

Complaint

IN THE MATTER OF

BILL CROUCH FOREIGN, INC., d/b/a BILL CROUCH
IMPORTS, INC. (formerly MAZDA OF BOULDER, INC.)

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3030. Complaint, July 31, 1980—Decision, July 31, 1980

This consent order requires, among other things, a Boulder, Colo. retail dealer for new Honda automobiles to cease from charging customers more than its actual cost for transporting vehicles to its showroom; misrepresenting that optional equipment is installed by the manufacturer or required by law; and failing to disclose to customers any additional charges that would be included in the purchase price of the automobile. The order further requires the firm to make refunds, in a prescribed manner, to eligible Honda Accord customers who had paid more than \$30.00 above the actual cost for freight; and retain specified records for a period of two years.

Appearances

For the Commission: *John H. Evans* and *Allen R. Franck*

For the respondent: *Miles C. Cortez, Jr.* and *Debra R. Lappin*,
Welborn, Dufford, Cook & Brown, Denver, Colo.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*, as amended), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bill Crouch Foreign, Inc., dba Bill Crouch Imports, Inc. (formerly Mazda of Boulder, Inc.), a corporation, hereinafter sometimes referred to as "respondent," has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado with its principal office and principal place of business located at 2555 Thirtieth St., Boulder, Colorado.

PAR. 2. Respondent is now, and for some time has been, engaged in the advertising, offering for sale, and sale of new automobiles, and the parts and equipment thereof, to retail customers. Respondent is an authorized dealer for the Honda Automobile Company.

PAR. 3. Respondent's volume of business is substantial and its acts and practices, as set forth herein, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

COUNT I

The allegations contained in Paragraphs One through Three are incorporated by reference herein as if fully set forth verbatim.

PAR. 4. In the course of offering for sale and selling new Honda automobiles to retail customers, respondent regularly has listed on purchase orders and bills of sale, and has collected from customers as part of the total purchase price, a charge for "Freight." This terminology represents that the charge is intended to reimburse the respondent for its actual costs or outlays to third parties for the transportation of new automobiles to the dealership from the point where they are delivered by the manufacturer.

PAR. 5. In truth and in fact, in many instances the charges referred to in Paragraph Four, which respondent has listed and collected from customers for "Freight," have exceeded respondent's actual outlays to third parties for the transportation of new automobiles.

PAR. 6. The practices described hereinabove have had the capacity and tendency to mislead and deceive new automobile consumers and have induced customers to make payments which they might not have made but for respondent's aforesaid representations.

PAR. 7. Respondent's conduct as alleged in Count I was and is to the detriment and injury of the purchasing public and constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. Furthermore, respondent's retention of funds collected from customers by means of such conduct constituted, and now constitutes, an unfair or deceptive act or practice in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

The allegations contained in Paragraphs One through Seven are incorporated by reference herein as if fully set forth verbatim.

PAR. 8. In the further course of selling new Honda automobiles to retail customers, respondent or respondent's agents regularly have represented to customers that the application or installation of

several dealer-installed items, including, but not limited to, "undercoating" and "Polyglycoat" (a chemical paint polish and sealant), is recommended, required, or performed by the automobile manufacturer or that the respondent has no control over the installation or application of these items.

PAR. 9. In truth and in fact, the items referred to in Paragraph Eight are installed or applied at the direction of respondent to new automobiles which come into respondent's possession. Furthermore, the manufacturer of these new automobiles neither recommends, requires, nor performs the installation or application of these items.

PAR. 10. Respondent's representations as set forth in Paragraph Eight were and are false and misleading. Relying upon such representations, customers have been misled into accepting and paying for items that they might otherwise not have purchased.

PAR. 11. Respondent's conduct as alleged in Count II was and is to the detriment and injury of the purchasing public, and constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND 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 of complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having hereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that 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 Bill Crouch Foreign, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 2555 Thirtieth St., in the City of Boulder and State of Colorado.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For purposes of this Order:

1. "New automobile" shall mean any passenger car or station wagon the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
2. "Optional equipment" shall mean, with respect to any new automobile, any equipment or features not included within the manufacturer's suggested retail price, as defined in 15 U.S.C. 1232(f)(1).

I

It is ordered. That respondent Bill Crouch Foreign, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any sale, offering for sale, advertising or distribution of new automobiles, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Listing on stickers affixed to any new automobile, or on purchase orders, bills of sale, or sales contracts, and collecting from consumers, any freight, transportation or destination charges that exceed respondent's cost as determined herein for the shipment of the new automobile from any port-of-entry to respondent's showrooms. For purposes of this Order, respondent's cost shall be deemed to be the amount shown on the most recent invoice received by respondent covering the shipment of comparable automobiles from a

comparable port-of-entry to respondent's showrooms plus five dollars (\$5.00).

2. Affirmatively representing that any optional equipment is recommended, required, or installed by the manufacturer or is required by law, unless such is in fact the case; *provided, however*, that this requirement shall not be construed to impose a duty on respondent or its agents to affirmatively disclose information regarding such optional equipment, including but not limited to the nature or source of or requirement for such equipment, except in response to a specific consumer inquiry.

