

OFFICE OF THE ATTORNEY GENERAL OF OHIO
CONSUMER PROTECTION SECTION

RECEIVED

SEP 17 1993

AT. GEN. OF OHIO
CONSUMER FRAUDS & CRIMES
PUBLIC INSPECTION FILE

In the Matter of:

RICART FORD, INC.
4255 South Hamilton Road
Columbus, Ohio 43225

) INVESTIGATIVE FILE
)
) NO. C1 92 0224

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 2ND day of SEPTEMBER, 1993, between Ricart Ford, Inc. and the Attorney General for the State of Ohio ("Attorney General") following the Attorney General's investigation of various acts and practices engaged in by the dealership for the purpose of determining if those acts and practices violate Ohio's Consumer Sales Practices Act, Ohio Revised Code Section 1345.01 et seq. and its Substantive Rules, Ohio Administrative Code Section 109:4-3-01 et seq. For the purposes of this Assurance, the "dealership" means Ricart Ford, Inc.; doing business under that name or any other name, its agents, servants, representatives, salespersons, employees, successors or assigns and all persons acting in concert or participation with it, directly or indirectly, through any corporate device, partnership, or association.

WHEREAS, the Attorney General has investigated certain acts and practices of the dealership relating primarily to the dealership's advertising practices;

WHEREAS, the Attorney General may, consistent with the provisions of Chapter 1345 of the Ohio Revised Code, enter into an Assurance of Voluntary Compliance;

EX. 3

Page 1 of 2

WHEREAS, the dealership desires to conform its advertising and sales practices to the standards required by Ohio law; and

WHEREAS, this Assurance shall not be construed as an admission by the dealership of any violation of Chapter 1345 of the Ohio Revised Code or the Substantive Rules promulgated thereunder. It is an assurance in writing by the dealership of its intent to conduct its business in a manner reasonably designed to avoid any violation of those laws in the future.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree to the following:

(A) That upon the acceptance of this Assurance by the parties hereto, the Attorney General shall terminate his investigation of the dealership, and the dealership's agents, officers, and shareholders.

(B) That the dealership will:

(1) Comply with R.C. 1345.02(A) and O.A.C. 109:4-3-16(B)(27) by disclosing that dealer contribution may affect consumer cost when advertising any interest reduction program requiring financial contribution by the dealership. For this purpose, "dealer contribution" includes agreeing to forego the opportunity to negotiate for a higher interest rate that would result in a higher dealer reserve for the dealership. This paragraph does not apply to interest rate negotiations when no interest rate has been advertised by the dealer or its agent.

(2) Comply with O.A.C. 109:4-3-16(B)(1) by not using any advertisements conveying and permitting erroneous impressions

regarding any aspect of any vehicle being offered for sale.

(3) Comply with O.A.C. 109:4-3-02(A) (1) by disclosing any material conditions, limitations, and exclusions relating to any offers of sale in close proximity to those offers.

(4) Comply with R.C. 1345.02(B) (8) by only representing that specific price advantages will apply to particular motor vehicles if those price advantages exist.

(C) The sum of Two Thousand Four Hundred Dollars (\$2,400.00) shall be contributed to a consumer education program, to be jointly developed and sponsored by the dealership, the Ohio Automobile Dealers Association and the Ohio Attorney General.

(D) The dealership shall not represent in any manner whatsoever that the Attorney General has sanctioned, condoned or approved in any way, any part or aspect of its business operation or practice nor shall the dealership use the name of the Attorney General, unless written authorization is obtained from the Attorney General, and then only to the extent of such written authorization.

(E) Nothing in this Assurance shall be deemed to preclude a class action by the Attorney General for damages on behalf of all individuals with complaints against the dealership pursuant to Section 1345.07 of the Ohio Revised Code, or any other appropriate action if a court of competent jurisdiction has determined that the terms of this Assurance have not been fully complied with. In that event, both parties shall have all rights set forth in Chapter 1345 of the Ohio Revised Code. By signing this Assurance, the parties agree that this Assurance, if fully complied with, will terminate

