

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BILLION AUTO, INC.,
BILLION SC, INC.,
BILLION NSC, INC.,
BILLION COMMUNITY, INC.,
BILLION CC, INC.,
BILLION H, INC.,
BILLION K, INC.,
BILLION FT DES MOINES, INC.,
BILLION DES MOINES MOTORS, INC.,
BILLION HAWKEYE, INC.,
BILLIONS EMPIRE MOTORS, INC.,
BILLION FT, INC.,
BILLION G, INC.,
BILLION T, INC.,
BILLION C, INC.,
BILLION DELLS AUTO, INC.,
BILLION MOTORS, INC.,
BILLION SOUTHTOWN, INC.,
BILLION WEST, INC.,
BILLION MONTANA MOTORS, INC., and
NICHOLS MEDIA, INC., corporations,

Defendants.

Case No. _____

COMPLAINT FOR CIVIL PENALTIES AND OTHER RELIEF

Plaintiff, the United States of America, acting upon the notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for its complaint alleges that:

1. Plaintiff brings this action under Sections 5(l) and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(l) and 56(a), as amended; the Truth In Lending Act (“TILA”), 15 U.S.C. §§ 1601-1667, as amended; and its implementing Regulation Z, 12 C.F.R. § 226, as amended; the Consumer Leasing Act (“CLA”), 15 U.S.C. §§ 1667-1667f, as amended; and its implementing Regulation M, 12 C.F.R. § 213, as amended; to obtain monetary civil penalties and other relief for Defendants’ violations of a final Commission order.

2. The family-owned Billion Auto Entities (as defined herein) and their predecessors have been motor vehicle dealers since 1935. In addition to their dealerships located in Iowa, South Dakota, and Montana, the Billion family controls Defendant Nichols Media, Inc., which produces or reviews all of the Billion dealerships’ advertisements. Since the effective date of the Commission’s final order, May 8, 2012, Defendants, among other things, have been expressly required: (i) not to make misrepresentations about costs and terms of financing or leasing vehicles; (ii) to conform their consumer credit advertisements to TILA and Regulation Z; and (iii) to conform their consumer lease advertisements to CLA and Regulation M. However, Defendants routinely have violated several provisions of the Commission’s final order. These violations relate both to core injunctive provisions – i.e., Defendants have engaged in numerous material misrepresentations and TILA and CLA violations – and provisions authorizing the FTC to investigate the completeness and accuracy of Defendant-Respondent’s offers.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(l), 56(a), and 1607(c).

4. Venue in this district is proper under 28 U.S.C. §§ 1391(b)-(d) and 1395(a).

DEFENDANTS

5. Defendant Billion Auto, Inc. (“Defendant-Respondent”) is registered with the State of Iowa as a foreign corporation. It has a registered agent address of CT Corp., 400 E. Court Ave., Des Moines, IA 50309, and a physical retail address of 3701 Singing Hills Blvd., Sioux City, IA 51106. At all times material to this complaint, Defendant-Respondent has participated in the acts and practices described in this complaint. Defendant-Respondent transacts business in this district, including through a motor vehicle retail store or lot, through television, print, or radio advertisements reaching consumers living in the district, and through the website billionauto.com.

6. Defendant Billion SC, Inc. (“BSCI”) is registered with the State of Iowa as a foreign corporation. It has a registered agent address of CT Corp., 400 E. Court Ave., Des Moines, IA 50309, and a physical retail address of 4300 Southgate Dr., Sioux City, IA 51106. At all times material to this complaint, BSCI has participated in the acts and practices described in this complaint. BSCI transacts business in this district, including through a motor vehicle retail store or lot, through television, print, or radio advertisements reaching consumers living in the district, and through the website billionauto.com.

7. Defendant Billion NSC, Inc. (“BNSCI”) is registered with the State of Iowa as a foreign corporation. It has a registered agent address of CT Corp., 400 E. Court Ave., Des Moines, IA 50309, and a physical retail address of 4300 Southgate Dr., Sioux City, IA 51106. At all times material to this complaint, BNSCI has participated in the acts and practices described in this complaint. BNSCI transacts business in this district, including through a motor vehicle retail store or lot, through television, print, or radio advertisements reaching consumers living in the district, and through the website billionauto.com.

