller: Well, thank you very much for the product. I really appreciate it.

Show Host: You're welcome, Sandra. Thank you for your phone call

Caller: Thank you very much.

Show Host: Sure. Bye-bye now.

Caller: Bye.

Show Host: Just like **Dr. Robert** says, these are effective and they work like no others out there, because these don't have other agents in them that prevent the zinc from doing the job they need to do.

Something else that's very important about these, they are non-medicating, they are not -- they will not make you drowsy, they are safe for pregnant ladies, they are safe for babies.

R. Pollack: Right.

Show Host: In fact, your ~~grandson~~ takes these, isn't that right?

R. Pollack: Yes, **right**. Just like that child there you see.

Show Host: Um-hum.

R. Pollack: It's safe for children, it's safe for adults.

Show Host: Yep.

R. Pollack: You are quite **right**, **there** is nothing in Cold-Eezer Plus that will stop any medication **from** working.

Show Host: Right.

R. Pollack: It doesn't really matter. It's all-natural.

Show Host: Um-hum.

R. Pollack: We need the items anyway, the nutrients that are there.

Show Host: Yes.

Complaint Exhibits

R. Pollack: It's just that we've treated them so that they're effective against the virus. Here you have a pilot -- or a child that is there.

Show Host: Urn-hum.

R. Pollack: The mother is putting it in her backpack to take to school.

Show Host: Right, sure.

R. Pollack: And they're beginning to recognize when a child is sucking on something, and there are a lot of colds going around, chances are it's a Cold-Eezer and not just some candy.

Show Host: It's safe for your kids, it's safe for your grandkids, it's safe for --

R. Pollack: There's the pilot.

Show Host: -- pilots and school bus drivers --

R. Pollack: Right, right.

Show Host: -- and anyone who is going to be driving a vehicle at all.

R. Pollack: Oh, right. They are -- they're prevented by law from taking anything that's -- that will sedate them.

Show Host: Absolutely.

R. Pollack: Cold-Eezer Plus is the **only thing** that they're allowed to take.

Show Host: There you go. We're going to head right back to the phones and see who else is taking Cold-Eezers with us.

Hello. You're on the Morning Show. Who's this, please?

Caller: This is Margie from Philadelphia, Pennsylvania.

Show Host: Hi, Margie. **How are you** doing?

Caller: **I'm** fine. **How are** you both?

Show Host: Great.

R. Pollack: Okay.

Show Host: Are you **taking** Cold-Eezers, Margie?

Caller: Well, this is the first time we've ever been able to get it.

Show Host: Oh.

Caller: And **I'm** really excited, because as you just showed, I have a four-year old.

Complaint Exhibits

Show Host: Hrm.

R. Pollack: Right.

Caller: And at school, they kept passing the colds around.

R. Pollack: Right.

Show Host: Yep.

Caller: So, I was really excited that I got through this morning.

R. Pollack: Good, good. Now you don't have to worry about that four-year old cold walking in through the door or the --

Caller: Exactly.

Show Host: Well, you know how it is, they bring you home gifts from school.

R. Pollack: Yeah, right.

Show Host: They bring home a picture they colored and they bring you home a cold all at the same time.

R. Pollack: Right.

Caller: Exactly. That's why I'm so excited. I was afraid to give her the zinc just by itself.

R. Pollack: Right.

Show Host: Right. Um-hum.

Caller: And with this being all-natural, then I'm really excited.

R. Pollack: Okay.

Show Host: Exactly. Well, you know, if Dr. Bob gives it to his grandson, it's got to work and it's definitely safe for kids.

R. Pollack: Right.

Show Host: So, that's super. Well, I'm glad you could get them.

Caller: Thank you.

Show Host: You were very smart to call in early.

Caller: I'm glad we got through. Thanks.

Show Host: They do tend to sell out every time we have them on air.

Complaint Exhibits

Caller: Yes, they do.

Show Host: It's a good thing you called in this morning.

Caller: Yes

Show Host: Thanks. Margie.

Caller: Thank you.

Show Host: Bye-bye now.

Caller: Bye-bye.

R. Pollack: Bye.

Show Host: You **know**, this is just about the only place that you can get them.

R. Pollack: Yes. It seems that this **is** true. And it's so wonderful that we have this national ability to get in touch **with** people and that they can get this, because you alluded to it before, the amount of money spent on just someone getting a cold is really incredible.

Show Host: Oh, it sure is.

R. Pollack: The wages that **are** concerned, if you can't get into work.

Show Host: Sure.

R. Pollack: If a child gets a cold, who's going to stay home with that —

Show Host: Mom's got to stay home.

R. Pollack: Right. It's mom **that** generally is going to be doing that.

Show Host: Sure. And those cold medicines are \$6 and \$7 a bottle.

R. Pollack: Right.

Show Host: And they **don't do anything** for your cold. They treat your symptoms.