13. The Defendants advertise and/or advertised the existence of a "used car factory" coupled with the claim that the "factory" can "make" any vehicle to meet any consumer's need or desire.
14. The Defendants advertise and/or advertised "factory direct" vehicles in reference to used motor vehicles.
15. The Defendants routinely advertise and/or advertised the sale of new motor vehicles the makes for which they were not authorized by the manufacturer to sell.
16. The Defendants routinely fail and/or failed to advertise the total cost of automobiles offered for sale (excluding tax, title and license fees) by deducting rebates, incentives, first time buyer plans and/or dealer added options from advertised prices.
17. The Defendants advertise and/or advertised vehicles at prices substantially less than the Defendants' actual cost after rebates, holdbacks, and/or dealer incentives.
18. On or about June 12, 1986, the Ohio Attorney General's Consumer Frauds & Crimes Section issued a Cease and Desist Order (attached hereto as State's Exhibit No. CT-1) to Ricart Ford addressing the dealership's advertising practices. Compliance, as indicated by the violations alleged below, never occurred...
19. On or about April 3, 1987, the Ohio Attorney General's Consumer Frauds & Crimes Section issued a Cease and Desist Order (attached hereto as State's Exhibit No. CT-2) to Ricart Vanland addressing the dealership's advertising

practices. The Attorney General obtained an assurance of future compliance with advertising regulations. This compliance, as indicated by the violations alleged below, never occurred.

20. On or about October 1, 1991, the Ohio Attorney General's Consumer Frauds & Crimes Section issued a Cease and Desist Order (attached hereto as State's Exhibit No. CT-3) to Ricart addressing the Ricart dealerships' advertising practices. The Attorney General obtained an assurance of future compliance with advertising regulations. This compliance, as indicated by the violations alleged below, never occurred.
21. On or about December 11, 1991, the Ohio Attorney General's Consumer Frauds & Crimes Section issued a Cease and Desist Order (attached hereto as State's Exhibit No. CT-4) to Ricart addressing the Ricart dealerships' advertising practices. Ricart failed to respond to this Order and compliance, as indicated by the violations alleged below, never occurred.
22. On or about December 20, 1991, the Ohio Attorney General's Consumer Frauds & Crimes Section issued a Cease and Desist Order (attached hereto as State's Exhibit No. CT-5) to Ricart addressing the Ricart dealerships' advertising practices. Ricart failed to respond to this Order and compliance, as indicated by the violations alleged below, never occurred.

23. The Defendants routinely conduct and/or conducted their advertising practices in violation of previous Cease and Desist Orders issued by the State of Ohio, Attorney General, Consumer Frauds and Crimes Division.
24. The Defendants advertise and/or advertised an "expo" with "free admission" when, in fact, no event or exposition existed.
25. The Defendants advertise and/or advertised "no down payment" when in fact the purchaser was required to put some monetary amount down.
26. The Defendants advertise and/or advertised offers to sell used vehicles for "\$50.00 over Invoice".
27. The Defendants advertise and/or advertised offers to sell new vehicles at "wholesale" prices.
28. The Defendants advertise and/or advertised prices labeled as "list price" when in fact the advertised "list" price had been artificially inflated in order to deduct option package discounts.
29. The Defendants routinely fail and/or failed to state that advertised motor vehicles were used.
30. The Defendants routinely fail and/or failed to include beginning and/or ending dates in advertised sales and offers of sale.
31. On or about September 16, 1991 the Defendants issued a direct mail solicitation classified as an "express next-day" letter announcing a "private sale" of new and

"factory fresh" automobiles purchased at factory sponsored auctions. The sale was not, in fact, private.

32. On or about March 14, 1991, the Attorney General, Consumer Frauds and Crimes Division, issued a substantiation request asking the Defendant Ricart Ford d/b/a Ricart Nissan, to substantiate its claim of being a "regional outlet". The documentation supplied failed to substantiate the claim.
33. The Defendants advertise and/or advertised "2 for 1" sales when in fact, no "free" item was available.
34. The Defendants routinely fail and/or failed to include all federally mandated disclosures when advertising terms requiring said disclosures.
35. The Defendants routinely fail and/or failed to include clear, conspicuous and oral disclosures in televised advertisements.
36. The Defendants routinely use and/or used microscopic or "mice" type print for disclosure of material terms contained in footnotes to advertisements.
37. The Defendants advertise and/or advertised "commercial" rebates in consumer solicitations and failed to disclose limitations upon availability of the rebates.
38. The Defendants advertise and/or advertised low monthly payments in advertisements for the "sale" of automobiles, when the payments were, in fact, limited to "lease" transactions only, without conspicuously disclosing that the advertised offer involved a lease.

39. The Defendants advertise and/or advertised sponsorship, affiliation and/or approval that they did not have.
40. The Defendants advertise and/or advertised continual sales.

