

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In The Matter of

FRANK BOMMARITO OLDSMOBILE, INC., a corporation, and FRANK J. BOMMARITO,
individually and as an officer of the corporation.

DOCKET NO. C-3774

COMPLAINT

The Federal Trade Commission, having reason to believe that Frank Bommarito Oldsmobile, Inc., a corporation, and Frank J. Bommarito, individually and as an officer of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667e, 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 it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Frank Bommarito Oldsmobile, Inc. is a Delaware corporation with its principal office or place of business at 15736 Manchester Road, Ballwin, Missouri 63011. Respondent offers automobiles for sale or lease to consumers.
2. Respondent Frank J. Bommarito 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, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Frank Bommarito Oldsmobile, Inc.
3. Respondents have disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.
4. Respondents have disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.
5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

LEASE ADVERTISING

1. Respondents have disseminated or have caused to be disseminated consumer lease advertisements ("lease advertisements") for automobiles in the print media, including but not necessarily limited to the attached Exhibits A through F. These advertisements contain the following statements:

"BRAND NEW

1995 SAFARI CONVERSION VANS. . .

BOMMARITO'S PREFERRED LEASING PRICE

\$399 MO. 36 MONTHS

NO MONEY DOWN"

[A fine print statement at the bottom of the ad states "Prices include all factory rebates."]
(Exhibit A)

"BOMMARITO INFINITI

NO MONEY DOWN SALE. . .

1995 INFINITI J-30

NO DOWN PAYMENT!

\$399 PER MONTH* NO MONEY DOWN

36 MONTH LEASE

1995 INFINITI Q-45

NO DOWN PAYMENT!

\$599 PER MONTH* NO MONEY DOWN

24 MONTH LEASE" **(Exhibit B)**

"OLDSMOBILE

'95 CUTLASS SUPREME

FOR ONLY \$269* 36 MOS. LEASE

NO MONEY DOWN. . .

'95 EIGHTY EIGHT

FOR ONLY \$339* 36 MOS. LEASE

NO MONEY DOWN" . . .

INFINITI NEW 1995 J30

NO MONEY DOWN

\$449 PER MONTH

36 MONTH LEASE

[A fine print statement at the bottom of the ad states "*12,000 miles per year, acq. fee and taxes extra."] (**Exhibit C**)

"BOMMARITO MAZDA'S PRESIDENTS WEEK SALE

1995 PROTÉGÉ

NO MONEY DOWN

\$199 PER MONTH FOR ONLY 36 MONTHS"

[A fine print statement at the bottom of the advertisement states "Protégé 36 month close end lease, includes gap insurance, excludes taxes. 1st payment and security deposit due. Activation fee required. Approved credit."] (**Exhibit D**)

"1995 Q45

2 Year Lease

\$599 per mo.* . . .

1995 J30

3 Year Lease

\$399 per mo.*"

[A fine print statement at the bottom of the ad states "*Q45, \$2500 cap reduction, 15,000 miles per year, J30, \$2000 cap reduction, 12,xxx miles per year, personal property and luxury tax included, sales tax and acquisition fee extra."] (**Exhibit E**)

F. Full Size

\$310⁰⁰* Mini \$18,995⁰⁰**

36 Month. . .

ST. LOUIS' EXCLUSIVE STARCRAFT DEALER

Was \$34,678

\$399⁰⁰* 36 Month"

[A fine print statement at the bottom of the ad states "***After rebate = \$599 Trim. Pkg. *36 Month Lease, \$2,000 Down, Cash or Trade, Includes Rebate and Acquisition Fee, 15,000 Miles Per Year."] (**Exhibit F**)

FEDERAL TRADE COMMISSION ACT VIOLATIONS

Count I: Misrepresentation of Inception Fees

1. In lease advertisements, including but not necessarily limited to Exhibits A through D, respondents have represented, expressly or by implication, that the amount stated as "down" is the total amount consumers must pay at lease inception to lease the advertised vehicles.

