

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030397 AND 031497—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Clear Channel Communications, Inc., Hellman and Friedman Capital Partners III, L.P., Eller Media Corporation	97-1445	03/14/97
Trimin Enterprises Inc., CSR Limited (an Australian company), Beadex Holdings, Inc	97-1446	03/14/97
Ugly Duckling Corporation, E-Z Plan, Inc., E-Z Plan, Inc	97-1455	03/14/97
Russell V. Umphenour, Jr., Triarc Companies, Inc., RTM Operating Company and RTM Development Company	97-1479	03/14/97
Regal Cinemas, Inc., Magic Cinemas, L.L.C., Magic Cinemas, L.L.C	97-1482	03/14/97
American Home Products Corporation, Biomatrix Inc., Biomatrix Inc	97-1497	03/14/97
National-Oilwell, Inc., Finmeccanica S.p.A., Ansaldo Ross Hill Inc	97-1499	03/14/97

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Parcellena P.
Fielding Contact Representatives,
Federal Trade Commission, Premerger
Notification Office, Bureau of
Competition, Room 303, Washington,
D.C. 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 97-7263 Filed 3-20-97; 8:45 am]

BILLING CODE 6750-01-M

[File No. D-9189]**Detroit Auto Dealers Association, Inc.;
Analysis To Aid Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the eleven remaining dealerships in the FTC's case against the Detroit Automobile Dealers Association (DADA) to be bound by the terms and provisions of an existing 1995 Commission order, with certain modifications. The original complaint alleged that DADA and a large number of its member automobile dealers violated federal antitrust laws when they illegally conspired to limit competition in the sale of new cars in the Detroit area by closing dealerships on Saturdays and most week nights.

DATES: Comments must be received on or before May 20, 1997.

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

FOR FURTHER INFORMATION CONTACT:

William J. Baer, Federal Trade
Commission, H-374, 6th St. and Pa.
Ave., N.W., Washington, D.C. 20580.
(202) 326-2932.

Mark D. Whitener, Federal Trade
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Ernest A. Nagata, Federal Trade
Commission, H-394, 6th St. and Pa.
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SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for March 14, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To
Aid Public Comment**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement to a proposed consent order from eleven automobile dealerships and nine owners or managers of dealerships in the Detroit, Michigan Area. The parties to the agreement (hereinafter collectively referred to as "the dealers") are listed at the end of this document. The proposed

order requires the dealers to cease and desist from entering into or carrying out any agreement among themselves or with other dealers to fix the hours of operation of automobile dealerships in the Detroit area.

The proposed consent order will resolve charges against the final group of respondents named in an administrative complaint issued by the Commission in December, 1984, in Detroit Auto Dealers Ass'n, Inc., Dkt. No. 9089. Similar charges against other respondents were resolved through consent orders issued in 1994 after a federal appellate court substantially affirmed the Commission's finding that respondents violated Section 5 of the Federal Trade Commission Act.

The consent order now proposed will modify a previous order that was entered against the present dealers in 1989 and subsequently modified in 1995. Upon further review, the Commission has determined that the previous order should be further modified in light of changes in the market since the entry of the 1994 consent orders. The 1994 orders required the respondent dealers to maintain extended operating hours for a one year period to restore competition that was lost as a result of the dealers' agreement to keep their stores closed on Saturdays and on several week nights. Recent evidence indicates that the market has changed in response to the previous orders, making it unnecessary to continue the same mandatory hours requirement in the order against the present dealers. The proposed consent order therefore suspends the remainder of that requirement.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested parties. Comments received during this period will become part of the public record. After 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.