8. Defendant Billion Community, Inc. (“BComI”) is registered with the State of Iowa as a foreign corporation. It has a registered agent address of CT Corp., 400 E. Court Ave., Des Moines, IA 50309, and a physical retail address of 2733 Mormon Trek Blvd., Iowa City, IA 52240. At all times material to this complaint, BComI has participated in the acts and practices described in this complaint. BComI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

9. Defendant Billion CC, Inc. (“BCCI”) is registered with the State of Iowa as a foreign corporation. It has a registered agent address of CT Corp., 400 E. Court Ave., Des Moines, IA 50309, and a physical retail address of 2323 Mormon Trek Blvd., Iowa City, IA 52246. At all times material to this complaint, BCCI has participated in the acts and practices described in this complaint. BCCI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

10. Defendant Billion H, Inc. (“BHI”) is registered with the State of Iowa as a foreign corporation. It has a registered agent address of CT Corp., 400 E. Court Ave., Des Moines, IA 50309, and a physical retail address of 2641 Mormon Trek Blvd., Iowa City, IA 52240. At all times material to this complaint, BHI has participated in the acts and practices described in this complaint. BHI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

11. Defendant Billion K, Inc. (“BKI”) is registered with the State of Iowa as a foreign corporation. It has a registered agent address of CT Corp., 400 E. Court Ave., Des Moines, IA 50309, and a physical retail address of 2845 Mormon Trek Blvd., Iowa City, IA 52240. At all

times material to this complaint, BKI has participated in the acts and practices described in this complaint. BKI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

12. Defendant Billion FT Des Moines, Inc. (“BFTDMI”) is registered with the State of Iowa as a foreign corporation. It has a registered agent address of CT Corp., 400 E. Court Ave., Des Moines, IA 50309, and a physical retail address of 2094 NW 114th St., Clive, IA 50325. At all times material to this complaint, BFTDMI has participated in the acts and practices described in this complaint. BFTDMI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

13. Defendant Billion Des Moines Motors, Inc. (“BDMMI”) is registered with the State of Iowa as a foreign corporation. It has a registered address of CT Corp., 400 E. Court Ave., Des Moines, IA 50309, and a physical retail address of 9060 Hickman Rd., Clive, IA 50325. At all times material to this complaint, BDMMI has participated in the acts and practices described in this complaint. BDMMI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

14. Defendant Billion Hawkeye, Inc. (“BHawkI”) is registered with the State of Iowa as a foreign corporation. It has a registered agent address of National Registered Agents, Inc., 400 E. Court Ave., Des Moines, IA 50309. At all times material to this complaint, BHawkI has participated in the acts and practices described in this complaint. BHawkI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

15. Defendant Billions Empire Motors, Inc. (“BEMI”) is a South Dakota corporation with an executive office address of 3401 W. 41st St., Sioux Falls, SD 57106. At all times material to this complaint, BEMI has participated in the acts and practices described in this complaint. BEMI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

16. Defendant Billion FT, Inc. (“BFTI”) is a South Dakota corporation with an executive office address of 3401 W. 41st St., Sioux Falls, SD 57106. At all times material to this complaint, BFTI has participated in the acts and practices described in this complaint. BFTI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

17. Defendant Billion G, Inc. (“BGI”) is a South Dakota corporation with an executive office address of 3401 W. 41st St., Sioux Falls, SD 57106. At all times material to this complaint, BGI has participated in the acts and practices described in this complaint. BGI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

18. Defendant Billion T, Inc. (“BTI”) is a South Dakota corporation with an executive office address of 3401 W. 41st St., Sioux Falls, SD 57106. At all times material to this complaint, BTI has participated in the acts and practices described in this complaint. BTI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

19. Defendant Billion C, Inc. (“BCI”) is a South Dakota corporation with an executive office address of 3401 W. 41st St., Sioux Falls, SD 57106. At all times material to this complaint, BCI has participated in the acts and practices described in this complaint. BCI

transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

20. Defendant Billion Dells Auto, Inc. (“BDAI”) is a South Dakota corporation with an executive office address of 3401 W. 41st St., Sioux Falls, SD 57106. At all times material to this complaint, BDAI has participated in the acts and practices described in this complaint.

BDAI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

21. Defendant Billion Motors, Inc. (“BMI”) is a South Dakota corporation with an executive office address of 600 W. 41st St., Sioux Falls, SD 57105. At all times material to this complaint, BMI has participated in the acts and practices described in this complaint. BMI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

22. Defendant Billion Southtown, Inc. (“BSI”) is a South Dakota corporation with an executive office address of 3401 W. 41st St., Sioux Falls, SD 57106. At all times material to this complaint, BSI has participated in the acts and practices described in this complaint. BSI transacts business in this district, including through television, print, or radio advertisements reaching consumers living in the district and the website billionauto.com.