R. Pollack: Exactly.

Show Host: They knock **you** on your **butt**. You're sleeping

R. Pollack: Right.

Show Host: Sure, you're sleeping **12 hours** a day, that's great. But they're doing nothing for the actual cold. **This** is revolutionary because it's actually doing something to prevent the cold **virus from** locking on to the respiratory cells. That's how we get sick.

Complaint Exhibits

R. Pollack: And clinically tested. They were actually clinically tested

Show Host: Yes

R. Pollack: And that's the marvelous part about it

Show Host: It jure is. Everyone at QVC has used these. All of the hosts have used them. The last time I had a cold, I used them. My cold was gone. I couldn't even believe it. in about a day and a half. I saw instant results and that was it. And I didn't take lots of them. I took one about. oh, gosh. every maybe four hours or so.

R. Pollack: Every three -- right. But see, you started early. That was the key.

Show Host: Yeah. um-hum.

R. Pollack: Right

Show Host: I'm going to unwrap this just so you can see what it looks like. There are two flavors. There's cherry, which is the newer flavor. this is what the cherry one looks like. And then there's your original. And they don't look too different, but I'm just going to hold them up so you can see. It's just a little hard candy, a little lozenge.

R. Pollack: Right

Show Host: And if you've seen Dr. Bob on before and you haven't given these a try, I really encourage you, please don't miss out on them because every time he's on air, we sell out. And we don't know when we can get him back in and get more Cold-Eezers back in.

R. Pollack: Right, right.

Show Host: You won't find these in the store probably

R. Pollack: Right.

Show Host: Probably. They either sell out very quickly --

R. Pollack: Right, correct.

Show Host: -- if you can get a store rhar carries them at all.

R. Pollack: Correct, yes.

Show Host: What you will find are other zinc products that are not at all like this, that don't work. that actually have ingredients added to them to prevent them from working. I know that sounds crazy, but it's true. This is it, right?

R. Pollack: Right.

Show Host: This is what you need to knock out that cold. Thank you so much.

Complaint Exhibits

R. Pollack: Thank you. It's been a pleasure

Show Host: It's nice to see you again, Dr. Poilack

R. Pollack: All right.

Show Host: The item number is A-36293. You're going to receive 60 of them -- that's two separate bags -- for \$18.25

R. Pollack: Right.

Show Host: What a deal.

(The Cold-Eezers segment was concluded.)

Complaint Exhibits

Exhibit C

TRANSCRIPT OF QVC

OCTOBER 2, 1997

Show Host: We're going to start off our Health Connection with something that, I guess, a lot of us -- a lot of us hopefully -- I'm actually fighting one right now

C. Phillips: Oh

Show Host: So, I'm going to start taking mine since you're here.

C. Phillips: Excellent. Start right now at the first sign

Show Host: Chuck Phillips is joining us to talk about Cold-Eezers. Thanks so much for joining us.

C. Phillips: Sure.

Show Host: We're just kind of meeting right here. So, we're going to jump in. You are, in fact -- you are the founder of the Quigley Corporation who brings us Cold-Eezers.

C. Phillips: One of the founders.

Show Host: One of the founders.

C. Phillips: Right.

Show Host: **And** this is something -- **and** if you have it, please give us a call, because many of you have used Cold-Eezers in the past. Maybe if you had the summer cold, you used them this summer. But I know the moms out there really want to hear about this.

ON SCREEN:
A-36293
60 Original or Cherry Flavor Cold-Eezers
Lozenges
QVC Price \$18.25
S&H \$3.97
QVC - 1-800-345-1515

C. Phillips: Absolutely.

Show Host: It helps reduce the symptoms of the common cold

C. Phillips: Right.

Show Host: This formula.

C. Phillips: Moms are waking up right now.

Complaint Exhibits

- Show Host: Um-hum.
- C. Phillips: And they're hearing that little voice --
- Show Host: Um-hum
- C. Phillips: -- mom, I don't feel so good. Well, what we're going to do this year is get more aggressive. we're going to attack the cold. We're suggesting to moms, get Cold-Eezer Plus in the house.
- Show Host: Um-hum.
- C. Phillips: Have it ready, and at the very first hint of a cold, start applying it. But even before then, try to use it as a preventative measure, so that if you know that the child has had an exposure, which is school, they can take one a day --
- Show Host: Um-hum.
- C. Phillips: -- to try to prevent getting a cold.
- Show Host: And you're talking about schools, I mean, everywhere you go, I mean, other children have it, other adults have it, you're just always exposed.
- C. Phillips: Always exposed, exactly. You touch things.
- Show Host: Um-hum.
- C. Phillips: You touch a doorknob and you go up and you touch your nose, you've got the chance to have it.
- Show Host: Right.
- C. Phillips: So, what we're saying is, point one, if you don't have it in the house, get some in the house so that you have it to use at the very first sign of a cold.
- Show Host: Um-hum.
- C. Phillips: That's the important thing. This year we're saying, have it around and take one a day. Give your child one before he goes to school, that way, it can possibly prevent that child from getting a cold.
- Show Host: Now, what do these contain? How do these work?
- C. Phillips: Well, it contains what we call ZIGG, zinc gluconate glycine.
- Show Host: Um-hum.
- C. Phillips: And it's a patented formula. It is homeopathic, it is all-natural. It's --
- Show Host: Right. That's important I know, especially when we're talking about little ones.
- C. Phillips: Little ones, right. It's non-sedating.
- Show Host: So, anybody -- you're not going to fall asleep on these.