3. Failing to disclose clearly and conspicuously, prior to signing of a completed purchase order, if the total purchase price exceeds the manufacturer's suggested retail price, the precise amount of any handling, service, or similar charges which will be included in the purchase price of a new automobile.

II

It is further ordered, That:

1. The respondent shall submit to the Commission, within fifteen (15) days after the date this Order is served on respondent's corporate president (hereinafter "date of service"), a notarized affidavit, executed by the president of respondent to the effect that the respondent has made or has caused to be made a good faith search of documents that pertain to purchasers of new Honda Accord automobiles from the respondent and that the respondent, to the best of its knowledge, has previously or simultaneously with said affidavit submitted to the Commission the names of all purchasers of such automobiles covered by this Order.

2. The respondent shall submit to the Commission, within sixty (60) days after the date of service, all necessary documents, including but not limited to, purchase orders, bills of sale, buyer's orders, freight invoices and billings, internal worksheets, and invoices and all other materials necessary for the Commission to determine the amount paid by the respondent to third parties for freight. Based upon the information supplied to the Commission by the respondent pursuant to this paragraph and Paragraph II(1), the Commission or its designee shall deliver to respondent a list of all purchasers of new Honda Accord automobiles who are "eligible class members," setting forth the amount of refund due from the respondent to each such class member, derived in accordance with Part II of this Order, which list shall be served on the respondent.

3. On the ninetieth (90th) day after service on the respondent of

the list of eligible class members as provided in Paragraph II(2) above, the respondent shall make refunds to eligible class members in the following manner:

(a) except as provided in subparagraph (b) below, submit to the Commission or its designee a refund check, undated, drawn on the account of respondent made payable to each eligible class member or his or her legal representative in the amount provided by the Commission;

(b) in the event a refund check for any eligible class member is not so submitted, submit to the Commission or its designee a list of "disputed eligible class members" stating the reasons why the purchaser whose name is shown on the list prepared by the Commission is not an eligible class member or is not entitled to the refund in the amount specified by the Commission, as the case may be. If necessary, counsel for the Commission and counsel for the respondent shall thereafter confer and determine if and/or in what amount a refund is due and owing to any such disputed eligible class member.

4. Thereafter, the Commission or its designee shall send to each eligible class member, by registered mail, with return receipt requested, and with copy to respondent, a letter in the language, manner, and form shown in Appendix A, with an enclosed stamped envelope showing the address of the Commission or its designee. Upon receipt of the executed Receipt and Waiver form from an eligible class member, as provided in Appendix A, the Commission or its designee shall thereafter enter a current date on the appropriate refund check submitted to the Commission by respondent in accordance with Paragraph II(3) above and forward the check to such eligible class member.

5. On or before the three-hundredth (300th) day after date of service, the Commission or its designee shall serve on respondent (a) a list of names, addresses and received refunds in accordance with the provisions of this Part II, and (b) a list of names, addresses and refund amounts of those eligible class members whose initial mailing in the form of Appendix A or refund check was returned by the United States Postal Service. The Federal Trade Commission shall have one year from the date of service of this list to locate such eligible class members. At such time as any class member is located, the Federal Trade Commission shall follow the procedure authorized in Paragraph II(4) above with respect to the initial mailing of a letter in the form of Appendix A and subsequent mailing, if appropriate, of a refund check to such eligible class member.

6. The respondent shall, on the three-hundred and thirtieth (330th) day after the date of service, file with the Commission a report in writing setting forth the manner and form in which it has complied with Part II of this Order.

7. At the end of the one-year period described in Paragraph II(5) above, the Commission shall return to the respondent all refund checks payable to eligible class members whom the Commission is unable to locate and respondent shall thereupon be relieved of any further obligation to make payments to such eligible class members.

8. Except as modified by Paragraph II(9) below, "eligible class members" means those persons who purchased any new Honda Accord automobile at the respondent's showrooms between July 15, 1976 and the date of service of this Order, and who paid any amount for "freight," or charge of similar import, in excess of respondent's actual outlays to third parties to transport the automobile from the port-of-entry to respondent's showrooms, if such actual outlays are known, or, if unknown, in excess of respondent's outlays as computed pursuant to subparagraph 10(b) below.

9. If at the time of sale the charge made by the respondent for "freight" to a person who purchased a new Honda Accord automobile between July 15, 1976 and the date of service of this Order was a "good faith estimate" of the respondent's actual freight outlays to third parties, such person shall not be an "eligible class member" within the meaning of this Consent Order. Any charge for freight made by the respondent shall be deemed a "good faith estimate" by the respondent if such charge cannot be shown to have exceeded the respondent's subsequent actual outlays, or, if unknown, its estimated outlays, as determined under subparagraph 10(b) below, to third parties for transportation of the automobile from the port-of-entry to the respondent's showrooms by more than thirty dollars (\$30.00).

10. The respondent shall make refund payments to each eligible class member as follows:

(a) each eligible class member shall receive as a refund one-half (1/2) of that amount by which the charge paid by the class member to the respondent for "freight" exceeded the respondent's actual outlays to third parties for transportation of the automobile purchased by the class member from the port-of-entry to respondent's showrooms.

(b) if such actual outlay is unknown, each eligible class member shall receive as a refund one-half (1/2) of that amount by which the charge paid by the class member to the respondent for "freight" exceeded the average sum paid by the respondent to third parties to