

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA, )

4 Plaintiff, )

5 vs. )

6 NISSAN MOTOR CORPORATION )  
7 IN U.S.A., )

8 Defendant. )

Civil No. C-72-1212 RHS

**Filed: January 26, 1973**

**Entered: February 26, 1973**

9  
10 FINAL JUDGMENT

11 Plaintiff, United States of America, having filed its  
12 complaint herein on June 30, 1972; defendant Nissan Motor  
13 Corporation in U.S.A., having appeared by its counsel; and the  
14 plaintiff and the defendant, by their respective attorneys, hav-  
15 ing consented to the entry of this Final Judgment without trial  
16 or adjudication of any issue of fact or law, and without admis-  
17 sion by either party with respect to any such issue;

18 NOW THEREFORE, without trial or adjudication of any  
19 issue of fact or law, and upon consent of the parties hereto,  
20 it is hereby

21 ORDERED, ADJUDGED AND DECREED as follows:

22  
23 I

24 This Court has jurisdiction of the subject matter  
25 hereof and the parties hereto. The complaint states a claim  
26 upon which relief may be granted against the defendant under  
27 Section 1 of the Act of Congress of July 2, 1890 (as amended),  
28 (15 U.S.C. §1), commonly known as the Sherman Act.

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1 II

2 As used in this Final Judgment:

3 (A) "Person" shall mean any individual, partnership,  
4 firm, association, corporation, or other business or legal entity;

5 (B) "Nissan" shall mean the defendant Nissan Motor  
6 Corporation in U.S.A., a corporation organized and existing under  
7 the laws of the State of California;

8 (C) "Nissan products" shall mean motor vehicles,  
9 optional equipment, and parts sold by Nissan under any trade  
10 name used by Nissan, including but not limited to "Datsun";

11 (D) "Nissan dealer" shall mean any person who has  
12 entered into a dealer sales agreement for the resale of Nissan  
13 products to consumers;

14 (E) "Automobile broker" shall mean any person, not a  
15 Nissan dealer, who purchases motor vehicles for resale to con-  
16 sumers or who acts as a referral service between consumers and  
17 Nissan dealers and who is licensed, where required under state  
18 law, to do so.

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20 III

21 The provisions of this Final Judgment applicable to  
22 Nissan shall also apply to each of its officers, directors, agents,  
23 employees, subsidiaries, successors, and assigns, and to all per-  
24 sons in active concert or participation with the defendant who  
25 receive actual notice of this Final Judgment by personal service  
26 or otherwise. The provisions of this Final Judgment shall not  
27 apply to acts or transactions of defendant Nissan outside the  
28 United States (except for sales to agencies of the United States)  
29 except as such acts or transactions affect the sale of Nissan  
30 products within the United States.

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1 IV

2 Nissan is enjoined and restrained from entering into,  
3 adhering to, maintaining, enforcing, or claiming, directly or  
4 indirectly, any rights under any contract, agreement, combination,  
5 understanding, plan or program with any Nissan dealer or group  
6 of Nissan dealers to:

7 (A) fix, establish, maintain or adhere to prices or  
8 discounts at which Nissan products are sold, offered for sale,  
9 or advertised by any such dealer;

10 (B) fix, establish, maintain or adhere to trade-in  
11 allowances for used motor vehicles received by consumers as part  
12 payment on the purchase of Nissan products from dealers;

13 (C) limit or restrict the sales territories within  
14 which, or the persons (including automobile brokers) to whom or  
15 through whom, Nissan dealers may offer to sell, sell or adver-  
16 tise Nissan products;

17 (D) require as a condition of participation by Nissan  
18 in the advertisement of Nissan products with any Nissan dealer  
19 or group of dealers that retail prices featured or contained in  
20 such advertisement be set by Nissan.