Complaint Exhibits

C. Phillips: No, you're not.

Show Host: Which a lot of cold medicines make you fall asleep

C. Phillips: They tend to make you drowsy

Show Host: Um-hum.

C. Phillips: And they sort of take the wind out of your sails --

Show Host: Right.

C. Phillips: -- and make you feel tired. Cold-Eezer Plus will not do that

Show Host: Um-hum.

C. Phillips: You take one every three hours when you're treating a cold, but as I say, let's get aggressive, let's take one a day to see if we can stop the cold from even coming onto you. Another strategy is if a child comes home, they have a cold, it's very evident, they've started to sneeze --

Show Host: Um-hum.

C. Phillips: Everyone in the family should take one or two --

Show Host: To prevent them --

C. Phillips: -- to prevent them to be infected by this infection that's now come into the house.

Show Host: Now, if-- like I said, last Saturday, I woke up with a sore throat.

C. Phillips: Right.

Show Host: So, I mean, I -- this, I should take -- you know, I didn't have them in the house, so --

C. Phillips: Oh, boy.

Show Host: Now, I have them. I'm **going** to take one now. But this will help reduce -- if it's too late, if somebody already has gotten the signs of a cold, how does it help to reduce -- what symptoms will it help reduce?

C. Phillips: It's not **too** late!

Show Host: Okay.

C. Phillips: If you've had a cold for one or two days, it will basically reduce the duration of what's left of the cold **nearly** in half.

Show Host: Okay. Oh, really?

C. Phillips: Sure. **So**, it's not -- it's never too late.

Show Host: Um-hum.

Complaint Exhibits

- C. Phillips: The thing is, we want to be quicker. we want to catch it before it starts. and we want to even come before that and become preventative --
- Show Host: Right.
- C. Phillips: -- and try to anticipate things. You know when you've been infected. You've been on an airplane flight. That's recycled air.
- Show Host: Um-hum.
- C. Phillips: And you're breathing it in. It just takes one person on that plane --
- Show Host: To be sick.
- C. Phillips: -- to fill the air.
- Show Host: Um-hum.
- C. Phillips: And you land, take your Cold-Eeze
- Show Host: Right. Because you have many -- I do that all the time. In fact, when I came back from New York, I was on a train, and I think the **trains** are similar to the planes with that **air**.
- C. Phillips: Sure. It's a contained space.
- Show Host: And that's where I **think** I got my cold Saturday morning.
- C. Phillips: Sure. Cold-Eezer **Plus** should be taken, you know --
- Show Host: Right when I got **off** the **train**, I should have taken one.
- C. Phillips: -- **as soon as** you're **off** the train.
- Show Host: Right.
- C. Phillips: Or **in the evening at** your home and you've had most of the exposure or you've touched **everything** you're going to touch, you've washed your hands, take a Cold-Eezer **Plus**.
- Show Host: Now, with **this**, you're going to get two bags, each contain 30 lozenges and each have 135 grams of the zinc in it, which --
- C. Phillips: Well, each Cold-Eezer **Plus** lozenge has --
- Show Host: Right.
- C. Phillips: -- **14.2 milligrams of zinc gluconate glycine**.
- Show Host: Um-hum.
- C. Phillips: And basically one **every** three hours to treat the cold.
- Show Host: Um-hum.

Complaint Exhibits

C. Phillips: Or take one a day to try to prevent it.

Show Host: Preventive.

C. Phillips: It's also excellent for allergies

Show Host: Oh, really?

C. Phillips: Absolutely.

Show Host: We're going to go to the phones and see who's shopping with us this morning. Hi, Geraldine.

Caller: Hi. How are you this morning?

Show Host: I'm great. Now, do you have Cold-Eezers or are you picking them up?

Caller: I'm just buying them.

Show Host: Oh, good.

C. Phillips: Oh, good.

Show Host: Now, why did you decide to pick them up?

Caller: I have a grandson that lives with me that goes to preschool. He brings a cold home every season. My husband and I are sick all winter.

Show Host: Oh, no.