COUNT ONE.
UNFAIR AND DECEPTIVE ACTS OR PRACTICES

41. Plaintiff hereby avers and realleges the allegations contained in paragraphs one (1) through forty (40) as if fully rewritten herein.
42. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) by engaging in false, deceptive and/or misleading advertising.
43. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(B)(1) by representing that motor vehicles had benefits, uses and/or characteristics that they did not have.
44. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(B)(2) by representing that motor vehicles were of a particular quality when they were not.
45. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(B)(4) by representing that motor vehicles were available to consumers for reasons that did not exist.
46. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(B)(8) by representing that motor vehicles were available to consumers at prices that did not exist.

COUNT TWO
UNCONSCIONABLE ACTS OR PRACTICES

47. Plaintiff hereby avers and realleges the allegations contained in paragraphs one (1) through forty (40) as if fully rewritten herein.
48. The Defendants have committed unconscionable acts or practices in connection with the sale of motor vehicles in violation of R.C. §1345.03(A), as illustrated by R.C. §1345.03(B)(6), by knowingly making misleading statements of opinion concerning the previous use or extent of use of motor vehicles, on which consumers were likely to rely to their detriment.

COUNT THREE
ADVERTISEMENT AND SALE OF
MOTOR VEHICLES RULE VIOLATIONS

49. Plaintiff hereby avers and realleges the allegations contained in paragraphs one (1) through forty (40) as if fully rewritten herein.
50. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(1) by engaging in advertising practices which tend to obscure or confuse material facts.
51. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(3) by engaging in advertising

practices which could create false impressions in the minds of reasonable consumers.

52. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(6) by misrepresenting the availability of advertised motor vehicles
53. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(9) by their use of the word "list" in reference to a price other than the Manufacturer's Suggested Retail Price (MSRP) as that term is defined in O.A.C. §109:4-3-16(A)(6).
54. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(10) by engaging in price comparisons involving prices other than "list" or "sticker" as those terms are defined in O.A.C. §109:4-3-16(A)(6).
55. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(11) by offering a savings or discount from prices other than "list" or "sticker".
56. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(12) by their misleading use of the words "invoice" and "wholesale".

57. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(13) by their failure to disclose, in advertisements, the model, year and the fact that advertised motor vehicles were used.
58. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(21) by advertising prices for motor vehicles that do not include all costs to the consumer except tax, registration and license fees.
59. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-16(B)(26) by failing to include beginning and ending dates of any sale or other offer for the sale of a motor vehicle.

COUNT FOUR
DIRECT SOLICITATIONS RULE VIOLATION

60. Plaintiff hereby avers and realleges the allegations contained in paragraphs one (1) through forty (40) as if fully rewritten herein.
61. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-11(A)(3) by issuing a solicitation which misrepresented that a consumer or prospective consumer had been specially selected to receive a bargain, discount or advantage.

COUNT FIVE
SUBSTANTIATION RULE VIOLATION

62. Plaintiff hereby avers and realleges the allegations contained in paragraphs one (1) through forty (40) as if fully rewritten herein.

63. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-10(B) by failing to possess documentation to substantiate claims made in advertisements prior to the time of making such claims or representations.

COUNT SIX
USE OF THE WORD "FREE" ETC. RULE VIOLATIONS

64. Plaintiff hereby avers and realleges the allegations contained in paragraphs one (1) through forty (40) as if fully rewritten herein.

65. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-04(A) through their "2 for 1" sale in which neither vehicle offered for sale was in reality a "free" vehicle.

66. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-04(H) by engaging in continual "free" offers.

COUNT SEVEN
EXCLUSIONS AND LIMITATIONS
IN ADVERTISEMENTS RULE VIOLATIONS

67. Plaintiff hereby avers and realleges the allegations contained in paragraphs one (1) through forty (40) as if

fully rewritten herein.

68. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-02(A)(1) by failing to state clearly and conspicuously in close proximity to the words stating an offer any material exclusions, reservations, limitations, modifications or conditions to an offer, including but not limited to, the disclosures mandated by the Federal Truth-in-Lending Act, 15 U.S.C. §§1664 and 1667(c). The Defendants' practice of placing material disclosures within footnotes to advertisements also violates this rule.
69. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. 109:4-3-02(B) by failing to make conspicuously clear and oral disclosure of exclusions, reservations, limitations, modifications or conditions in radio or television advertising.

