

Analysis of Proposed Consent  
Order to Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from respondents Lou Fusz Automotive Network, Inc. and Louis J. Fusz, Jr. ("respondents Lou Fusz"); Frank Bommarito Oldsmobile, Inc. and Frank J. Bommarito ("respondents Frank Bommarito"); Suntrup Ford, Inc., Suntrup Buick-Pontiac-GMC Truck, Inc., and Thomas Suntrup ("respondents Suntrup"); and Beuckman Ford, Inc. and Fred J. Beuckman, III ("respondents Beuckman").<sup>1</sup> The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreement or make final the agreements' proposed orders.

The complaints allege that each of the respondents' automobile lease advertisements have violated the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. The complaints also allege that respondents' credit advertisements have violated the Truth in Lending Act ("TILA") and Regulation Z, and, in the case of respondents Frank Bommarito, the FTC Act. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board ("Board") to promulgate regulations implementing such statutes -- Regulations M and Z respectively. See 15 U.S.C. §§ 1601-1667e; 12 C.F.R. Part 213; 12 C.F.R. Part 226.<sup>2</sup>

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<sup>1</sup> These entities and persons are collectively referred to as "respondents."

<sup>2</sup> On September 18, 1996, the Board issued revisions to Regulation M. 61 Fed. Reg. 52,246 (Oct. 7, 1996) ("1996 revisions to Regulation M"). The advertising requirements of the October 1996 revisions are to be codified at Section 213.7 of Regulation M, 12 C.F.R. § 213.7. Subsequently, on September 30, 1996, Congress passed revisions to the CLA. Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) ("revised CLA"). On April 1, 1997, the Board implemented these statutory changes in another rulemaking. 62 Fed. Reg. 15,346 (Apr. 1, 1997) ("1997 revisions to Regulation M"). These changes are also to be codified at Section 213.7 of Regulation M, 12 C.F.R. § 213.7. On April 4, 1997, the Board adopted a final revised Official Staff Commentary to Regulation M, 62 Fed. Reg. 16,053 (Apr. 4, 1997) ("Commentary"). The amendments to the CLA and the revisions to Regulation M and the Commentary are optionally effective immediately and become mandatorily effective on October 1, 1997.

The complaints against respondents Lou Fusz, Bommarito, and Suntrup allege that their lease advertisements have misrepresented the true amounts consumers owe at lease inception. The complaints allege that these companies' ads represented, based on prominent statements of "0 Down," "No Money Down," and "No Payment til April/March" respectively, that consumers can lease the advertised vehicles without incurring monetary obligations at lease inception. This representation is false, according to the complaints, because consumers must pay substantial fees, such as a significant downpayment, a security deposit, first month's payment, and/or other fees to lease the advertised vehicles. The complaints also allege that all respondents (including respondents Beuckman), based on their prominent statements about inception fees and/or prominent statements about a low monthly payment, have failed to disclose adequately significant inception fees in their advertisements. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaints further allege that all respondents' lease advertisements have violated the CLA and Regulation M. The complaints allege that respondents' ads state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease ("triggering" terms under these laws), but fail to properly state all of the "triggered" terms, as applicable and as follows: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the number, amount, due dates or period of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term. These practices, according to the complaints, violate the advertising requirements of the CLA and Regulation M.

These aforementioned violations cite the version of both the CLA and Regulation M in effect at the time the ads ran. Respondents' alleged practices of failing to properly disclose inception fees would also violate the revised CLA, the 1996 revisions to Regulation M, and the 1997 revisions to Regulation M, all of which are currently permissibly effective and will be mandatorily effective on October 1, 1997. As described below, the relief in the proposed consent orders enjoin respondents from violating the existing CLA and Regulation M but also provide respondents the option of complying with the revised laws to satisfy this requirement.

The complaint against respondents Lou Fusz also alleges that their lease advertisements have represented that consumers can lease the advertised vehicles at advertised terms, including but not limited to the monthly payment amount and the amount stated as "down." This representation is false, according to the complaint, because respondents have not offered the advertised vehicles at such terms. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act. These practices also violate Section 213.5(a) of Regulation M, 12 C.F.R. § 213.5(a), according to the complaint,

which requires that advertisers make advertised terms "usually and customarily" available to consumers.