23. Defendant Billion West, Inc. (“BWI”) is a South Dakota corporation with an executive office address of 3401 W. 41st Street, Sioux Falls, SD 57106. At all times material to this complaint, BWI has participated in the acts and practices described in this complaint. BWI transacts business in this district, including through the website billionauto.com.

24. Defendant Billion Montana Motors, Inc. (“BMMI”) is registered with the State of Montana as a foreign corporation, with an agent address of CT Corp., 208 N. Broadway, Ste.

313, Billings, MT 59101. At all times material to this complaint, BMMI has participated in the acts and practices described in this complaint. BMMI transacts business in this district, including through the website billionauto.com.

25. Defendant Nichols Media, Inc. (“Nichols Media”) is a South Dakota corporation with a principal business address of 3401 W. 41st Street, Sioux Falls, SD 57106. At all times material to this complaint, Nichols Media has participated in the acts and practices described in this complaint. Nichols Media transacts business in this district, including through its production, review, or placement of television, print, or radio advertisements for the other Defendants reaching consumers living in the district and the website billionauto.com.

26. Collectively, Defendant-Respondent, BSCI, BNSCI, BComI, BCCI, BHI, BKI, BFTDMI, BDMMI, BHawkI, BEMI, BFTI, BGI, BTI, BCI, BDAI, BMI, BSI, BWI, and BMMI – i.e., the 20 defendants other than Nichols Media – are referred to herein as “Billion Auto Entities.”

COMMERCE

27. At all times material to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

PRIOR COMMISSION PROCEEDING

28. In a Commission proceeding bearing Docket No. C-4356, the Commission charged Defendant-Respondent with, among other things:

- i. Making false or misleading representations that, when a consumer trades in a used motor vehicle in order to purchase another vehicle, Defendant-Respondent will pay off the balance of any loan on the trade-in such that the consumer will have no remaining obligation for any amount of that loan, in violation of the FTC Act;
- ii. Disseminating consumer credit advertisements for vehicles that failed to disclose and/or failed to disclose clearly and conspicuously terms for financing the purchase of the advertised vehicles, in violation of Regulation Z, 12 C.F.R. § 226, as amended, and the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601-1667, as amended; and
- iii. Disseminating consumer lease advertisements for vehicles that failed to disclose and/or failed to disclose clearly and conspicuously terms for leasing the advertised vehicles, in violation of Regulation M, 12 C.F.R. § 213, as amended, and the Consumer Leasing Act (“CLA”), 15 U.S.C. §§ 1667-1667f, as amended.

29. On May 1, 2012, the Commission entered its decision and order (“Consent Order”) approving a settlement with Defendant-Respondent. In pertinent part, Parts I, II, and III of the Consent Order state:

I.

IT IS HEREBY ORDERED that [Defendant-Respondent], directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, the purchase, financing, or leasing of automobiles, in or affecting commerce, shall not, in any manner, expressly or by implication: . . .

- B. Misrepresent any material fact regarding the cost and terms of financing or leasing any newly purchased vehicle.

II.

IT IS FURTHER ORDERED that [Defendant-Respondent], directly or through any corporation, subsidiary, division, or other device, in connection with an advertisement to promote, directly or indirectly, any extension of consumer credit, in or affecting commerce, shall not in any manner, expressly or by implication:

- A. State the amount or percentage of any down payment, 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 following terms:
1. The amount or percentage of the down payment;
 2. The terms of repayment; and
 3. The annual percentage rate, using the term “annual percentage rate” or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed[.]

III.

IT IS FURTHER ORDERED that [Defendant-Respondent], directly or through any corporation, subsidiary, division, or other device, in connection with an advertisement to promote, directly or indirectly, any consumer lease, in or affecting commerce, shall not, in any manner, expressly or by implication:

- A. 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 the following terms:
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; [and]
 4. The number, amounts, and timing of scheduled payments[.]

30. The Consent Order defines “clearly and conspicuously” as:

A. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.

B. In an electronic medium, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade and appear on the screen for a duration and in a location sufficient for an ordinary consumer to read and comprehend it.

C. In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.

D. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

E. In all advertisements, 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 or promotion.

31. The Consent Order additionally states:

IV.

IT IS FURTHER ORDERED that [Defendant-Respondent] and its successors and assigns 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: . . .

B. All materials that were relied upon in disseminating the representation[.]

32. The Consent Order further states:

VII.

IT IS FURTHER ORDERED that [Defendant-Respondent] and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

33. A copy of the Consent Order is attached hereto as Exhibit A. The FTC served the Consent Order on or about May 8, 2012, and it has remained in full force and effect ever since that date.