2. In truth and in fact, the amount stated as "down" in respondents' lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers are required to pay significant amounts at lease inception, including but not limited to one or more of the following: a downpayment, a first month's payment, security deposit, acquisition fee, and bank fee. Therefore, respondents' representation as alleged in Paragraph 7 was, and is, false or misleading.

3. Respondents' practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

Count II: Failure to Disclose Adequately Inception Fees

1. In lease advertisements, including but not necessarily limited to Exhibits A through F, respondents have represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisement, including but not limited to the monthly payment amount and/or amount stated as "down."

3. These lease advertisements do not adequately disclose additional terms pertaining to obligations at lease inception, including but not necessarily limited to one or more of the following charges: a required downpayment, first month's payment, security deposit, acquisition fee, and bank fee. This information either does not appear at all, appears in very fine print, and/or is referenced by multiple and inconsistent asterisks making it unclear which statements are relevant to which offer.

4. These additional terms would be material to consumers in deciding whether to visit respondents' dealership and/or whether to lease an automobile from respondents. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

5. Respondents' practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

CONSUMER LEASING ACT AND REGULATION M VIOLATIONS

Count III: Failure to Disclose Required Information

Clearly and Conspicuously

1. In lease advertisements, including but not necessarily limited to Exhibits A through F, respondents have stated a monthly payment amount, the number of required payments, and/or an amount "down."

2. These lease advertisements have failed to disclose clearly and conspicuously the following items of information required by Regulation M: 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 total of scheduled 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 or, in lieu of disclosure of the price, the method of determining the purchase-option 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.

3. Respondents' practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, and Section 213.5(c) of Regulation M, 12 C.F.R. § 213.5(c).

CREDIT ADVERTISING

1. Respondents have disseminated or have caused to be disseminated credit sale advertisements ("credit advertisements") for automobiles in the print media, including but not necessarily limited to the attached Exhibit F. These advertisements contain the following statements:

"BOMMARITO SMART BUY

'95 Cutlass Supreme

THIS IS NOT A LEASE

5.8% A.P.R. WITH APPROVED CREDIT

FOR ONLY \$275* 36 MOS.

NO MONEY DOWN. . .

BOMMARITO SMART BUY

'95 EIGHTY EIGHT

THIS IS NOT A LEASE

4.8% A.P.R. WITH APPROVED CREDIT

FOR ONLY \$315* 36 MOS.

NO MONEY DOWN

[A fine print statement at the bottom of the ad states "***After rebate = \$599 Trim Pkg. *36 Month Lease, \$2,000 Down, Cash or Trade, Includes Rebate and Acquisition Fee, 15,000 Miles Per Year."] (**Exhibit F**)

FEDERAL TRADE COMMISSION ACT VIOLATIONS

Count IV: Misrepresentation of Balloon Payments

1. In credit advertisements, including but not necessarily limited to Exhibit F, respondents have represented, expressly or by implication, that consumers can buy the advertised vehicles at the terms prominently stated, including but not necessarily limited to the monthly payment amount, APR, and amount stated as "down."
2. In truth and in fact, consumers cannot buy the advertised vehicles at the terms prominently stated in the advertisements. Consumers must also satisfy a final balloon payment obligation of several thousand dollars to purchase the advertised vehicles. Therefore, respondents' representation as alleged in Paragraph 18 was, and is, false or misleading.
3. Respondents' practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

TRUTH IN LENDING ACT AND REGULATION Z VIOLATIONS

Count V: Failure to Disclose Required Information

1. In credit advertisements, including but not necessarily limited to Exhibit F, respondents have stated a monthly payment amount and/or an amount "down" as terms for financing the purchase of the advertised vehicles.
2. These advertisements have failed to disclose, as required by Regulation Z, the terms of repayment, including but not limited to the existence and amount of the balloon payment.

3. Respondents' practices have violated Section 144 of the Truth in Lending Act, 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

THEREFORE, the Federal Trade Commission this fifth day of January, 1998, has issued this complaint against respondents.

By the Commission, Commissioner Thompson and Commissioner Swindle not participating.

Donald S. Clark
Secretary

SEAL

[Exhibits A-F are attached to paper copies of the complaint, but are not available in electronic form]