The complaint against respondents Lou Fusz also alleges that their lease advertisements promoting a "one payment" plan have represented that consumers can lease the advertised vehicles by making equal monthly payments for a specified term. This representation is false, according to the complaint, because the "one payment" plan requires consumers to make all payments owed under the lease agreement at lease signing. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaint against respondents Beuckman also alleges that their lease advertisements have represented that consumers can purchase the advertised vehicles by financing the vehicles through credit at the advertised monthly payment and term. According to the complaint, respondents Beuckman failed to disclose adequately that the transaction advertised is a lease. Specifically, the complaint alleges that respondents Beuckman failed to disclose that the term "RCL" is an abbreviation for "Red Carpet Lease" or to otherwise disclose that the advertised monthly payment and term are components of a lease offer. These practices, according to the complaint, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The complaints against all of the respondents allege that their credit advertisements have violated the TILA and Regulation Z. The complaints allege that respondents' ads state the amount or percentage of any downpayment, the number of payments or period of repayment, and/or the amount of any payment, but fail to properly state the following required terms: the amount or percentage of the downpayment, the terms of repayment, and/or the annual percentage rate, using that term or the abbreviation "APR," in violation of the advertising requirements of the TILA and Regulation Z. The complaint against respondents Suntrup also alleges that their credit advertisements have violated the TILA and Regulation Z by stating a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR," in violation of the TILA and Regulation Z.

The complaint against respondents Frank Bommarito also alleges that their credit advertisements have represented that consumers can purchase the advertised vehicles at the terms prominently stated in the ad, such as the monthly payment, annual percentage rate ("APR"), and amount stated as "down." This representation is false, according to the complaint, because consumers must also pay a final balloon payment of several thousand dollars to purchase the advertised vehicles. These practices, according to the complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, the proposed orders prohibit respondents, in any lease advertisement, from misrepresenting the costs of leasing a vehicle, including but not limited to the total amount due at lease inception. The proposed orders also prohibit respondents, in any lease advertisement, from

stating any amount due at lease inception or that no such amount is required, not including a statement of the periodic payment, unless the advertisement also states with "equal prominence" the total amount due at lease inception. This "prominence" requirement for lease inception fees also is found in the Board's 1996 and 1997 revisions to Regulation M.

The proposed orders also require respondents, in any advertisement that states the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, to also state clearly and conspicuously all of the terms required by Regulation M, as applicable and as follows: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term if the lessee has such liability. For all lease advertisements, the proposed orders permit respondents to comply with this provision by utilizing applicable provisions of the revised CLA and the 1996 and 1997 revisions to Regulation M. The orders set out for each media which provisions of such revised laws are applicable.

The proposed order for respondents Lou Fusz also prohibits these respondents from stating specific lease terms unless respondents usually and customarily lease or will lease a vehicle at those terms. This proposed order also prohibits respondents Lou Fusz from misrepresenting the type of transaction advertised, including but not limited to the fact that the offer is for a one payment lease.

The proposed order for respondents Beuckman also prohibits these respondents from stating the term "RCL" without disclosing clearly and conspicuously that such term refers to a lease transaction.

With regard to respondents' credit advertisements, the proposed orders require that any advertisement that states the amount or percentage of any downpayment, the number of payments, the amount of any payment, or the amount of any finance charge must also state clearly and conspicuously all of the terms required by the TILA and Regulation Z, as applicable and as follows: the amount or percentage of the downpayment; the terms or repayment; and the annual percentage rate, using that term or the abbreviation "APR." If the APR may be increased after consummation of the credit transaction, that fact must also be disclosed. The proposed order for respondents Suntrup also prohibits these respondents from stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR."

The proposed order for respondents Frank Bommarito prohibits these respondents, in any credit advertisement, from misrepresenting the terms of financing a vehicle, including but not limited to the amount of any balloon payment. This proposed order also prohibits respondents Frank Bommarito from stating the amount of any payment or the amount or percentage of any downpayment or amount "down" in any advertisement unless these respondents also state the amount of any final balloon payment prominently and in close proximity to the most prominent of the above statements.

The proposed orders also prohibit all respondents from failing to comply in any other respect with the CLA and Regulation M and the TILA and Regulation Z. The proposed order permits respondents to comply with other requirements of existing Regulation M, 12 C.F.R. § 213 by utilizing the 1996 and 1997 revisions to Regulation M, as amended.

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