DEFENDANTS' CONDUCT

34. According to Defendants' billionauto.com website, the Billion Auto Entities, their predecessors, and owners have "been family owned since 1935." They operate motor vehicle retail stores and lots in Iowa, South Dakota, and Montana, and their television, radio, and print advertisements reach consumers in at least six states – Iowa, Minnesota, Montana, Nebraska, South Dakota, and Wyoming. In a recent posting, Defendants' website states, "Over 25,000 vehicles sold a year."

Defendants' Notice of the Consent Order and Active Concert or Participation

35. In 2011, Defendant-Respondent stipulated to the Consent Order, specifically acknowledging potential liability for "civil penalties in the amount provided by law and other appropriate relief for each violation of the [Consent Order] after it becomes final."

36. David H. Billion or David R. Billion, father and son, hold the president or vice president position at all of the 21 Defendants, except at BFTI, where David R. Billion is the treasurer and registered agent.

37. Because all 21 Defendants, including Nichols Media, share common officers, each Defendant received notice of the Consent Order. Because Defendant Nichols Media exclusively produced or reviewed Defendants' ads, all 21 Defendants, whether or not named as Respondents in the Consent Order, have been in active concert or participation in the promotion of:

- i. the purchase, financing, or leasing of motor vehicles, as stated in Part I of the Consent Order;
- ii. the extension of consumer credit, as stated in Part II of the Consent Order; and
- iii. any consumer lease, as stated in Part III of the Consent Order.

**Advertisements with Hidden Conditions and Costs That
Misrepresent Terms of Financing or Leasing Vehicles**

38. Defendants have offered to finance or lease motor vehicles in hundreds of television, radio, and print advertisements and at billionauto.com. However, Defendants frequently misrepresent the transaction by focusing only on a few attractive terms, such as a low monthly payment or annual percentage rate, while concealing other material terms, for example, that limit who can qualify or that add significant extra costs.

39. For example, one such advertisement ran approximately 10 times on Sioux Falls, South Dakota-area television stations in September 2012. This 30-second ad features successive images of three vehicle models offered for lease.¹ Immediately beside the first pictured model, text prominently states “LEASE FOR \$179MO.”



See Exhibit D (screenshot \$179 offer).² The advertisement, however, hides material conditions that both raise the price and restrict who can qualify for the deal. For only three seconds at the bottom of the screen while the first model is shown, it presents two lines of small type, in white font on a patterned, multi-colored background.



Although an ordinary consumer cannot read these lines because of their small size, short time on screen, and poor contrast, they reveal that consumers must pay substantially more than \$179 to obtain the vehicle. That is, consumers must bring \$2000 plus the first monthly payment to get

¹ The filename of the ad corresponding to Exhibit D is BILK-12-05.mov.

² The video screenshots pasted herein are proportional to their originals.

the deal. The advertisement also reveals that the only consumers who qualify for this deal are persons who happen to be both (i) returning customers loyal to that manufacturer and (ii) military members or veterans. It similarly misrepresents lease offers for the other two vehicle models in this ad with hidden large payments and restrictions. Indeed, the advertisement deflects attention from each offer's bottom-of-screen small type with multi-sensory effects: a moving and talking announcer; pounding music; pop-up graphics; shot transitions with whistle blasts; and alternating screen wipes from both sides. Since May 8, 2012, each Defendant has advertised such finance or lease offers with a hidden material condition(s) that either raises the price and/or restricts who can qualify for the deal.

40. Another representative vehicle advertisement ran approximately 280 times on several Sioux City, Iowa-area radio stations in April 2013. This 30-second radio ad features offers to sell or lease two vehicle models.³ Specifically, between the eighth and fifteenth seconds, the announcer states in a normal cadence:

Now drive the 2013 Nissan Altima for just 99 dollars a month or the 2013 Nissan Sentra, just 79 dollars a month.

At no other time during the ad, however, does the announcer state, in a normal cadence, other terms of the transactions. Instead, in accelerated cadence during only the final five seconds of the ad, the announcer blurts the following material costs and terms:

Thirty-six month 36 thousand mile lease plus first payment tax and license 5000 down with qualified credit see dealer for details.

Only in this rapid-fire delivery does the advertisement disclose material terms such as: these are lease transactions; their duration is 36 months; and consumers must bring \$5000 plus the first monthly payment to get the deals. These two lease offers exemplify instances when Defendants

³ The ad's filename is BNSC-13-502.mp3.

have misrepresented material facts regarding the costs and terms of motor vehicle leases. Since May 8, 2012, each Defendant has advertised such finance or lease offers with a hidden material condition(s) that either raises the price and/or restricts who can qualify for the deal.