Background

Count I of the administrative complaint charged that the respondents agreed among themselves and with others to limit competition in the sale of new motor vehicles in the Detroit, Michigan area in violation of Section 5 of the Federal Trade Commission Act, by adopting and adhering to a schedule limiting hours of operation for the sale or lease of motor vehicles in the Detroit area. The alleged agreement limited weekday evening hours to Mondays and Thursdays and eliminated Saturday hours altogether, except for occasional special sales.¹

The dealers defended their agreement in part on grounds that they had acted in response to employee demands for shorter hours and, therefore, that the agreement was exempt from the antitrust laws by reason of the nonstatutory labor exemption. In February, 1989, the Commission held that the dealers' agreement restrained competition, and that the dealers were not entitled to the nonstatutory labor exemption because their uniform hours restrictions were not the result of any collective bargaining activity with employees; on the contrary, the dealers had agreed among themselves in order to avoid collective bargaining. *Detroit Auto Dealers Ass'n, Inc.* 111 F.T.C. 417 (1989). The Commission's Final Order, among other provisions, prohibited the dealers from conspiring in any way to fix hours of operation. As a corrective measure the Final Order also required the dealers to remain open a minimum of 64 hours a week for one year. The Commission found that "a cease and desist order alone would be inadequate to remedy the respondents' violations of Section 5." Because of the history of violent enforcement of the hours restrictions, the Commission found that "[d]ealers individually will decide to remain closed for fear of reprisals if they try to extend hours. Only if many dealers are open at the same time, making enforcement of the restriction difficult or impossible, will the fear of being singled out for enforcement be overcome." *Detroit Auto Dealers Ass'n, Inc.*, 111 F.T.C. at 506.

The respondents appealed the Commission's decision to the United States Court of Appeals for the Sixth Circuit. On January 31, 1992, the Court of Appeals affirmed the Commission's decision in substantial part and remanded the case to the Commission for the "limited purpose" of reconsidering certain issue, including

whether certain respondents may be entitled to the nonstatutory labor defense. In *re: Detroit Auto Dealers Ass'n Inc.*, 955 F.2d 457 (6th Cir.), cert. denied, 113 S. Ct. 461 (1992).

The charges against 148 of the respondents were resolved in April and July, 1994, through consent orders substantially similar to the Commission's order of February 22, 1989. Those orders required the dealer respondents to operate their stores for at least a minimum number of hours per week for a one year period.²

Twenty-two other respondents, including the present dealers, participated in the remand proceeding. On June 20, 1995, the Commission issued a decision finding that the dealers did not qualify for the nonstatutory labor exemption. 5 Trade Reg. Rep. (CCH) ¶23,853 (1995). The Commission's order of June 20, 1995 modified in limited respects the Commission's order of February 22, 1989.

The present dealers again appealed the Commission's order to the United States Court of Appeals for the Sixth Circuit. Following the denial of the dealers' request for a stay of the order by both the Commission and the court, the order went into effect pending appeal. On May 24, 1996, the court once again remanded the case to the Commission. In *re: Detroit Auto Dealers Ass'n Inc.*, 84 F.3d 787 (6th Cir. 1996), rehearing denied, ____ F.3d ____ (6th Cir. Aug. 26, 1996). Without questioning the Commission's finding of liability, the court directed the Commission to consider whether a modification of the Commission's order would be warranted in light of changed factual conditions in the Detroit market. Among other things, the court expressed a belief that most dealers in the Detroit market were now open on Saturdays, which would lessen or eliminate any need to order the dealers to be open that day.

On November 22, 1996, following the court's denial of the Commission's petition for rehearing, the Commission issued an order remanding the case to an Administrative Law Judge for further evidentiary hearings. Shortly thereafter, the parties entered into the present settlement agreement.

The Proposed Order

The terms of the proposed consent order are substantially similar to those of the Commission's Order of February 22, 1989, as modified by Commission's Order of June 20, 1995. The consent order makes three modest changes to those previous orders, which are incorporated in the consent order by reference. The principal difference, set forth in Part I.A of the proposed order, is that the dealers' obligations under Part III of the previous orders, which required them to maintain a minimum number of hours of operation for a period of one year, has been reduced to the time during which the dealers were in compliance with that provision prior to the Sixth Circuit's issuance of a stay on March 13, 1996—approximately six months. While it does not appear to be the case that "most" dealers in Detroit are now open on Saturdays as the court stated in its remand decision, it does appear that the Commission's prosecution of this case, together with the remedial provisions of the previous consent orders, has resulted in significant corrective changes in the market. A substantial number of Detroit area dealers are now open on Saturdays. In recognition of this, the settlement relieves respondents of any further affirmative hours obligation.