C. Phillips: Oh, boy.

Caller: So, we're hoping that this -- I'm going to try this and hope it will cut down the effects that we usually receive --

Show Host: Um-hum.

Caller: -- from the cold seasons. We haven't ever been this sick in years. But he brings all the fresh, nice, young germs into the house that we can't fight.

Show Host: The new germs.

Caller: Yes.

Show Host: Well, you know -- and as Chuck said, take this as a preventative, too. So, I mean, when he starts the preschool, you know, start taking maybe one a day.

C. Phillips: Right.

Show Host: And then if he brings it home, you're not going to get that.

Caller: Well, here's hoping because my husband moans.

Show Host: Oh.

Complaint Exhibits

Caller: He says every time this kid goes to school. I'm sick

Show Host: Um-hum

C. Phillips: Well, have him take one a day and he will not catch it and have the child perhaps take one in the morning before they go to school and --

Caller: Oh, that's a good idea.

C. Phillips: -- to prevent them from even getting the cold. It's preventive medicine. It's an aggressive family strategy to stop this spreading of the cold --

Show Host: Um-hum.

C. Phillips: -- and to help the child out almost instantly

Show Host: And it's nice, too, because it's all-natural. It's like a homeopathic way to prevent the cold and prevent the symptoms and it's also non-sedating. So, they're not going to go to preschool and be like, you know, snoozing on the side because there's no, you know, medicines in here to really bother you or the little ones

C. Phillips: They won't become tired. And rest assured, it's a stocking item here at QVC. You can get Cold-Eezer Plus 24 hours a day. You can't run out.

Show Host: Right.

Caller: Well, if they work -- if they work, I guarantee you, you'll have a lifetime member.

C. Phillips: Oh, good.

Show Host: Well, and let us know, Geraldine. Call us back after you try them and let us know how they do work for you. Okay?

Caller: I certainly will.

Show Host: Thank you so much.

Caller: And thank you for talking to me, and you have a real nice day

Show Host: You, too.

C. Phillips: You, too. Bye-bye.

Caller: Bye-bye

Show Host: I want to let everyone know, too, because a lot of people think zinc, they think bad taste. You've really helped that out a lot. You have two flavors to choose from, original or cherry. I love the cherry

C. Phillips: Yes. Well, zinc -- you can take zinc --

Show Host: Um-hum.

Complaint Exhibits

- C. Phillips: -- gluconate lozenges, just tablets and let them dissolve, but they actually can make you nauseous.
- Show Host: Um-hum.
- C. Phillips: So, Dr. John Godfrey, the inventor of our formula, found a way to sweeten zinc gluconate --
- Show Host: Um-hum.
- C. Phillips: -- yet release the zinc ions to the mucosal surfaces which does the job.
- Show Host: Um-hum.
- C. Phillips: That's what is stopping the rhinovirus from reproducing, but it's also what we think is perhaps clamping on the nerve endings in here and telling your system that you don't need to have mucus being produced.
- Show Host: Right. I think we have some tape that will show that.
- C. Phillips: Yes, good.
- Show Host: And maybe you can explain it again as we see it.
- ON SCREEN: Animation**
- C. Phillips: Absolutely. It's -- you see that the purple items are your rhinovirus in and around your mouth, and as they come in and touch the walls of the inside of your mouth and nose, they attach themselves.
- Show Host: Um-hum.
- C. Phillips: Boom, you have an infection going. They intrude, they replicate, and they kill the cell and send billions more out there.
- Show Host: Hmm.
- C. Phillips: Now what you see is the blue double positive zinc ions of Cold-Eezer Plus in and around the rhinovirus and they actually plug up the areas that the rhinovirus normally would use to, let's say, magnetically, by forces, positive and negative like a magnet, lodge onto your cells. So, the zinc gluconate glycine is stopping that. The zinc double positive ions are preventing the rhinovirus from even having a chance to get a foothold, and it just gets washed away by the body's normal system of cleaning this area, which is mucus.
- Show Host: Um-hum.
- C. Phillips: So, it works rather well.
- Show Host: And it will help reduce the symptoms and the duration. Not only the symptoms like the coughing --
- C. Phillips: Exactly

Complaint Exhibits

Show Host: -- the cough and the stuffy nose and the sore throat and the nasal drip and the sneezing, but also the duration

C. Phillips: The duration, which is the most important thing anyway

Show Host: Because if you're out of work for three or four days, I mean, that's a long time --

C. Phillips: Yes

Show Host: -- to not get that paycheck or to just be out of work on your back and miserable I'd be miserable.

C. Phillips: Well, miserable, the agony, the misery is what you want to get rid of

Show Host: I know

C. Phillips: Absolutely.

Show Host: And as Geraldine said, you know, her husband is moaning, I mean, then the agony for everybody in the family.