Consumer Credit Advertisements
Without Required Clear and Conspicuous Disclosures

41. Defendants have promoted the extension of consumer credit for motor vehicles, in hundreds of television, radio, and print advertisements and at billionauto.com. Defendants' credit offers often contain a prominent "triggering term," as it is commonly known under the Truth in Lending Act ("TILA") and Regulation Z, requiring clear and conspicuous disclosure of specific cost, annual percentage rate, duration, and down payment terms relating to the transaction. However, Defendants frequently either fail to make a required disclosure(s) and/or fail to make them clearly and conspicuously.

42. For example, an advertisement with a credit offer ran approximately 30 times on Sioux City, Iowa-area television stations during several days in June 2013. This 30-second ad features successive images of three vehicle models offered for sale.⁴ Immediately beside the second pictured model, text prominently states a credit offer with an annual percentage rate of 0% and a duration of 60 months.



See, e.g., Exhibit E-1 (screenshot of 0% offer). For less than three seconds at the bottom of the screen while the second model is shown, however, three lines of small type are presented.

⁴ The filename of the ad corresponding to Exhibit E is BKSC-13-04R.mov. Each model appears with its own lease offer; the second model also appears with a credit offer.

Stk#K6047, MSRP: \$22290, 36 month lease, 36,000 miles, \$1995 down plus first payment, tax, title and license and acquisition fee. Just announced \$1,000 KMF Bonus Cash. Price includes all factory rebates and discounts with qualified credit.

Regardless of whether an ordinary consumer could read these lines – and they cannot because of the small size and the short time on screen – the advertisement completely omits the required cost term, e.g., a dollar amount (such as \$300/month). This offer exemplifies an instance when Defendants’ credit offers have omitted a required term(s). Since May 8, 2012, each Defendant has advertised such credit offers that fail to make a required disclosure(s).

43. Another representative advertisement with credit offers was published in the *Argus Leader* and *Public Opinion* newspapers, which circulate in southeastern South Dakota and reach consumers living in this district. This ad ran in several July and August 2012 issues. This ad contains numerous photographs of vehicle models offered for sale or lease.⁵ Immediately beside four of the pictured models, text prominently states an annual percentage rate of 0% for a duration of either 60 or 72 months.



Only in small type at the bottom of the ad, however, are the required disclosures relating to these credit offers presented.

Sale price OFF MSRP after all rebates, discounts, bonus cash, Commercial Credit Cash (MUST have to own/operate business & title in business name), Lease Conquest mail offer (MUST lease a '99 or newer non-GM vehicle), Trade Assistance Bonus Cash (MUST trade in a '99 or newer car or truck), tax, title, registration and doc fee of \$149 extra on purchases and leases. Financing offers through Ally with approved credit. See dealer for details. Pictures for illustration purposes only. Vehicles subject to prior sale. For 0% APR, monthly payment for every \$1,000 financed is \$19.99 for 72 months; \$16.67 for 60 months. 0% APR, 1.9% APR and 3.9% APR (Annual Percentage Rate) offer does not include registration, taxes, license or doc fee of \$149 which are extra. Offer ends 7/31/12. LEASES: 30 months/10,000 miles per year \$2,000 down payment + 1st month's payment. No security deposit, tax and License extra. Acquisition added to lease total. 20 per mile over 2,500 miles. Lessee pays for maintenance, repair and excess wear. Payments may be higher in some states. Not available with other offers. Residency restrictions apply. Offer expires 7/31/12. Conquest lease offer. Must own or lease '99 or newer Non-GM vehicle. See dealer for details.

⁵ The ad (filename BillionGMCpo072812.pdf) is attached hereto as Exhibit F; a true and correct copy measures approximately 5.4 x 11.5 inches.

Specifically, two lines of small type – in the middle of a seven-line block, appearing in black font on blue background – contain the following disclosures: “For 0.0% APR, monthly payment for every \$1,000 financed is \$13.89 for 72 months; \$16.67 for 60 months.” Because of their small size, distant location, and poor contrast, these terms are not clearly and conspicuously disclosed. This ad’s four 0%-APR offers exemplify instances when Defendants have failed to make required disclosures clearly and conspicuously. Since May 8, 2012, each Defendant has advertised such credit offers that fail to make a required disclosure(s) clearly and conspicuously.