The two other changes relate to the effective date of the consent order. The Commission's order of June 22, 1995, went into effect pending appeal, and respondents have filed compliance reports certifying that they have been and remain in compliance as if the order remained in effect. To give respondents credit for compliance with the Commission's previous order to date, the effective date of the consent order will be construed to be the effective date of the Order of June 22, 1995. However, the terms and duration of all compliance obligations, other than the Part III affirmative hours provision, remain the same. Part I.B of the consent order specifies the effective date for compliance reporting obligations under Part X of the original order and gives respondents credit for compliance reports filed to date. Part I.C of the consent order sets forth the same effective date for all other order provisions.

The relevant order provisions, as modified, are as follows:

Part I of the Commission's order of February 22, 1989, prohibited the dealers from entering into or continuing any agreement with any other dealer or dealer association in the Detroit area to establish, maintain or adhere to any

¹ Count II of the complaint, charging certain dealers with agreements to restrain advertising, was settled in 1986.

² See *Detroit Automobile Dealers Ass'n Inc.*, Proposed Consent Agreement With Analysis to Aid Public Comment, 59 Fed. Reg. 6263 (Feb. 10, 1994); Final Order, 5 Trade Reg. Rep. (CCH) ¶23,532 (Apr. 24, 1994), Proposed Consent Agreement With Analysis to Aid Public Comment, 59 Fed. Reg. 23861 (May 9, 1994); Final Order, 5 Trade Reg. Rep. (CCH) ¶23,587 (July 20, 1994).

hours of operation. This provision is not changed by the proposed consent order.

Part II.A of the Commission's order of February 22, 1989, prohibited the dealers from exchanging information or communicating with any other dealer or association concerning hours of operation, except to the extent necessary (i) to comply with any order of the Commission, and (ii) after two (2) years from the date the order becomes final, to incorporate individual dealers' hours of operation in lawful joint advertisements. Part II.A has two exceptions to the two-year prohibition against the inclusion of individual dealers' hours of operation in joint advertising. First, the prohibition would not apply to individual dealers that are legally operated under common control. Second, the prohibition would not apply to joint advertising for special events such as tent sales, mall sales, or annual sales when hours of operation are extended. These provisions are not changed by the proposed consent order.

Part II.B of the Commission's order of February 22, 1989, prohibited the dealers from requesting, recommending, coercing, influencing, inducing, encouraging or persuading any dealer or dealer association to maintain, adopt or adhere to any hours of operation. This provision is not changed by the proposed consent order.

Part III of the Commission's order of February 22, 1989, as modified by the Commission's Order of June 20, 1995, required the dealers to maintain for a period of one year, a minimum of sixty-four hours of operation per week for the sale and lease of motor vehicles, or alternatively, a minimum of an average of ten and a half hours during weekdays plus an additional eight hours on Saturdays. Under the proposed consent order, the term of this requirement is reduced to the period for which the dealers were in compliance with the requirement pending appeal of the Commission's order of June 20, 1995. Accordingly, under the proposed consent order the dealers will have no further obligations to maintain minimum hours of operation.

Part IV of the Commission's order of February 22, 1989, required the dealers, beginning thirty days after the order became final and for a minimum of four weeks thereafter, to place at least four weekly advertisements in Detroit newspapers explaining that the dealers were required by Commission order to offer extended shopping hours for one year. The dealers fulfilled their obligations under this provision pending appeal of the Commission's June 20, 1995 order. Accordingly, the

proposed consent order imposes no further obligations under this provision.

Part V of the Commission's order of February 22, 1989, required the dealers, while Part III of the order was in effect, to disclose their hours of operation in all advertising, with limited exceptions. Since the proposed consent order limits the dealers' obligations under Part III to their compliance to date, the dealers will have no further obligations under Part V.