C. Phillips: Oh, really, everybody is awake

Show Host: And the little ones who wake up and, you know, mom, I don't feel good, you know This is going to --

C. Phillips: And then you're into the whole thing, Mom's got to deal with this

Show Host: Um-hum.

C. Phillips: But we can stop that.

Show Host: And then she gets the cold.

C. Phillips: We can stop it --

Show Host: Preventative.

C. Phillips: -- (inaudible).

Show Host: Right.

C. Phillips: Now, there's a word about business in general, if you own a business, whether it's a single proprietor or AT&T.

Show Host: Um-hum.

C. Phillips: We suggest they take a good hard look at having Cold-Eezer Plus around for their employees.

Show Host: Mmm.

C. Phillips: Now, the United States last year lost \$21 billion from the common cold. We have them here at QVC.

Complaint Exhibits

- Show Host: Um-hum.
- C. Phillips: And they're available to most everyone here and we've heard that it works rather well.
- Show Host: My mother picked them up last year for her work.
- C. Phillips: Okay.
- Show Host: And she works -- she has a store, and so, you have, you know, all sorts of peopis coming in --
- C. Phillips: Sure.
- Show Host: -- and employees as well that you're going to get the cold
- C. Phillips: Well, of all the people to protect. your employees are very important
- Show Host: Right.
- C. Phillips: It costs a business approximately \$125 a day for that person to be absent.
- Show Host: Um-hum.
- C. Phillips: Now, if they're there, they're also spreading the cold, right? And so, I mean, it doubles the problem. Why not stop it immediately?
- Show Host: Right.
- C. Phillips: Have it available to the people that work for you. It's -- 55 percent of all colds end up at the doctor. It's amazing. Fifty five percent of everyone who gets a cold gets a condition that the cold began and --
- Show Host: Um-hum.
- C. Phillips: -- now it's gotten worse.
- Show Host: So, take this as a preventative, like once a day, but also, you know, take it -- if you were not able to do the preventative, make sure you take it once it starts and reduce the symptoms and reduce the duration.
- C. Phillips: Right. Real important, too, is the value of zinc. Nearly everyone in the United States is zinc deficient. There's very few places to get natural zinc.
- Show Host: Um-hum.
- C. Phillips: Oysters, things like this, which aren't readily available every day
- Show Host: No. And some people don't like oysters.
- C. Phillips: Right. And being zinc deficient puts you into various categories that are not good, let's say.
- Show Host: Um-hum.

Complaint Exhibits

C Phillips: If you're taking the zinc, it will help aging, it will help immunity, it will help vision. It's good for 26 or 27 conditions of the human body. So, taking one a day, you're getting nearly the daily requirement --

Show Host: Um-hum

C Phillips: -- but you're also preventing that cold from getting a foothold on you

Show Host: Right.

C Phillips: And it stops the whole process --

Show Host: Reducing --

C Phillips: -- right in its tracks.

Show Host: -- the symptoms and the duration of the common cold. We do have cherry flavor or original. You're going to have two bags of 30 lozenges in each one. They're \$18.25. Try them out. They really, really do work. I've used them. My mom has used them. Actually, I have one right now.

C Phillips: You have one right now. There's one working right now.

Show Host: I know. There's one working right now. A-36293, and they do taste great. I like the cherry personally, but there are -- you know, the other flavor is just as good. Both of those. \$18.25.

Thank you so much, Chuck.

C Phillips: Thank you, Bonnie.

Show Host: Thanks for keeping us healthy.

C Phillips: Oh, I'll be glad to.

Show Host: I'm sorry that you weren't here Saturday morning. But now my cold will go --

C Phillips: One a day and you won't have this problem.

Show Host: That's right. Thanks so much. A-36293.

(The Cold-Eezers segment was concluded.)

Complaint Exhibits

Exhibit D

**Don't play pass the cold in your family!
Reach for Cold-Eeze® with Zigg™.**

You know what happens when one of the kids comes home from school with a cold... it seems everybody in the family gets it! Well, now you can fight back with Cold-Eeze®. It's the only zinc lozenge with Zigg™ (zinc gluconate glycine), the only patented formula clinically proven to reduce the severity and duration of common cold symptoms.



Cold-Eezes... there is no substitute!

The Quigley Corporation Makers of Cold-Eeze® with Zigg™, is proud to sponsor this year's tour of the World's Largest... Follow the Yellow Brick Road for tour engagements.

**Click Here to Enter The Cold-Eeze
Emerald Isle Sweepstakes
a Trip for 4 to Ireland!**

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Exhibit D

Complaint Exhibits

Exhibit E



When The Common Cold or Allergies Strike.....