Consumer Lease Advertisements
Without Required Clear and Conspicuous Disclosures

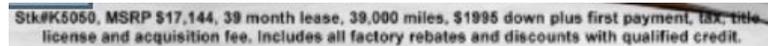
44. Defendants have promoted the extension of consumer leases for motor vehicles in hundreds of television, radio, and print advertisements and at billionauto.com. Defendants’ lease offers often contain a prominent “triggering term,” as it is commonly known under the Consumer Leasing Act (“CLA”) and Regulation M, requiring the further clear and conspicuous disclosure of several cost, duration, and nature terms relating to the transaction. However, Defendants frequently either fail to make a required disclosure(s) and/or fail to make them clearly and conspicuously.

45. As referenced above, an advertisement with lease offers ran approximately 30 times on Sioux City, Iowa-area television stations in June 2013.⁶ This 30-second ad features successive images of three vehicle models. Immediately beside each of the successive pictured models, text prominently states a cost: “\$159/MO.,” “\$129/MO.,” and “\$89/MO.”



⁶ The filename of the ad corresponding to Exhibit E is BKSC-13-04R.mov.

See, e.g., Exhibit E-2 (screenshot of \$89 offer). For less than three seconds at the bottom of the screen in connection with each successive model, however, two or three different lines of small type are presented.



Stk#K5050, MSRP \$17,144, 39 month lease, 39,000 miles, \$1995 down plus first payment, tax, title, license and acquisition fee. Includes all factory rebates and discounts with qualified credit.

Regardless of whether an ordinary consumer could read these lines – and they cannot because of the small size and the short time on screen – the advertisement completely omits two of the mandatory lease disclosures. First, it does not reveal whether or not a security deposit is required. Second, it does not state the total dollar amount due at signing. Rather, they merely list, but neither fully quantify nor add, the component amounts – i.e., (i) \$1995 and (ii) the first monthly payment and (iii) an acquisition fee. Such vague and fragmentary information is not the total amount due at signing. This ad’s three lease offers exemplify instances when Defendants have entirely omitted required terms relating to each transaction. Since May 8, 2012, each Defendant has advertised such lease offers that fail to make a required disclosure(s).

46. Another lease advertisement ran approximately 250 times on Sioux City, Iowa-area television stations in June 2013.⁷ This 30-second ad features successive shots of four vehicle models. Immediately beside three of the pictured models, a monthly cost is prominently featured – “\$129/MO.,” “\$99/MO.,” and “\$79/MO.”



⁷ The filename of the ad corresponding to Exhibit G is BKSC-13-02.mov.

See, e.g., Exhibit G (screenshot of \$79 offer). Appearing for only three seconds at the bottom of the screen in connection with each of the three successive models, however, two or three different lines of small type are presented.

36 month/36,000 mile lease, plus first payment, tax & license, 5,000 down, with qualified credit. #N5313 including all rebates and discounts. See dealer for details.
Kbb fair trade value less reconditioning. See dealer for details

Specifically, these lines contain the following mandatory disclosures: (i) the number of scheduled payments is either 36 or 39 per offer; and (ii) the transactions are leases. Because of their small size and brief time on screen, these terms are not disclosed clearly and conspicuously. Indeed, the advertisement deflects attention from each offer's bottom-of-screen small type with multi-sensory effects: a talking announcer; pounding music; pop-up and moving graphics; shot transitions with squealing-tire and magical-swoosh sounds; and screen wipes using diagonal flare bursts. This ad's three lease offers exemplify instances when Defendants have failed to make required disclosures clearly and conspicuously. Since May 8, 2012, each Defendant has advertised such lease offers that fail to make a required disclosure(s) clearly and conspicuously.

Defendant-Respondent's Recordkeeping and Reporting Failures

47. Defendant-Respondent agreed, in Parts IV and VII of the Consent Order, to retain certain business records, produce them upon request, and submit compliance reports. After the Consent Order became final on May 8, 2012, however, Defendant-Respondent replied to several FTC requests with incomplete reports. These fragmentary reports reveal, among other things, Defendant Nichols Media's responsibility for all Defendants' advertising, as well as Defendant-Respondent's numerous failures to retain and produce required records and to submit reports.

48. In its 60-day compliance report in 2012, Defendant-Respondent informed the FTC about its related media company:

All advertising for Billion Automotive entities is maintained exclusively by Nichols Media, an entity majority owned by David H. Billion and David R. Billion. No additional advertising entities are involved. All Billion Automotive dealership entities must have all advertising produced or reviewed by Nichols Media prior to placement.

