

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of TXVT Limited Partnership, a Texas Limited Partnership,
d/b/a Trophy Nissan, File No. 142 3117

The Federal Trade Commission (“FTC”) has accepted, subject to final approval, an agreement containing a consent order from TXVT Limited Partnership, d/b/a Trophy Nissan. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

The Respondent is a motor vehicle dealer. The matter involves its advertising of the purchase, financing, and leasing of its motor vehicles. According to the FTC complaint, Respondent has advertised that when a consumer trades in a used vehicle in order to purchase a new vehicle and pays \$1.00, Respondent will pay off the balance of any loan or lease agreement on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan or lease. The complaint alleges that in fact, when a consumer trades in a used vehicle with negative equity (i.e., the loan or lease balance on the vehicle exceeds the vehicle’s value), pays \$1.00, and purchases another vehicle, Respondent does not pay off the balance of the loan or lease agreement on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan or lease agreement. Instead, the Respondent includes the negative equity from the trade-in in the loan for the newly purchased vehicle. The complaint alleges therefore that the representation is false or misleading in violation of Section 5 of the FTC Act.

The complaint also alleges that Respondent has advertised that Respondent would match consumers’ income tax refund for use as a down payment on an automobile. The complaint alleges that Respondent’s advertisement did not disclose adequately additional terms pertaining to the offer, such as that Respondent would match only up to \$1,000 of consumers’ income tax refund. The complaint alleges therefore that the failure to disclose adequately the additional terms is deceptive in violation of Section 5 of the FTC Act.

The complaint further alleges that Respondent advertised that consumers could lease advertised vehicles at terms prominently stated in the advertisements, including, but not necessarily limited to, the monthly payment amount. The complaint alleges that Respondent’s advertisements did not disclose or disclose adequately additional terms pertaining to the lease offer, such as the total amount of any payments due at lease inception. The complaint alleges that these additional terms were material to consumers in deciding whether to lease a vehicle. The complaint alleges therefore that the failure to disclose or disclose adequately the additional terms is deceptive in violation of Section 5 of the FTC Act.

In addition, the complaint alleges violations of the Consumer Leasing Act (“CLA”) and Regulation M for failing to disclose or to disclose clearly and conspicuously certain costs and terms when advertising leases. Finally, the complaint alleges violations of the Truth in Lending Act (“TILA”) and Regulation Z for failing to disclose or to disclose clearly and conspicuously certain costs and terms when advertising credit.

The proposed order is designed to prevent the Respondent from engaging in similar deceptive practices in the future. Part I.A of the proposed order prohibits the Respondent from misrepresenting that it will pay any particular amount of the remaining loan or lease obligation on a consumer's trade-in vehicle used to purchase, finance, or lease another motor vehicle, including representing that the Respondent will pay the entire remaining obligation on the trade-in vehicle when the consumer will actually be responsible for paying that amount. Part I.B of the proposed order prohibits Respondent from misrepresenting the material terms of any promotion or other incentive, and the nature, value, or amount of a promotion or other incentive, including, but not limited to, that Respondent will match a consumer's tax refund for use as the down payment on the purchase of a vehicle. Part I.C prohibits the Respondent from misrepresenting the cost of: (1) leasing a vehicle, including, but not necessarily limited to, the total amount due at lease inception, the down payment, amount down, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments; or (2) purchasing a vehicle with financing, including but not necessarily limited to, the amount or percentage of the down payment, and the repayment obligation over the full term of the loan, including any balloon payment. Part I.D prohibits the Respondent from misrepresenting any other material fact about the price, sale, financing, or leasing of any vehicle.

Part II of the proposed order prohibits Respondent from making any representation about any promotion or other incentive including, but not limited to, that Respondent will match a consumer's tax refund for use as the down payment on the purchase of a vehicle, without disclosing clearly and conspicuously, the terms and limitations of such promotion or other incentive.

Part III of the proposed order requires Respondent to clearly and conspicuously make all of the disclosures required by CLA and Regulation M if they state relevant trigger terms, including the monthly lease payment or the amount of any payment or that any or no initial payment is required at lease inception. In addition, Part III prohibits any other violation of CLA or Regulation M.

Part IV of the proposed order requires that the Respondent clearly and conspicuously make all of the disclosures required by TILA and Regulation Z if they 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. In addition, Part IV prohibits the Respondent from stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term. Part IV also prohibits any other violation of TILA and Regulation Z.

Part V of the proposed order requires Respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements. Part VI requires that Respondent provide copies of the order to certain of their personnel. Part VII requires notification to the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part VIII requires the Respondent to file compliance

reports with the Commission. Finally, Part IX is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order’s terms.