- Sneezing
- Sore Throat
- Teary Eyes
- Runny Nose
- Stuffy Sinus

.....Strike Back
with Homeopathic Sugar Free
Cold-Eeze® Tablets with ZIGG

Exhibit E

Complaint Exhibits

Exhibit F

COLD-EEZE :60
ALLERGIES

YOU ALREADY KNOW THAT COLD-EEZE LOZENGES ARE EFFECTIVE AGAINST COLDS. BUT HAVE YOU EVER THOUGHT OF USING THEM AGAINST YOUR AIRBORNE ALLERGIES? THE SNEEZING, SNIFFLING, RUNNY-NOSE AND WATERY EYES CAN MAKE YOU MISERABLE. TRY TAKING COLD-EEZE. THE GREAT TASTING BREAKTHROUGH LOZENGE YOU'VE HEARD SO MUCH ABOUT. WITH THE ZINC-GLUCONATE GLYCINE FORMULA. COLD-EEZE IS CLINICALLY PROVEN TO REDUCE THE DURATION AND SEVERITY OF THE COMMON COLD. IN FACT, COLD-EEZE IS SO EFFECTIVE. CONSUMER TESTIMONY AND PRELIMINARY FINDINGS SUGGEST COLD-EEZE ALSO MAY RELIEVE THE DISCOMFORT FROM AIRBORNE ALLERGIES. TRY COLD-EEZE, FOR RELIEF FROM THE DREADFUL SYMPTOMS OF HAYFEVER, MOLD-SPORES AND OTHER AIRBORNE ALLERGIES. HOMEOPATHIC COLD-EEZE IS ALL NATURAL AND NON-SEDATING. SO REMEMBER THERE IS ONLY ONE COLD-EEZE, ASK FOR IT BY NAME AND GIVE IT A TRY TODAY ...AND TOMORROW ...OR WHENEVER YOU NEED IT!

TAGS: AVAILABLE AT RITE AID, CVS, THRIFT DRUGS, DRUG EMPORIUM
ALL FINE OUTLETS EVERYWHERE.

Complaint Exhibits

Exhibit G

**COLD-EEZE :60
THE IMITATORS. Fake**

REMEMBER WHEN I TOLD YOU ABOUT PASSING THE COLD IN YOUR FAMILY? YOU KNOW, THE KIDS BRING A COLD HOME FROM SCHOOL AND PASS IT ONTO EVERYBODY ELSE.

NOW, WITH THE PHENOMENAL SUCCESS OF COLD-EEZE LOZENGES, MANY IMPOSTORS ARE TRYING TO COPY IT! BEWARE OF THESE FAKE IMITATORS.

COLD-EEZE IS THE ONLY LOZENGE CLINICALLY PROVEN IN TWO DOUBLE-BLIND STUDIES TO REDUCE THE DURATION AND SEVERITY OF THE COMMON COLD. IN FACT, COLD-EEZE HAS BEEN SO EFFECTIVE AGAINST COMMON COLDS IN FAMILIES THAT PEDIATRIC STUDIES ARE UNDERWAY TRY COLD-EEZE TO HELP PROTECT YOUR LITTLE ONES FROM THE NASTY CLUTCHES OF FULL-BLOWN COLDS.

SO REMEMBER THE NEXT TIME ONE OF YOUR KIDS BRING THE SNIFFLES HOME FROM SCHOOL, STAY AWAY FROM THOSE FAKE IMITATORS.

THERE'S ONLY ONE ZINC LOZENGE PROVEN TO WORK ON COLDS: COLD-EEZE. ASK FOR IT BY NAME. CLINICALLY PROVEN COLD-EEZE. IT REALLY WORKS!!

TAGS:

Complaint Exhibits

Exhibit H

COLD-EEZE

TAG #3
 4 13-UFN
 SPRING ALLERGIES

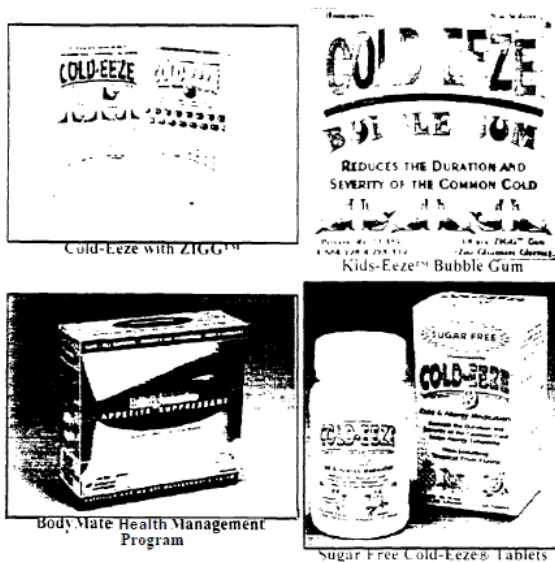
- * ALLERGY SEASON IS HERE...WARM WEATHER, SUNSHINE, FLOWERS...IT'S A TERRIBLE TIME TO START SNEEZING! SO ATTACK THOSE SYMPTOMS WITH **COLD-EEZE**.
- * **COLD-EEZE** IS NOW THE **MOST EFFECTIVE** AND **POPULAR** COLD FIGHTER IN THE COUNTRY.
- * THERE'S NO SUBSTITUTE FOR **COLD-EEZE** WHEN IT COMES TO EASING SYMPTOMS.
- * REMEMBER, WHEN YOU THINK ZINC, THINK **COLD-EEZE** THE ONLY LOZEYGE WITH "ZIGG" THAT'S **ZINC GLUCONATE GLYCINE** AND IT'S ONLY IN **COLD-EEZE**.
- * **COLD-EEZE** PATENTED, HOMEOPATHIC, ALL NATURAL, NON SEDATING, FAST ACTING AND CLINICALLY PROVEN.
- * NOW AVAILABLE IN FOUR SOOTHING FLAVORS TOO!
- * SO ENJOY THE SEASON, TAKE **COLD-EEZE** WITH YOU TO WORK, THE GYM OR EVEN ON VACATION.
- * THERE IS NOW **SUBSTITUTE ANYWHERE...**
- * **COLD-EEZE**, THE OFFICIAL SPONSOR OF THE NATIONAL TOURING STAGE **PRODUCTION** OF THE **WIZARD OF OZ**.