49. In 2013 and 2014, FTC staff sought further compliance information from Defendant-Respondent via narrowly tailored requests. Staff requested, among other things: (i) all entities through which it has advertised consumer credit; (ii) all credit and lease ads; (iii) all related dealerships, owners, and management; (iv) transaction, revenue, and profit data in units and dollars; (v) any guidelines used to create or review ads; and (vi) records from manufacturers, banks, and others to substantiate credit and lease terms offered in ads.

50. Defendant-Respondent replied to these requests:

- i. Entities. By referring FTC to a list labeled “Billion Auto Entities,” but stating nothing further.⁸
- ii. Advertisements. By producing nearly 3,000 television, radio, print, and website ads for dealerships in Iowa, South Dakota, and Montana.
- iii. Ownership. By referring FTC to a similar list labeled “Billion Automotive Dealerships,” but refusing to comply further, objecting that the additional information is “irrelevant as to whether or not [Defendant-Respondent] is in compliance with advertising laws, rules or regulations.”⁹

⁸ See Exhibit B attached hereto, listing 19 of the 20 Billion Auto Entities named as defendants.

⁹ See Exhibit C attached hereto, listing all of the Billion Auto Entities named as defendants.

- iv. Revenues. Producing transaction data in units, but withholding revenues and profits, objecting that they are “irrelevant to any investigation regarding [Defendant-Respondent’s] compliance with advertising laws, rules or regulations.”
- v. Guidelines. By producing three guideline documents from the Iowa Automobile Dealers Association, and stating: “We also rely upon the experience of Nichols Media to make sure all laws and regulations are complied with.”
- vi. Substantiation. By stating that it “does not have [responsive] documents. Promotions originate from the manufacturers and possibly from banks. When a specific promotion ends, the documents and information regarding the promotion are discarded.”

51. Additionally, FTC staff requested Defendant-Respondent provide information about Nichols Media, e.g., identification of its officers, shareholders, advertising guidelines, revenues attributable to the Billion Auto Entities, and persons involved in creation and review of ads. In reply, Defendant-Respondent stated, in part, that it “objects on the ground that you are asking for information pertaining to Nichols Media, which is a separate and independent business and not part of this proceeding.” It also vaguely stated that general managers at most of its locations in Iowa, South Dakota, and Montana “might have worked with Nichols Media on the preparation of advertising.” Defendant-Respondent then refused to identify, among other things, Nichols Media’s officers, shareholders, guidelines for ads, revenues attributable to the Billion Auto Entities, and persons involved in creation and review of ads.

VIOLATIONS OF CONSENT ORDER

FIRST CAUSE OF ACTION
(CONSENT ORDER PART I – MISREPRESENTATIONS)

52. In numerous instances, Defendants disseminated or caused the dissemination of advertisements containing material facts regarding the cost or terms of offers for financing or leasing a motor vehicle, that represented expressly or by implication:

A. The prominent costs or terms are generally available to consumers;
or

B. The prominent costs or terms are inclusive of all material costs and terms of the transaction.

53. In truth and in fact:

A. The prominent costs or terms are not generally available to consumers because, to qualify, as examples, consumers must be: a military member or veteran, a recent college graduate, an existing manufacturer customer or a competing manufacturer customer, or a business (not merely a residential) buyer; or

B. The prominent costs or terms do not include costs and terms such as large down payments, vehicle trade-ins, security deposits, acquisition fees, or other up-front payments.

54. Defendants' representations described in Paragraph 52 above, constitute misrepresentations, in violation of Part I(B) of the Consent Order.

SECOND CAUSE OF ACTION
(CONSENT ORDER PART II – TILA / REGULATION Z – CONSUMER CREDIT)

55. In numerous instances, Defendants disseminated or caused the dissemination of offers promoting, directly or indirectly, the extension of consumer credit for a motor vehicle.

56. In numerous instances, the offers for the extension of consumer credit for vehicles described in Paragraph 55 stated the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, but:

A. Omitted the amount or percentage of the down payment or the terms of repayment; or

B. Failed to state all required disclosures “clearly and conspicuously,” as defined in the Consent Order, including the amount or percentage of the down payment or the terms of repayment. These disclosures were not stated “clearly and conspicuously,” because, among other deficiencies, they appeared in small type, in a distant location, for a short duration, in a fast speed or cadence, in unintelligible language or syntax, or were accompanied by distracting sounds or images.

57. By failing to make these disclosures required by Part II(A) of the Consent Order, or failing to make the required disclosures “clearly and conspicuously,” Defendants violated Part II(A) of the Consent Order.

THIRD CAUSE OF ACTION
(CONSENT ORDER PART III – CLA / REGULATION M – CONSUMER LEASES)

58. In numerous instances, Defendants disseminated or caused the dissemination of offers promoting, directly or indirectly, consumer leases for a motor vehicle.