COUNT EIGHT
PRICE COMPARISONS RULE VIOLATIONS

70. Plaintiff hereby avers and realleges the allegations contained in paragraphs one (1) through forty (40) as if fully rewritten herein.
71. The Defendants have committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) and specifically O.A.C. §109:4-3-12(D) by engaging in continual "Sale" advertisements.

COUNT NINE
TRUTH-IN-LENDING ACT VIOLATIONS

72. Plaintiff hereby avers and realleges the allegations contained in paragraphs one (1) through forty (40) as if fully rewritten herein.

73. The Defendants by engaging in lease advertising and failing to include all disclosures required by the Truth-In-Lending Act, 15 U.S.C. §1667(c) and specifically, Regulation M, 12 CFR §213 committed a violation of those laws which has been determined by a court of law in this State to be an unfair and deceptive act or practice, in a decision available for public inspection pursuant to R.C. §1345.05(A)(3) prior to ~~public inspection pursuant to R.C. §1345.05(A)(3)~~ ^{§1345.05(A)(3) prior to} the acts or practices complained of herein. Consequently, the Defendants in this instance have committed unfair and deceptive acts or practices in violation of R.C.

violates R.C. 1345.03(A) including, but not limited to:

- a. Knowingly making misleading statements of opinion; and
- b. Failing to comply with Cease and Desist Orders issued by the Office of the Attorney General

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. DECLARE that each act or practice complained of herein violates the Ohio Consumer Sales Practices Act in the manner set forth in the Complaint.
- B. ISSUE a permanent injunction enjoining Defendants Ricart Ford, Inc.; Ricart Ford, Inc.; dba Ricart Isuzu, Ricart Mitsubishi, Ricart Nissan; Capitol Jeep-Eagle, Inc. dba Ricart Jeep-Eagle, Inc.; Vanland of Delaware dba Ricart Vanland; Ricart Westowne, Inc. dba Ricart Mazda; and Paul Fredrick "Fred" Ricart, Jr. Individually, under these or any other names, their agents, partners, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or association in connection with any consumer transaction from:
- 1) Committing any unfair or deceptive act or practice which violates R.C. 1345.02 including, but not limited to, violations of the specific statutes and rules alleged to have been violated herein.
 - 2) Committing any unconscionable act or practice which violates R.C. 1345.03(A) including, but not limited to:
 - a. Knowingly making misleading statements of opinion; and
 - b. Failing to comply with Cease and Desist Orders issued by the Office of the Attorney General

C. ORDER Defendants to make restitution in an amount to be determined by the Court to each and every consumer entitled to recover herein.

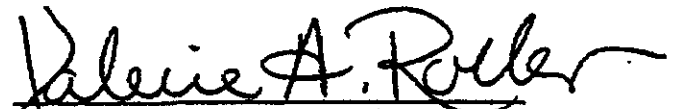
D. ASSESS, FINE and IMPOSE upon Defendants a civil penalty pursuant to R.C. §1345.07(D) in the amount of Six Hundred and Fifty Thousand Dollars (\$650,000.00) to be assessed as follows:

- 1) One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) for the violations alleged in Count One herein;
- 2) Fifty Thousand Dollars (\$50,000.00) for the violations alleged in Count Two herein;
- 3) Two Hundred and Fifty Thousand Dollars (\$250,000.00) for the violations alleged in Count Three herein;
- 4) Twenty-Five Thousand Dollars (\$25,000.00) for the violations alleged in Count Four herein;
- 5) Twenty-Five Thousand Dollars (\$25,000.00) for the violations alleged in Count Five herein;
- 6) Fifty Thousand Dollars (\$50,000.00) for the violations alleged in Count Six herein;
- 7) Fifty Thousand Dollars (\$50,000.00) for the violations alleged in Count Seven herein;
- 8) Twenty-Five Thousand Dollars (\$25,000.00) for the violations alleged in Count Eight herein;
- 9) Fifty Thousand Dollars (\$50,000.00) for the violations alleged in Count Nine herein.

- E. ORDER Defendants to keep for five (5) years records sufficient to establish compliance with the terms of the Court's Judgment and to permit the Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy such records during normal business hours.
- F. GRANT Plaintiff its attorney fees, investigative costs, and the costs incurred in bringing this action.
- G. GRANT such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

LEE FISHER
Attorney General


VALERIE A. ROLLER (ROL 09)
Ohio Supreme Court No. 0040026
Assistant Attorney General
Consumer Frauds & Crimes
30 East Broad Street
State Office Tower - 25th Floor
Columbus, Ohio 43266-0410
614/466-8831

8826C