

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In The Matter of)	
)	
PACIFICO FORD, INC.,)	DOCKET NO. C-3921
a corporation, and)	
)	DECISION AND ORDER
KERRY T. PACIFICO,)	
individually and as an)	
officer of the corporation)	

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:

1. Respondent Pacifico Ford, Inc. is a Pennsylvania corporation with its principal office or place of business at 6701 Essington Avenue, Philadelphia, Pennsylvania 19153.

2. Respondent Kerry T. 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 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 the 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.

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.
5. Unless otherwise specified, "respondents" shall mean Pacifico Ford, Inc., a corporation, its successors and assigns and its officers; Kerry T. 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
 - 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 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 Ford, Inc., and its successors and assigns, and respondent Kerry T. 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.

IV.

IT IS FURTHER ORDERED that respondent Pacifico Ford, Inc., and its successors and assigns, and respondent Kerry T. 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 Ford, 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.

VI.

IT IS FURTHER ORDERED that respondents Kerry T. 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 Ford, Inc., and its successors and assigns, and respondent Kerry T. 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:

- 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.

Donald S. Clark
Secretary

SEAL

ISSUED: February 7, 2000