59. In numerous instances, the offers for consumer leases for vehicles described in Paragraph 58 stated the amount of any payment or that any or no initial payment was required at lease inception, but:

A. Omitted a statement that the transaction advertised is a lease, the total amount due at lease signing or delivery, a statement of whether or not a security deposit is required, or the number, amounts, and timing of scheduled payments; or

B. Failed to state all required disclosures “clearly and conspicuously,” as defined in the Consent Order, including a statement that the transaction advertised is a lease, the total amount due at lease signing or delivery, a statement of whether or not a security deposit is required, or the number, amounts, and timing of scheduled payments. These disclosures were not stated “clearly and conspicuously,” because, among other deficiencies, they appeared in small type, in a distant location, for a short duration, in a fast speed or cadence, in unintelligible language or syntax, or were accompanied by distracting sounds or images.

60. By failing to make these disclosures required by Part III(A) of the Consent Order, or failing to make the required disclosures “clearly and conspicuously,” Defendants violated Part III(A) of the Consent Order.

FOURTH CAUSE OF ACTION
(CONSENT ORDER PART IV – FAILURE TO RETAIN AND PRODUCE RECORDS)

61. Part IV(B) of the Consent Order requires Defendant-Respondent “for five (5) years after the last date of dissemination of any representation covered by [the Consent Order], [to] maintain and upon request make available to the Federal Trade Commission for inspection and copying . . . all materials that were relied upon in disseminating the representation.”

62. In numerous instances in which Defendant-Respondent disseminated specific offers to provide consumer credit or leases in connection with motor vehicles, Defendant-Respondent:

A. Did not maintain materials, such as time-relevant communications from the manufacturer, lender, or lessor, and internal documents verifying the existence of the advertised costs and terms, relied upon in extending the terms of the offers, or

B. Did not make them available, upon request, to the FTC for inspection and copying.

63. Defendant-Respondent’s acts or practices, as described in Paragraph 62 above, violated Part IV(B) of the Consent Order.

FIFTH CAUSE OF ACTION
(CONSENT ORDER PART VII – FAILURE TO REPORT ON COMPLIANCE)

64. Part VII of the Consent Order requires Defendant-Respondent to submit an initial “true and accurate report, in writing, setting forth in detail the manner and form of [its] own compliance with [the Consent Order,]” and within 10 days of receipt of written notice from the Commission, it “shall submit additional true and accurate written reports.”

65. Within 10 days after receipt of written notice from the Commission, Defendant-Respondent did not submit additional true and accurate written reports concerning:

A. The Billion Auto Entities' organizational structure (e.g., parent/sibling/subsidiary/division affiliations), ownership, control, and management;

B. Gross revenues and pretax profits per transaction for the Billion Auto Entities; and

C. Identification of Nichols Media's officers, shareholders, guidelines for advertisements offering credit and leases, revenues attributable to the Billion Auto Entities, and persons involved in creation and review of ads.

66. Defendant-Respondent's acts or practices, as described in Paragraph 65 above, violated Part VII of the Consent Order.

CIVIL PENALTIES

67. Each representation Defendants have made in violation of the Consent Order constitutes a separate violation for which Plaintiff may seek civil penalties. Additionally, each of Defendant-Respondent's failures to maintain and make available materials and its failure to submit true and accurate written reports constitutes a separate violation for which Plaintiff may seek civil penalties.

68. Each day Defendants have made, or have continued to make, representations in violation of the Consent Order constitutes a separate violation for which Plaintiff may seek civil penalties.

69. Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), as modified by Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of the FTC's

Rules of Practice, 16 C.F.R. § 1.98(c), authorizes the Court to award monetary civil penalties of up to \$16,000 for each such violation of the Consent Order.

70. Under Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), this Court is authorized to permanently enjoin Defendants from violating the Consent Order and grant ancillary relief.

PRAYER FOR RELIEF

71. WHEREFORE, Plaintiff requests this Court, pursuant to 15 U.S.C. § 45(l), and pursuant to the Court's own equitable powers, to:

- (1) Enter judgment against Defendants and in favor of the Plaintiff for each violation alleged in this complaint;
- (2) Award Plaintiff monetary civil penalties from Defendants for each violation of the Consent Order alleged in this complaint;
- (3) Enter a permanent injunction to prevent Defendants from violating the Consent Order;
- (4) Award Plaintiff its costs and attorneys' fees incurred in connection with this action; and
- (5) Award Plaintiff such additional relief as the Court may deem just and proper.

DATED: December 11, 2014

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