21  
22 V

23 Nissan is enjoined and restrained from:

24 (A) Suggesting, urging, compelling or requiring any  
25 dealer to establish, adopt, advertise or adhere to any fixed,  
26 suggested or specified price, discount, trade-in allowance,  
27 mark-up or margin of profit in the sale of Nissan products;

28 (B) Refusing, as part of any cooperative advertising  
29 plan, to participate in the cost of any advertisements by any  
30 Nissan dealer or group of dealers because such advertisements  
31 feature or contain retail prices other than prices suggested by  
32 Nissan;

1 (C) Encouraging the report of, or taking action in  
2 response to any complaint by Nissan dealers regarding discount-  
3 ing or over-allowances on trade-ins by any other Nissan dealer;

4 (D) Suggesting, urging, compelling or requiring any  
5 Nissan dealer to establish, adopt, adhere to or enforce adherence  
6 to any limit on the classes of customers (including automobile  
7 brokers) to whom or through whom, or the territory in which such  
8 dealer may sell, offer to sell or advertise Nissan products;

9 (E) Terminating or threatening to terminate the  
10 dealer sales agreement of any Nissan dealer because of the prices  
11 at which, the persons or classes of persons (including automobile  
12 brokers) to whom or through whom, or the markets or territories  
13 in which such dealer has sold or offered to sell Nissan products;

14 (F) Discontinuing, curtailing or limiting the sale  
15 of Nissan products to, or otherwise penalizing any Nissan dealer  
16 because of the prices at which, the persons or classes of persons  
17 (including automobile brokers) to whom or through whom, or the  
18 markets or territories in which such dealer has sold or offered  
19 to sell Nissan products.

20  
21 VI

22 Nothing in this Final Judgment shall prohibit Nissan  
23 from:

24 (A) Affixing to each Nissan automobile a label which  
25 states, among other things, the retail price of such automobile  
26 suggested by Nissan, as required by the Automobile Information  
27 Disclosure Act, 72 Stat. 326 [15 U.S.C §§1231-33];

28 (B) Filing information, including the retail price for  
29 each model automobile suggested by Nissan, as required by State  
30 law where applicable;

31 (C) Unilaterally suggesting retail prices, mark-ups or  
32 margin of profit to its dealers for the sale of Nissan products;

1 providing however, that any such suggestion shall include a  
2 statement that each dealer is free to sell at whatever prices,  
3 mark-ups or margins of profit he may choose.  
4

5 VII

6 (A) Nissan is ordered and directed within ninety  
7 (90) days after the date of entry of this Final Judgment to  
8 revise any portion of its contracts and agreements with its  
9 dealers which are inconsistent with any provision of this Final  
10 Judgment.

11 (B) Nissan is ordered and directed, within ninety  
12 (90) days after entry of this Final Judgment, to mail to each  
13 Nissan dealer a copy of this Final Judgment and to notify each  
14 such dealer in writing, in a form acceptable to plaintiff, that  
15 he may sell Nissan products at such prices as, and to or through  
16 whomever (including automobile brokers) and wherever he may  
17 please.

18 (C) Nissan is ordered and directed for a period of  
19 ten (10) years after entry of this Final Judgment to deliver to  
20 each new dealer with whom Nissan commences regular business re-  
21 lations a copy of this Final Judgment together with a notice in  
22 writing in the same form as that approved for use pursuant to  
23 Subsection VII(B) above within thirty (30) days after commencing  
24 such business relations.

25 (D) Nissan is ordered and directed, within ninety  
26 (90) days after the entry of this Final Judgment to serve a copy  
27 of this Final Judgment upon each of Nissan's officers, directors  
28 and each of its employees or representatives who has responsibi-  
29 lity for the sale of Nissan products.

30 (E) Nissan is ordered and directed for a period of  
31 ten (10) years after the entry of this Final Judgment to serve

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1 a copy of this Final Judgment upon each successor to those offi-  
2 cers, directors and supervisory employees of Nissan described  
3 in Subsection (D) of this Section VII, within thirty (30) days  
4 after each such successor is employed by or becomes associated  
5 with Nissan.

6 (F) Nissan is ordered and directed within one hundred  
7 and twenty (120) days after the entry of this Final Judgment to  
8 serve upon plaintiff affidavits concerning the fact and manner  
9 of compliance with Subsections (B) and (D) of this Section VII.