COLD-EEZE IS AVAILABLE AT.....

WALGREENS, OSCO/SAV-ON, JEWEL, DOMINICKS, K-MART, VONS,
 LUCKY'S, DUANE REAOE AND FINE STORES EVERYWHERE,

Complaint Exhibits

Exhibit I



The Quigley Corporation Makers of Cold-Eeze® with Zigg™, is proud to sponsor this year's tour of The Wizard Of Oz. Follow the Yellow Brick Road for tour engagements.

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Complaint Exhibits

Cold-Eeze Bubble Gum Formula



The same clinically proven ZIGG™ formula and dosage as regular COLD-EEZE® Lozenges!

Complaint Exhibits

Exhibit J

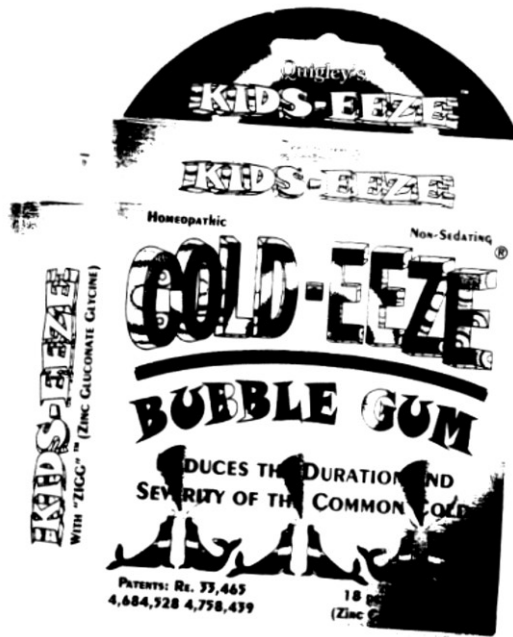


Exhibit J

Complaint Exhibits

TRY QUIGLEY CORPORATION'S OTHER FINE PRODUCTS

COLD-EEZE® HOMEOPATHIC LOZENGES IN 4 FLAVORS
 COLD-EEZE® HOMEOPATHIC SUGAR-FREE TABLETS
 FOR COLDS & ALLERGIES

BODYMAZE™ NUTRITION & WEIGHT MANAGEMENT PROGRAM



Indications: To reduce the duration and symptoms of the COMMON cold (cough, sore throat, stuffy nose, sneezing, post-nasal drip, hoarseness). Non-sedating.

Ingredients: Net contents: 18 pieces, bubble gum. Each 4.5g piece contains: Active ingredient: 13.3mg of ionic zinc from Zincum Gluconicum 2X (104mg zinc gluconate trihydrate) equivalent to Zincum 3X. Inactive ingredients: 4.49g including: Sucrose, Gum base, Corn Syrup, Glycine, Gluconic Acid, Glycerin, Artificial Flavors, Acesulfame Potassium, Red 40 Lake, Red 40, and BHT (To Maintain Freshness).

Directions: For maximum effectiveness, begin treatment at first sign of cold. Chew each piece for at least 20 minutes. Repeat every 2 to 4 hours as needed. Recommended daily dose is 5 pieces per day. To avoid minor upset, do not chew on an empty stomach. Do not eat or drink citrus fruits or juices 1/2 hour before & after chewing a piece. Otherwise, drink plenty of fluids.

Warnings: COLD-EEZE® Bubble Gum is formulated to relieve cold symptoms & may be insufficient treatment for flu. If symptoms worsen or persist beyond 7 days, consult a physician.