Parts VI, VII and VIII of the Commission's order of February 22, 1989, applied only to the association respondents. Accordingly, the dealers will have no obligations under these provisions.

Part IX of the Commission's order of February 22, 1989, required the dealers to give a copy of the order to each employee and, for a period of five years, to give a copy to each new employee involved in motor vehicle sales or leasing. This provision is not changed by the proposed consent order.

Part X of the Commission's order of February 22, 1989, required the dealers to file annual compliance reports for a period of five years. The proposed consent order would give the dealers credit for compliance reports filed since the effective date of the Commission's order of June 20, 1995.

Part XI of the Commission's order of February 22, 1989, required the dealers, for a period of five years, to inform the Commission of any change in corporate status that may affect compliance obligations under the order, or, with respect to individual respondents, of any change in employment. This provision is not changed by the proposed consent order.

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

Parties to the Consent Agreement

Dealer Respondents

Crestwood Dodge, Inc., 32850 Ford Road, Garder City, MI 48135
 Bob Borst Lincoln-Mercury, Inc., a/k/a Bob Borst Lincoln-Mercury Sales Inc., 1950 W. Maple Road, Troy, MI 48084
 Bob Dusseau, Inc., a/k/a Bob Dusseau Lincoln-Mercury, 31625 Grant River Avenue, Farmington, MI 48024
 Bob Maxey Lincoln-Mercury Sales, Inc., 16901 Mack Avenue, Detroit, MI 48224
 Crest Lincoln-Mercury Sales, Inc., 36200 Van Dyke Avenue, Sterling Heights, MI 48077
 Stewart Chevrolet, Inc., 23755 Allen Road, Woodhaven, MI 48183

Woody Pontiac Sales, Inc., 12140 Joseph Campau, Hamtramck, MI 48212
 Jack Demmer Ford, Inc., a/k/a/ Jack Demmer Ford, 37300 Michigan Avenue, Wayne, MI 48184
 Al Long Ford, Inc., 13711 E. Eight Mile Road, Warren, MI 48089
 Ed Schmid Ford, Inc., 21600 Woodward Avenue, Ferndale, MI 48220
 Ray Whitfield Ford, a/k/a/ Ray Whitfield Ford, Inc., 10725 S. Telegraph Road, Taylor, MI 48180

Individual Respondents

Robert C. Borst, c/o Bob Borst Lincoln-Mercury, Inc., 1950 W. Maple Road, Troy, MI 48084
 Robert Dusseau, a/k/a/ Robert F. Dusseau, c/o Bob Dusseau Lincoln-Mercury, 31625 Grant River Avenue, Farmington, MI 48024
 Robert Maxey, c/o Bob Maxey Lincoln-Mercury Sales Inc., 16901 Mack Avenue, Detroit, MI 48224
 William Ritchie, a/k/a/ William R. Ritchie, c/o Crest Lincoln-Mercury Sales, Inc., 36200 Van Dyke Avenue, Sterling Heights, MI 48077
 Gordon L. Stewart, a/k/a/ Gordon Stewart, c/o Stewart Chevrolet, Inc., 23755 Allen Road, Woodhaven, MI 48183
 Woodrow W. Woody, c/o Woody Pontiac Sales, Inc., 12140 Joseph Campau, Hamtramck, MI 48212
 John E. Demmer, a/k/a/ Jack E. Demmer, c/o Jack Demmer Ford, Inc., 37300 Michigan Avenue, Wayne, MI 48184
 Edward F. Schmid, a/k/a/ Edward Schmid, c/o Ed Schmid Ford, Inc., 21600 Woodward Avenue, Ferndale, MI 48220
 Raymond J. Whitfield, a/k/a/ Raymond Whitfield, c/o Ray Whitfield Ford, 10725 S. Telegraph Road, Taylor, MI 48180

Donald S. Clark,

Secretary.

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[File No. 962-3175]

Gerber Products Company; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the baby food company from representing the extent to which doctors or other health