#### 10 VIII

11  
12 For a period of ten (10) years from the date of the  
13 entry of this Final Judgment, Nissan is ordered to file with the  
14 plaintiff, on each anniversary date of such entry, a report set-  
15 ting forth the steps which Nissan has taken during the prior  
16 year to advise Nissan's appropriate officers, directors, and  
17 employees of its and their obligations under this Final Judgment.  
18 Such report shall further contain the name and address of any  
19 dealer whose dealership was terminated by Nissan and state the  
20 reasons for such termination.

#### 21 IX

22  
23 For the purpose of securing or determining compliance  
24 with this Final Judgment, duly authorized representatives of the  
25 Department of Justice shall, on written request of the Attorney  
26 General, or the Assistant Attorney General in charge of the Anti-  
27 trust Division, and on reasonable notice to Nissan made to its  
28 principal office, be permitted, subject to any legally recognized  
29 privilege:

30 (1) Access, during office hours of Nissan, to  
31 all books, ledgers, accounts, correspondence, memo-  
32 randa and other records and documents in the possession

1 or under the control of Nissan relating to any matters  
2 contained in this Final Judgment.

3 (2) Subject to the reasonable convenience of  
4 Nissan, and without restraint or interference from  
5 it, to interview its officers or employees, who may  
6 have counsel present, regarding any such matters.

7 Upon written request of the Attorney General, or the  
8 Assistant Attorney General in charge of the Antitrust Division,  
9 made to such principal office, Nissan shall submit such reports  
10 in writing with respect to the matters contained in this Final  
11 Judgment as may from time to time be requested.

12 No information obtained by the means permitted in this  
13 Section IX shall be divulged by any representatives of the De-  
14 partment of Justice to any person other than a duly authorized  
15 representative of the Executive Branch of the plaintiff, except  
16 in the course of legal proceedings to which the United States is  
17 a party for the purpose of securing compliance with this Final  
18 Judgment, or as otherwise required by law.

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20 X  
21 Jurisdiction is retained by this Court for the purpose  
22 of enabling any party to this Final Judgment to apply to this  
23 Court at any time for such further orders and directions as may  
24 be necessary or appropriate for the construction or carrying out  
25 of this Final Judgment, for the modification of any of the pro-  
26 visions contained therein, for the enforcement of compliance  
27 therewith and for the punishment of violations thereof.

28 DATED: February 26, 1973

29  
30 /s/ ROBERT H. SCHNACKE  
31 Robert H. Schnacke  
32 UNITED STATES DISTRICT JUDGE.

Name  
Address of Dealer

Date

Dear Sir:

On June 30, 1972, the United States filed a Complaint in federal district court alleging certain violations of the federal antitrust laws by Nissan Motor Corporation In U.S.A. and its dealers. That suit was settled by consent of the parties. A consent judgment, to which both the United States and Nissan agreed, was entered on \_\_\_\_\_, 1972. A copy of that judgment is enclosed for your information.

Pursuant to the terms of this Consent Judgment, Nissan informs you that you are free to sell and advertise Nissan motor vehicles, optional equipment and parts at any price, to or through any person (including automobile brokers) and in any area you may choose. Further, you may make any trade-in allowance you choose in accepting used motor vehicles in partial payment for said Nissan products.

Nissan does not request and will not seek assurance or agreement from you that you will resell or advertise Nissan products at prices suggested by Nissan or to persons or in territories limited by Nissan. However, as you will observe, under the enclosed Consent Judgment Nissan may continue to suggest retail prices and will continue to comply with state and federal laws, including the Monroney Act, requiring the filing or publication of such suggested prices.

Nissan employees engaged in the sale of our products have been furnished a copy of this notice, and they have been instructed to observe the policy in this notice in all respects. We suggest that you circulate this notice to your employees engaged in or responsible for the purchase or resale of our products.

Nissan Motor Corporation in U.S.A.

By \_\_\_\_\_