**CLINICALLY PROVEN
 COLD-EEZE® WITH ZIGG™**

The following studies apply only to the COLD-EEZE® formulation with ZIGG™ (Zinc Gluconate Glycine), the only great tasting formulation proven effective in treating a Common Cold.

A randomized, double-blind placebo study, with 23mg of ionic zinc in a citrus flavored lozenge, concluded that treatment of a cold with our Patented formula within 48 hours of the onset resulted in symptom relief and a 62% reduction in the duration of the common cold. Results were published in the Journal of International Medical Research, Godfrey et. al., Vol. 20, No. 3, June 1992.

A second, randomized, double-blind placebo study, with only 13.3mg of ionic zinc in a citrus flavored lozenge, concluded patients starting treatment with our Patented formula within 24 hours of the onset, taking an average of 6 lozenges per day, resulted in a 42% reduction in the duration of common cold symptoms. Results were published in the Annals of Internal Medicine, Massad et. al., Vol. 123, No. 2, July 15, 1996, pages 87-90.

MANUFACTURED FOR & DISTRIBUTED BY
 THE QUIGLEY CORPORATION
 P.O. BOX 1349 - DOYLESTOWN, PA 18901 USA
 EMAIL: consumer-dept@quigleyco.com
 INTERNET: <http://www.quigleyco.com>
 HASDAQ TRADING SYMBOL: QGAY

8 15001 80116 0



DECISION & 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 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 respondent of all the jurisdictional facts set forth in the draft 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 or that the facts, as alleged in the complaint, other than jurisdictional facts, are true; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the 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 § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional finding and enters the following order:

1. Respondent The Quigley Corporation ("Quigley") is a Nevada corporation with its principal office or place of business at 10 South Clinton Street, P.O. Box 1349, Doylestown, PA 18901.

Decision and Order

ORDER

DEFINITIONS

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

1. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. Unless otherwise specified, “respondent” shall mean The Quigley Corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. “Commerce” 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 other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Cold-Eeze Zinc Lozenges, Kids-Eeze Bubble Gum, or any other food, drug or dietary supplement, as “food” and “drug” are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. will prevent users from contracting colds;

Decision and Order

- B. will reduce the risk of contracting pneumonia;
- C. will relieve or reduce the symptoms of hay fever and allergies;
- D. will reduce the severity of cold symptoms in children;
or
- E. will prevent children from contracting colds;

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug or dietary supplement, as “food” and “drug” are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such food, drug or dietary supplement can or will cure, treat, or prevent any disease, or have any effect on the structure or function of the human body unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

Nothing in this Order shall prohibit Respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

Decision and Order

IV.

Nothing in this order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

V.

IT IS FURTHER ORDERED that respondent The Quigley Corporation, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent The Quigley Corporation, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents,

Decision and Order

and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request, make available to the Federal Trade Commission for inspection and copying, a copy of each signed statement acknowledging receipt of the order.

VII.

IT IS FURTHER ORDERED that respondent The Quigley Corporation, 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 respondents learn less than thirty (30) days prior to the date such action is to take place, respondents 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondent The Quigley Corporation, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other

Decision and Order

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 February 10, 2020, 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.

By the Commission, Commissioner Anthony dissenting and Commissioner Leary not participating.

Analysis to Aid Public Comment

**ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing consent order from respondent the Quigley Corporation (“Quigley”).

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.

This matter involves alleged deceptive representations for Cold-Eeze Zinc Lozenges and Cold-Eezer Plus Zinc Gluconate Lozenges (hereinafter, collectively “Cold-Eeze”) and Kids-Eeze Bubble Gum (“Kids-Eeze”).

The Commission's proposed complaint alleges that Quigley made unsubstantiated representations that Cold-Eeze will prevent users from contracting colds and pneumonia; will treat allergies; will reduce the severity of colds in children; and that Kids-Eeze will reduce the severity of cold symptoms in children.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits the respondent from making the representations about Cold-Eeze and Kids-Eeze challenged in the complaint, unless it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Analysis to Aid Public Comment

Part II of the proposed order prohibits respondent from making any representation that any food, drug, or dietary supplement can or will cure, treat or prevent any disease, or have any effect on the structure or function of the human body, unless it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part III of the proposed order allows the respondent to make any representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (“FDA”) standard or under any new drug application approved by the FDA.

Part IV of the proposed order allows the respondent to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts V through VIII require the respondent to keep copies of advertisements making representations covered by the order; to keep records concerning those representations, including material that they relied upon when making the representations; to provide copies of the order to certain of the respondents' personnel; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission.

Part IX of the proposed order is a “sunset” provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

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.

Dissenting Statement

**DISSENTING STATEMENT OF
COMMISSIONER SHEILA F. ANTHONY**

I write separately to express my view that the consent in this matter does not adequately address Quigley Corporation's conduct with respect to its marketing of the Kids-Eeze product.